

**1999-2000**

**SENATE  
COMMERCE**

**MINUTES**

**SENATE COMMERCE COMMITTEE MEMBERSHIP**

**SEN. R. C. SOLES, JR. - CHAIRMAN**

**Sen. Frank W. Ballance, Jr.**  
**Sen. Patrick J. Ballantine – Ranking Minority Member**  
**Sen. Robert C. “Bob” Carpenter**  
**Sen. John H. Carrington**  
**Sen. Charles Carter**  
**Sen. Betsy Cochrane – Vice-Chairman**  
**Sen. Walter H. Dalton**  
**Sen. James S. Forrester**  
**Sen. Virginia Foxx**  
**Sen. David W. Hoyle – Vice-Chairman**  
**Sen. Luther Henry Jordan, Jr.**  
**Sen. John H. Kerr, III**  
**Sen. Howard N. Lee – Vice-Chairman**  
**Sen. R. L. “Bob” Martin – Vice-Chairman**  
**Sen. Stephen M. Metcalf**  
**Sen. Kenneth R. Moore**  
**Sen. Aaron W. Plyler**  
**Sen. William R. Purcell**  
**Sen. Anthony E. Rand**  
**Sen. Eric Miller Reeves**  
**Sen. Robert A. Rucho**  
**Sen. Bob Shaw**  
**Sen. Larry Shaw**  
**Sen. Ed Warren – Vice-Chairman**



NORTH CAROLINA GENERAL ASSEMBLY  
COMMITTEE SUMMARY REPORT

1999-2000 Biennium		SENATE: COMMERCE		Valid Through 19-JUL-1999	
BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 14	ALLRED	CEMETERY CONSUMER PROTECTION	*S -REF TO COM ON COMMERCE	04-29-99	
H 19	REDWINE	CASINO BOATS REGULATED	*S -RE-REF COM ON FINANCE	03-30-99	06-22-99
H 112	BAREFOOT	SECURITIES TRANSFER ON DEATH	S -RE-REF COM ON FINANCE	03-11-99	03-31-99
H 219	CHURCH	SAVINGS INSTITUTION CHANGES	R -CH. SL 99-0179	04-12-99	06-01-99
H 414	SETZER	VETERINARIAN RECIPROCITY	*R -CH. SL 99-0203	04-01-99	06-02-99
H 461=	REDWINE	RELEASE OF DMV INFORMATION	*S -REF TO COM ON COMMERCE	04-22-99	
H 476=	TOLSON	EMC SUBSIDIARIES	*R -CH. SL 99-0180	04-29-99	05-26-99
<b>H 512</b>	<b>CLARY</b>	<b>ASSISTED LIVING ADMINISTRATORS</b>	<b>*H -CONCURRED IN S/COM SUB</b>	<b>04-29-99</b>	<b>05-19-99</b>
H 570	REDWINE	CAROLINA SHORES 201	R -CH. SL 99-0240	06-21-99	06-30-99
H 674=	HAIRE	TRIBAL BUILDING INSPECTIONS	*R -CH. SL 99-0078	04-22-99	05-11-99
H 736	ROGERS	MANAGED CARE/PATIENT ACCESS	*S -RE-REF COM ON COMMERCE	05-04-99	
H 863	REDWINE	ST. JAMES INCORPORATION	R -CH. SL 99-0241	06-09-99	06-30-99
H 899	BRIDGEMAN	REAL ESTATE SALESMAN/BROKER LICENSUR	*R -CH. SL 99-0200	04-28-99	05-11-99
H 985	WAINWRIGHT	STATE LAND TRANSACTIONS	*R -CH. SL 99-0252	04-28-99	05-18-99
H1076	COX	FIRE MAINS COMPLY WITH BUILDING CODE	*R -CH. SL 99-0123	04-27-99	05-12-99
H1149	JEFFUS	MODULAR CONSTRUCTION REQUIREMENTS	*S -REF TO COM ON COMMERCE	04-28-99	
H1349=	MILLER G	CONFIRM SAMUEL J. ERVIN, IV	S -REF TO COM ON COMMERCE	04-29-99	
S 23	PLYLER	MASS GATHERINGS LAW/CLARIFICATION	R -CH. SL 99-0003	02-03-99	02-09-99
S 23	PLYLER	MASS GATHERINGS LAW/CLARIFICATION	R -CH. SL 99-0003	02-10-99	02-16-99
S 32	SOLES	CONFIRM ROBERT KOGER	R -CH. RES 99-03	02-04-99	02-16-99
S 51	SHAW L	HIGHWAY CONTRACT BONDING REQ'MENTS	R -CH. SL 99-0025	02-08-99	02-23-99
S 59=	FOXX	MOBILE PHARMACIES	*R -CH. SL 99-0246	02-09-99	02-24-99
S 78	SOLES	CONFIRM LINGERFELT APPOINTMENT	R -CH. RES 99-05	02-15-99	02-23-99
S 192	REEVES	FILING OF FOREIGN AGREEMENTS	*R -CH. SL 99-0260	03-01-99	04-07-99
S 212	RAND	MORTUARY SCIENCE CHANGES	*S -PRES. TO GOV. 07-14	03-02-99	04-21-99
S 254=	GULLEY W	OUTDOOR ADVERTISING CONTROL ACT	S -PLACED ON CAL FOR 07-19	03-08-99	04-07-99
S 284	SHAW L	SMALL BUSINESS PROCUREMENT ACT	*S -PRES. TO GOV. 07-15	03-08-99	03-31-99
S 417	CARTER	LETTERS OF CREDIT COLLATERAL	R -CH. SL 99-0074	03-18-99	04-07-99
S 419=	HOYLE	CLARIFY MV DEALER TRANSFER RIGHTS	S -PRES. TO GOV. 07-14	03-18-99	04-22-99
S 420=	HOYLE	CLARIFY MV DEALERS LICENSING LAW	*S -PRES. TO GOV. 07-14	03-18-99	04-27-99

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  
 SENATE: COMMERCE

1999-2000 Biennium	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 479	RAND	BEACH AREA BUILDING CODE REV.	S - REF TO COM ON COMMERCE	03-23-99	
S 480=	METCALF	EMC SUBSIDIARIES	S - REF TO COM ON COMMERCE	03-23-99	
S 500	KINNAIRD	REQUEST STATE REPORTS DOUBLE-SIDED	S - REF TO COM ON COMMERCE	03-25-99	
S 570	HOYLE	UPDATE CONSUMER FINANCE ACT	*S - RE-REF COM ON FINANCE	03-29-99	05-25-99
<b>S 580</b>	<b>HOYLE</b>	<b>INTERNET DINING GUIDE FUNDS AND FEES</b>	<b>S - RE-REF COM ON APPROPR</b>	<b>03-29-99</b>	<b>04-27-99</b>
S 606	BALLANCE	TOURISM RESORT ABC PERMITS	*S - RE-REF COM ON FINANCE	03-29-99	04-14-99
S 607	BALLANCE	ABC PERMIT MODIFICATIONS	*S - CONCURRED IN H/COM SUB	03-29-99	04-14-99
S 641	ROBINSON	JOINT ACCOUNT RIGHT OF SURVIVORSHIP	S - REF TO COM ON COMMERCE	03-30-99	
S 654	GULLEY W	MANUFACTURED HOME LAW RESTORATION	*R - CH. SL 99-0278	03-30-99	03-31-99
S 658	DALTON	EXTEND SUNSET/MUN. ELECTRIC AMEND	*R - CH. SL 99-0111	03-30-99	04-14-99
S 660	CLODFELTER	REVISED LIMITED LIABILITY CO. ACT	*R - CH. SL 99-0189	03-31-99	04-20-99
S 732=	SOLES	CHIROPRACTIC OWNERSHIP RESTRICTED	*S - PRES. TO GOV. 07-14	04-01-99	04-21-99
S 733=	SOLES	CHIROPRACTIC CLAIMS REVIEW	S - RE-REF COM ON COMMERCE	04-07-99	
S 785	ALBERTSON	REGULATION OF LP GAS	*S - PRES. TO GOV. 07-14	04-07-99	04-27-99
S 790	SOLES	CLARIFY CERTAIN CONTRACT LOAN FEES	R - CH. SL 99-0075	04-07-99	04-20-99
S 796	HOYLE	GENERAL CONTRACTORS PROPERTY	S - PRES. TO GOV. 07-15	04-12-99	04-20-99
S 830	MILLER B	AUTO REPAIR WORK DISCLOSURES	*H - PASSED 2ND READING	04-12-99	04-28-99
S 866	GULLEY W	MORT. LENDERS AND BROKERS LICENSURE	S - REF TO COM ON COMMERCE	04-13-99	
S 871	REEVES	DECEDENTS' ESTATES/FUNERAL EXPENSES	*R - CH. SL 99-0166	04-13-99	04-20-99
S 933	KINNAIRD	ADULT CARE HOMES/TRANSFERS	S - RE-REF COM ON HLTHCARE	04-14-99	04-22-99
S 935=	CARTER	TELEPHONE SOLICITATION	S - REF TO COM ON COMMERCE	04-14-99	
S 939	WARREN E	BANKING LAW REVISIONS	R - CH. SL 99-0072	04-14-99	04-20-99
S 941	WARREN E	MANUFACTURED HOMES LAW CHANGES	*S - RATIFIED	04-14-99	04-22-99
S 941	WARREN E	MANUFACTURED HOMES LAW CHANGES	*S - RATIFIED	04-26-99	04-27-99
S 968	SHAW L	WAIVER OF COMPETITIVE BIDDING MODIFI	*H - PLACED ON CAL FOR 07-19	04-15-99	06-23-99
S 974	SOLES	VACATION RENTAL ACT	*S - PRES. TO GOV. 07-14	04-15-99	04-27-99
S 975=	SOLES	CONFIRM ERVIN	R - CH. RES 99-08	04-15-99	04-22-99
S 993	ODOM	MANAGED CARE/COLLATERAL SOURCE	S - REF TO COM ON COMMERCE	04-15-99	
S1008	HOYLE	EXTEND UNIV. SERVICE DEADLINE	R - CH. SL 99-0112	04-15-99	04-22-99
S1066	RAND	HEALTH CARE IMPROVEMENT ACT	S - RE-REF COM ON COMMERCE	04-26-99	

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BOLDDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY  
 COMMITTEE SUMMARY REPORT

1999-2000 Biennium	INTRODUCER	SHORT TITLE	SENATE: COMMERCE	LATEST ACTION ON BILL	Valid Through 19-JUL-1999
BILL				IN DATE	OUT DATE
S1077=	ALBERTSON	FREEDOM TO CHOOSE CLEAN ENERGY		S - REF TO COM ON COMMERCE	04-15-99
S1137	MARTIN W	PROHIBIT CASH-OUT TRANSACTIONS		S - REF TO COM ON COMMERCE	04-15-99
S1143	WARREN E	CONTRACTS CONTINUE/EURO. UNION		*S - PRES. TO GOV. 07-08	04-15-99
S1166	ODOM	WORKERS' COMP./AVERAGE WEEKLY WAGES		S - REF TO COM ON COMMERCE	04-15-99

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 BOLDDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

SENATE COMMERCE COMMITTEE

MINUTES

The Senate Commerce and Financial Institution Committee held its organizational meeting on Tuesday, February 9, 1999 in Room 1027 of the Legislative Building. Sen. R. C. Soles, Jr., Chairman, called the meeting to order.

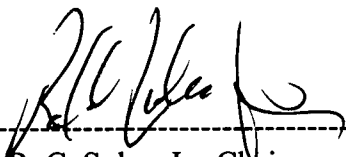
All committee members then introduced themselves and told what districts and counties they represented, etc. Sen. Soles then recognized staff, committee counsel and pages.

SB 23 – AN ACT TO CLARIFY THE LAW REGULATING MASS GATHERINGS.

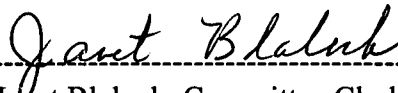
Sen. Plyler, bill sponsor, explained the bill to the committee. Mr. Doug Stafford, Executive Vice-President of the Charlotte Motor Speedway, was recognized and he gave us a brief story about the history of the speedway. Mr. Stafford informed the committee that this year the speedway is celebrating its 40<sup>th</sup> Anniversary. There was some discussion and questions by the committee.

Sen. Plyler made a motion to give the bill and favorable report and it was seconded by Sen. Jordan. The motion carried.

There being no further business meeting adjourned.



Sen. R. C. Soles, Jr., Chairman



Janet Blalock, Committee Clerk

VISITOR REGISTRATION SHEET

MMLR  
Name of Committee

2-9-99  
Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

Gordon Kaugh	Project Challenge NC	Springe Park
John K... ..	<del>AT&amp;T</del>	
Lisa Reyes	the insider	
Lynn Hornes	Bowen	
Wm J. Bain	NCMS	
Gene Gene	NCMS	
Mari ...	NC SA	
John ...	Lambert Consulting	
John H. Cyrus	NC State Strategic	
Joe McClees	McClees Consulting	
David Simmons	ZOA, PA	
Govett Ardue	"	
Brenda Dougherty	Sprint	
Malcolm Black	DENR	
Laura ...	DENR	
Mark ...	Capital Group	
Larry Heckner	Household Financial Group	
Bill McAulay	BNC	
John ...	NC Family Policy Council	
Lucius Pullen	ATTORNEY	
Chris Carter	Carter & Assoc	
David Anders	PPFNC	
PG	DLFB	

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Ed Regan

N.C. Assoc. of Co. Comm.

Durwood Louschington

NS

Army Fallbright

Amfor's wing.



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February 8, 1999

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel *LJ*

RE: Senate Bill 23 (Mass Gatherings Law/Clarification)

Senate Bill 23 provides that the State laws and regulations governing "mass gatherings" do not apply to permanent stadiums with adjacent campgrounds that host annual events with crowds of more than 100,000 people.

Under current law, a *mass gathering* is any assembly of 5,000 people or more in an open space or open air for more than 24 hours, but it does not include assemblies in permanent buildings or permanent structures. A 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, including the following:

- The area must be large enough to accommodate the expected participants
- The perimeter of the area can be no closer than 1500 feet to a residence (unless the owner consents) nor can it be within 1 to 3 miles of certain classes of reservoirs or watersheds
- Parking spaces must be provided (one space for each four persons)
- There must be a written plan for security enforcement, dust control, fire prevention, emergencies, medical care, and lighting
- The sponsor must provide personnel to keep public highways open
- Water must be provided from an approved source
- Sanitary toilet facilities must be provided
- Solid waste must be collected and stored in leak-proof containers
- Noise levels apply to amplified equipment

This act would take effect upon becoming law.

S23-SMRN99-001

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Sen. R. C. Soles, Jr., Chairman**

Tuesday, February 09, 1999

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

**FAVORABLE**

S.B. SB 23	Mass Gatherings Law/Clarification
	Sequential Referral: none
	Recommended Referral: none

TOTAL REPORTED: 1

Committee Clerk Comment:



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 23

Short Title: Mass Gatherings Law/Clarification.

(Public)

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Sponsors: Senators Plyler; Albertson, Cooper, Hartsell, Hoyle, Perdue, Purcell, Rand, and Soles.

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Referred to: Commerce.

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February 3, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE LAW REGULATING MASS GATHERINGS.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. G.S. 130A-252 reads as rewritten:  
5 "**§ 130A-252. Definition of mass ~~gathering~~; gathering; applicability of Part.**  
6 (a) For the purposes of this Part, "mass gathering" means a congregation or  
7 assembly of more than 5,000 people in an open space or open air for a period of  
8 more than 24 hours. A mass gathering shall include all congregations and assemblies  
9 organized or held for any purpose, but shall not include assemblies in permanent  
10 buildings or permanent structures designed or intended for use by a large number of  
11 people. To determine whether a congregation or assembly extends for more than 24  
12 hours, the period shall begin when the people expected to attend are first permitted  
13 on the land where the congregation or assembly will be held and shall end when the  
14 people in attendance are expected to depart. To determine whether a congregation or  
15 assembly shall consist of more than 5,000 people, the number reasonably expected to  
16 attend, as determined from the promotion, advertisement and preparation for the  
17 congregation or assembly and from the attendance at prior congregations or  
18 assemblies of the same type, shall be considered.  
19 (b) The provisions of this Part do not apply to permanent stadiums with adjacent  
20 campgrounds that host annual events attracting crowds in excess of 100,000 people."  
21 Section 2. This act is effective when it becomes law.

SENATE COMMERCE COMMITTEE  
11:00 A.M., TUESDAY, FEBRUARY 16, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

The Senate Commerce Committee met on Tuesday, February 16, 1999, at 11:00 a.m. in Room 1027 of the State Legislative Building. Twenty members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

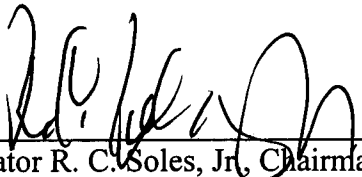
Senator Soles called the meeting to order and stated that the first order of business would be consideration of the following bill: S. B. 23, AN ACT TO CLARIFY THE LAW REGULATING MASS GATHERINGS. A proposed Committee Substitute was offered and Senator Rand moved that the Proposed Committee Substitute be adopted. Senator Hoyle seconded the motion which carried. Senator Plyler was recognized to explain the Committee Substitute. He said the only change from the original bill occurred in Part (b) of the bill where the figure was changed from "100,000" to "70,000" people.

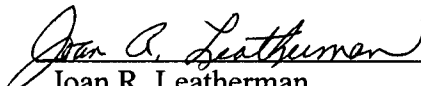
Senator Rand moved that the Committee Substitute for SB 23 be given a favorable report. Motion carried.

SJR 32, A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF ROBERT KOGER MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION. Senator Soles recognized Ms. Jo Anne Sanford, Chair of the N. C. Utilities Commission, for a brief overview of the work of the Commission and remarks in support of Dr. Koger. Commissioners Richard Conder and Bobby Owens were also recognized by Chairman Soles, and Commissioner Conder spoke favorably on behalf of Dr. Koger.

Dr. Koger was recognized for a statement after which Senator Kerr moved that the Committee approve the recommendation of Dr. Koger and that SJR 32 be given a favorable report. Motion carried. (See attached resume of Dr. Koger, a letter from Mr. George F. Bason, Chairman of the N. C. Board of Ethics, and a memorandum from Steven Rose, Committee Counsel, dated February 15<sup>th</sup> regarding SJR 32.)

There being no further business to come before the Committee, the meeting adjourned at 11:25 a.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman,  
Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
R. C. Soles, Jr., Chairman**

Monday, February 22, 1999

R. C. SOLES, JR.,  
submits the following with recommendations as to passage:

**FAVORABLE**

S.J.R.     **32**             Confirmation of Appointment of Robert Koger to N. C. Utilities Commission  
                                  Sequential Referral:     None  
                                  Recommended Referral:  None

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

S.B.       **23**             Mass Gatherings Law/Clarification  
                                  Draft Number:            PCS6515-LE  
                                  Sequential Referral:     None  
                                  Recommended Referral:  None  
                                  Long Title Amended:    No

**TOTAL REPORTED: 2**

Committee Clerk Comment:

**SENATE COMMERCE COMMITTEE  
AGENDA  
Tuesday, February 16, 1999  
ROOM 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 23, MASS GATHERINGS LAW/CLARIFICATION (PLYLER)**

**REMARKS BY:  
MS. JO ANNE SANFORD, CHAIRMAN, N. C. UTILITIES COMMISSION**

**SJR 32, CONFIRMATION OF APPOINTMENT OF ROBERT KOGER BY  
THE GOVERNOR TO THE N. C. UTILITIES COMMISSION**

**ADJOURNMENT**



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

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SENATE BILL 23  
Proposed Committee Substitute S23-PCS6515-LE

Short Title: Mass Gatherings Law/Clarification.

(Public)

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Sponsors:

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Referred to:

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February 3, 1999

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2 AN ACT TO CLARIFY THE LAW REGULATING MASS GATHERINGS.  
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7 assembly of more than 5,000 people in an open space or open air for a period of  
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11 people. To determine whether a congregation or assembly extends for more than 24  
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15 assembly shall consist of more than 5,000 people, the number reasonably expected to  
16 attend, as determined from the promotion, advertisement and preparation for the  
17 congregation or assembly and from the attendance at prior congregations or  
18 assemblies of the same type, shall be considered.  
19 (b) The provisions of this Part do not apply to permanent stadiums with adjacent  
20 campgrounds that host annual events attracting crowds in excess of 70,000 people."  
21 Section 2. This act is effective when it becomes law.



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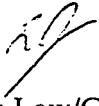
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February 8, 1999

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel 

RE: Senate Bill 23 (Mass Gatherings Law/Clarification)

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- Water must be provided from an approved source
- Sanitary toilet facilities must be provided
- Solid waste must be collected and stored in leak-proof containers
- Noise levels apply to amplified equipment

This act would take effect upon becoming law.

S23-SMRN99-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE JOINT RESOLUTION 32

---

Sponsors: Senators Soles; Ballance, Kerr, Perdue, Plyler, Rand, Reeves, and Warren.

---

Referred to: Commerce.

---

February 4, 1999

1 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE  
2 APPOINTMENT OF ROBERT KOGER MADE BY THE GOVERNOR TO  
3 MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

4           Whereas, under the provisions of G.S. 62-10, appointments made by the  
5 Governor to membership on the North Carolina Utilities Commission are subject to  
6 confirmation by the General Assembly by joint resolution; and

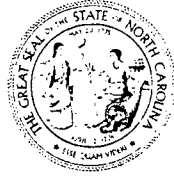
7           Whereas, a vacancy has occurred on the North Carolina Utilities  
8 Commission because of the resignation of Allyson K. Duncan; and

9           Whereas, the Governor has submitted to the presiding officers of the  
10 House of Representatives and the Senate, the name of his appointee to serve the  
11 remainder of the unexpired term on the North Carolina Utilities Commission of  
12 Allyson K. Duncan, which will expire June 30, 1999; Now, therefore,  
13 Be it resolved by the Senate, the House of Representatives concurring:

14           Section 1. The appointment of Robert Koger to the North Carolina  
15 Utilities Commission for a term to expire June 30, 1999, is confirmed.

16           Section 2. This resolution is effective upon ratification.





*Referred to  
Commerce*

STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR  
RALEIGH 27603-8001

JAMES B. HUNT JR.  
GOVERNOR

November 20, 1998

Ms. Janet Pruitt  
Principal Clerk of the Senate  
North Carolina General Assembly  
Legislative Building  
16 West Jones Street  
Raleigh, NC 27603-5925

Dear Ms. Pruitt:

Pursuant to General Statute 62-10, I hereby appoint Mr. Robert Koger to serve as a member of the North Carolina Utilities Commission and submit his name for confirmation by the North Carolina General Assembly. Mr. Koger will complete the unexpired term of Commissioner Allyson K. Duncan. His term shall begin immediately upon taking the oath of office and he shall continue to serve on an interim basis pending legislative confirmation. His term shall expire June 30, 1999.

My warmest personal regards.

Sincerely,

*James B. Hunt Jr.*  
James B. Hunt Jr.

JBH/jj/tmw

cc: The Honorable Dennis Wicker  
The Honorable Marc Basnight  
The Honorable Harold Brubaker  
Ms. Denise Weeks

NOV 24 1998

*Janet Pruitt*  
JAN 28 1999





State of North Carolina  
Utilities Commission

Post Office Box 29510  
Raleigh, NC 27626-0510

COMMISSIONERS  
JO ANNE SANFORD, Chair  
RALPH A. HUNT  
JUDY HUNT

COMMISSIONERS  
WILLIAM R. PITTMAN  
J. RICHARD CONDER  
ROBERT V. OWENS, JR.  
DR. ROBERT K. KOGER



**Dr. Robert K. Koger**  
**President and Executive Director**  
**Advanced Energy Corporation**

Robert Koger assumed leadership of Advanced Energy as its President and Executive Director in 1988. He previously served on the North Carolina Utilities Commission for eleven years, including eight years as chairman. Earlier experiences include serving as Director of the Commission's Engineering and Economics Division and as an engineer with the Rural Electrification Administration.

Dr. Koger's wide-ranging energy experience also includes participation on several important committees including the Executive Committee of the National Association of Regulatory Commissioners (NARUC), President of the Southeastern Association of Regulatory Commissioners (SEARUC), and a ten-year membership on the Advisory Council of the Electric Power Research Institute (EPRI).

The International Association of Energy Engineers honored Koger as Energy Executive of the Year in 1991.

Among current governmental activities, Koger is presently serving terms on the North Carolina Energy Policy Council (appointed by the governor) and the U. S. Department of Energy's State Energy Advisory Board (appointment by the Secretary of Energy). For the past twenty years, Koger has been a resource for the Southern States Energy Board, serving on various committees examining issues such as natural gas utilization, electric industry restructuring, and more recently, clean coal technologies and their export potential.

Advanced Energy, with annual revenues of about \$4.5 million, is a non-profit corporation located on the N. C. State University's Centennial Campus in Raleigh, North Carolina, that helps industrial, commercial, and residential customers improve the return on their energy investment. With expertise in industrial process technologies, motors and drives, and applied building science, Advanced Energy provides solutions through consulting, testing, and training. The primary mission of Advanced Energy is to increase efficiency and productivity in industries, businesses, and homes as they transform energy into goods, services, and environmental conditioning. At its Industrial Energy Lab, Advanced Energy provides access to cutting-edge industrial process technologies and state-of-the-art motors and drives testing.

Koger graduated from the University of Tennessee with a degree in Electrical Engineering and earned a masters's degree in Economics and a doctorate in Industrial Engineering from North Carolina State University. He has also completed an Executive Leadership Program at the University of North Carolina.

Koger is married to Dr. Jeanne Burwell Koger, and they have three adult children.



RECEIVED

FEB 10 1999

RESEARCH DIVISION

**NORTH CAROLINA BOARD OF ETHICS**

116 WEST JONES STREET  
RALEIGH NC 27603-8003  
(919) 733-2780

GEORGE F. BASON  
CHAIRMAN

December 3, 1998

The Honorable James B. Hunt, Jr.  
Governor of North Carolina  
Raleigh, North Carolina

Regarding: Evaluation of Statement of Economic Interest filed by  
Dr. Robert K. Koger, Utilities Commission

Dear Governor Hunt:

In accordance with Section 4 of Executive Order Number 127, we have completed our evaluation of Dr. Koger's statement of economic interest.

**We did not find an actual conflict of interest or the potential for conflict of interest when Dr. Koger recuses himself from any matters concerning the North Carolina Advanced Energy Corporation and he indicated he will do so.**

Dr. Koger will be serving for an interim period of time not exceeding six or seven months. He plans to take a six months' leave of absence from the North Carolina Advanced Energy Corporation.

Dr. Koger indicated that the relationship between the North Carolina Advanced Energy Corporation and the North Carolina Utilities Commission is somewhat complex but not conflicting. He has furnished documentation supporting his statement. He indicated that he would recuse himself from any matters concerning the North Carolina Advanced Energy Corporation. We appreciate and support his position.

He serves on the boards of: (1) NC Energy Policy Council as a Gubernatorial appointee, and (2) US Department of Energy's State Energy Advisory Board as an appointee of the Secretary of Energy. Service on these boards does not appear to conflict with the official duties of the NC Utilities Commission.

Section 7 of Executive Order Number 127, addresses rules of conduct for public officials. We recommend that all members of boards, commissions, and councils refer to these rules while performing official duties.

We are sending a copy of this evaluation letter to the Chairman of the Commission so that our findings can be read into the Commission's minutes.

Sincerely,

*George F. Bason / md*

George F. Bason  
Chairman

cc: Dr. Koger  
Chairman of the Commission

December 1, 1998

Attachment to Page 1 of "Statement of Economic Interest" for Robert K. Koger  
Response to last question on Page 1 follows:

Dear Members and Staff of the Ethics Board

Governor Hunt has asked me to return to the North Carolina Utilities Commission as soon as possible for an interim period of time not exceeding six or seven months. Because of a resignation of one of the Commissioners from a seat with a term ending June 30, 1999, the Governor needs someone to complete the term given the present workload of the Commission. Assuming your approval, I plan to take a six months' leave of absence from the North Carolina Advanced Energy Corporation in order to accede to the Governor's request.

The relationship between the North Carolina Advanced Energy Corporation and the North Carolina Utilities Commission is somewhat complex but not conflicting. The 7 members of the Commission are the "owners" (representing the public interest) of the non-profit Advanced Energy Corporation. Their responsibilities and duties are set out in the detailed articles of incorporation that I am enclosing. Basically, the Commissioners conduct an annual review to ensure that the Board of Directors is appropriately carrying out the provisions of the charter, which they set up.

The Commissioners are not involved in the management or operation of Advanced Energy. A 12- member Board comprised of 7 public members (appointed by the Governor for staggered 3- year terms), 4 electric utility representatives, and 1 rural electric co-op representative provide oversight and guidance to the corporation. The Chairman of the Board must be a public member. The Corporation has been in existence since 1980. Several States have followed North Carolina's lead and have established similar organizations.

Advanced Energy (formerly Alternative Energy Corp.) is complementary to the work of the Utilities Commission in regard to helping to keep energy costs to North Carolinians as reasonable as possible. Attached are some brochures that might help explain what the Corporation does.

Advanced Energy derives a majority of its funding from a surcharge on electric bills. For example, the surcharge for an average residential customer using 1000 kilowatt-hours per month would be about 3 cents. On a \$75 to \$85 electric bill, 3 cents is hardly significant but when totaled on all bills statewide, provides sufficient funds to carry out meaningful research activities and programs that bring widespread benefit to North Carolina ratepayers.

Each year, Advanced Energy makes a public report of its work to the Commission. While serving during this interim appointment, I would ~~refuse~~<sup>refuse</sup> myself from participation in any decisions or actions affecting Advanced Energy Corp.

I have discussed this matter with lawyers on the Utilities Commission and with the Utilities Commission Public Staff. The Public Staff is a separate division of State Government charged with protecting the public interest in all matters coming before the Commission. The heads of both these agencies have indicated that they can see no conflict of interest with my serving on the Commission while on a leave of absence from Advanced Energy provided I ~~refuse~~<sup>refuse</sup> myself in those situations as stated earlier.

Commission Chairperson Jo Anne Sanford can be reached at 733- 4249. The Executive Director of the Public Staff, Robert Gruber, is at 733- 2435. I believe Jack Jenkins, counsel to the Governor, has also looked into this issue. If I can be of further help in answering any of your questions about Advanced Energy, please let me know.

I am attaching a resume' that was recently submitted to Board of the National Electric Reliability Council (NERC). It may provide you with some additional information. If proposed Federal legislation passes, a new national reliability board will be established to oversee the electric transmission network of the U.S. It is to be composed of nine independent public members. Because of my training and background, I was asked to submit a resume'. I have a great interest in this area and would very much like to participate if given the opportunity. Please note that the resume' was prepared with that Board in mind.

Service on this Board would probably require quarterly meetings. However, I do not expect this matter to be decided during the next six months. If I should be nominated to serve on this board and it occurs while serving on the Commission, I will seek your ruling prior to accepting the position.

12/2/98

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER 127 AS  
AMENDED BY EXECUTIVE ORDER NUMBER 131 BY GOVERNOR JAMES B. HUNT JR.

MAIL FORM TO — BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603  
OR INTEROFFICE MAIL TO THE ADMINISTRATION BUILDING, ROOM 2009Q  
COURIER 51-01-00 FOR ASSISTANCE, CALL MILLIE DONAVANT, 919-733-2780

Name of Person Filing

Robert K. Koder

Name of Spouse

Jeanne B. Koder

Home Address

1420 Kershaw Dr.

Raleigh, NC 27609

Home Telephone

919-787-3153

STATE GOVERNMENT EMPLOYEES

Agency, Division,  
Position

Address (Include  
Building & Courier)

Telephone Number

APPOINTEES TO BOARDS, COMMISSIONS, OR COUNCILS

Your Employer,

North Carolina Advanced Energy Corp.

Your Position Title,

President + Executive Director

Business Activity of  
Your Employer

Primary activity is promoting energy efficiency.  
(For more details, please see enclosures)

Your Office Address

909 Capability Drive, Suite 2100

Raleigh, NC 27606-3870

Your Telephone Number

919-857-9000

Name of Board on which  
you are serving

N.C. Utilities Commission

Are you, or your  
employer, licensed or  
regulated by the Board  
on which you are serving,  
or have business  
relationships with the  
same area of State  
Government with which  
you are associated?

Yes  No If so, please explain See Attachment  
to page 1.

**USE ATTACHMENTS IF NEEDED**

1. List all parcels of real estate located in North Carolina in which you, or your spouse, have an ownership interest valued more than \$10,000. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel. Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

(1) 164 acre farm located at 8839 Old Switch Board Rd  
Snow Camp, NC in Alamance County (Two manuf.  
homes on site).

(2) Residence at 1420 Kershaw Dr  
Raleigh, NC 27609

2. Identify personal property sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

N/A

3. List the name of each publicly-owned company in which the value of securities held by you or your spouse exceeds \$10,000. You may attach a list from your broker.

We only own mutual funds in tax deferred  
Retirement Accounts.

Employment with Advanced Energy prevents me  
from owning any utility stocks.



4. List the name and business activity of each non-publicly-owned company or business entity in which the value of securities or other equity interests held by you or your spouse exceeds \$10,000, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies, partnerships, and closely held corporations.

Wintesharan - own limited partnership in subsidized HUD housing

With respect to the entities listed, should any of the entities own securities or equity interests exceeding \$10,000 in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

N/A

Are you, your spouse, or any of the entities listed licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

See Attachment to page 1

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

- (1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or
- (2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

N/A

6. List all directorships on all boards on which you are serving. Please explain any situations which could appear to be a conflict of interest with your official duties.

N.C. Energy Policy Council  
U.S. Dept. of Energy State Energy Advisory Board

7. Are you an elected official at the local government level? If so, please explain.

No

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest exceeding \$10,000.

No

9. List assets with a valuation of at least \$10,000 each held by you or your spouse which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

Covered previously

10. List liabilities with a valuation of at least \$10,000 each for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

Farm Related Loans:

North Central Farm Credit (1st Mortgage + cash loan)  
Eddie Murchison (previous owner) (2nd mortgage)  
Douglasville Manuf. Home - (1st mortgage with  
Dyrex Mortgage Co.)

11. List sources of income for you and your spouse where \$10,000 or more was received from each source as shown. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Advanced Energy Corp.  
State Retirement System  
Carolina-Virginia Dairy Co-op  
Mark Bradshaw Dairy (He leases own farm)  
N.C. State University (Spouse's salary)

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

Not related

12. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of \$10,000 from any of the following categories of legal representation:

- Admiralty  Taxation  Decedent's estates  Corporation law  Real property
- Negligence (representing plaintiffs)  Negligence (representing defendants)
- Criminal law  Labor law  Insurance law  Administrative law
- Utilities regulation or representation of regulated utilities  Representation of local governments

13. If the information has not been included in previous questions, list all non-publicly owned businesses you have been associated with during the past five years as an employee, officer, director, partner, or owner. For each business listed, state your association, and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of the business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

N/A

List your associations with civic organizations if the organizations receive grants or other funding from State Government. Include the type of funding and the name of the State Agency from which the funding is received.

N/A

14. List all gifts received with a value exceeding \$200 during the twelve months preceding the date of this statement from sources other than your spouse or relatives.

None

List all gifts received with a value exceeding \$100 from any source having business with or regulated by the State.

None

15. Within the preceding five years have you or your spouse filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceeding under the various laws of the various states of these United States? Within the preceding five years have you or your spouse owned 5% or more of any corporation that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States? Within the preceding five years have you or your spouse been a general partner in any partnership or owned 5% of any corporation which was a general partner in any partnership that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States? If so, provide a brief summary of facts and circumstances regarding each listed bankruptcy.

N/A

16. Having read Executive Order Number 127, as amended by Executive Order 131, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

As stated in attachment to page 1,  
I will rescue myself from any matters  
concerning Advanced Energy.

### VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments, and to the best of my knowledge and belief it is true, correct and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of \_\_\_\_\_ as to that potential conflict.

12/2/98  
Date

Robert K. Koger  
Signature of Person Filing

STATE OF NORTH CAROLINA  
COUNTY OF ~~Wake~~ Granville

Subscribed and sworn to before me this the 2nd day of December, 1998.

My Commission Expires:  
8/25/2000

Mildred M. Donavant  
Notary Public

**Dr. Robert K. Koger**  
President and Executive Director

*Nationally recognized as a leader in the electric utility industry, Robert K. Koger brings an unbiased and serious-minded approach to the representation of the public interest in issues of utility regulation and energy.*



Robert Koger's recent election by the south's electric power suppliers as a public member of the Board of Directors of the Southeastern Electric Reliability Council is the latest in the ongoing recognition of his ability to discern and interpret the emerging issues of the changes in the electric utility industry and to fairly represent all parties in any situation. Assuming leadership of Advanced Energy (formerly Alternative Energy Corporation) as its President and Executive Director in 1988, he previously served on the North Carolina Utilities Commission for eleven years, including eight years as chairman. Earlier experiences include serving as Director of the Commission's Engineering and Economics Division (ten years) and as an engineer with the Rural Electrification Administration.

Dr. Koger's wide-ranging energy experience also includes participation on several important committees including the Executive Committee of the National Association of Regulatory Commissioners (NARUC), President of the Southeastern Association of Regulatory Commissioners (SEARUC), and a 10-year membership on the Advisory Council of the Electric Power Research Institute (EPRI).

The International Association of Energy Engineers honored Koger as Energy Executive of the Year in 1991.

Among current governmental activities, Koger is presently serving terms on the North Carolina Energy Policy Council (appointed by the governor) and the U.S. Department of Energy's State Energy Advisory Board (appointment by the Secretary of Energy). For the past twenty years, Koger has been a resource for the Southern States Energy Board, serving on various committees examining issues such as natural gas utilization, electric industry restructuring, and more recently, clean coal technologies and their export potential.

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Koger graduated from the University of Tennessee with a degree in Electrical Engineering and earned a master's degree in Economics and a doctorate in Industrial Engineering from North Carolina State University. He has also completed an Executive Leadership Program at the University of North Carolina.

###  
###

ARTICLE 3

The purposes for which this is organized are: To the end of moderating the rate of growth in electric power demand and developing the more efficient uses of energy resources *in order to encourage energy efficient economic development in North Carolina*, this corporation will promote or fund, or assist in promoting or funding, or engage in, projects, programs, and applied research, development, and demonstration, designed and intended to accomplish, or to assist in accomplishing, any one or more of the following objectives:

- (1) The promotion, support, research, development, demonstration, or commercialization of alternatives to electric power as a source of energy which may be used within the State of North Carolina;
- (2) The promotion, support, research, demonstration, or development of methods by which electric power can be produced more economically;
- (3) The promotion of load management and conservation in a manner that improves system load factors and



- the efficient use of energy;
- (4) The education and informing of consumers in the use and benefits of alternative energy sources, *conservation, and load management, and energy efficiency;*
- (5) The moderation of the future cost of electric utility service available or to be available to users of electricity within the State of North Carolina.
- (6) *The promotion, support, research, demonstration, or development of efficient uses of electric power.*

ARTICLE 5

~~SECTION 1. Number of Directors: The three incorporators of this Corporation shall serve as its initial Board of Directors until the directors provided for hereinafter, or a majority of them, have been appointed in the manner hereinafter provided. The first meeting of the Board of Directors shall be held within 30 days after a majority of the Directors provided for herein have been appointed. There shall be a maximum of thirteen (13) Directors of this~~

Filed in Docket  
E100-37A

0-0104088

FILED

10:27 am  
JUN 06 1997

ARTICLES OF AMENDMENT  
OF  
NORTH CAROLINA ALTERNATIVE ENERGY CORPORATION

EFFECTIVE  
ELAINE F. MARSHALL  
SECRETARY OF STATE  
NORTH CAROLINA

Pursuant to Section 55A-10-05 of the General Statutes of North Carolina, the corporation hereby submits these Articles of Amendment for the purpose of amending its Restated Articles of Incorporation.

- 1. The name of the corporation is North Carolina Alternative Energy Corporation.
- 2. The Restated Articles of Incorporation of the corporation are hereby amended as follows.

Article I of the Restated Articles of Incorporation is deleted and replaced with a restated Article I which shall read in its entirety as follows.

"The name of the corporation is North Carolina Advanced Energy Corporation."

- 3. The date of adoption of the foregoing amendment to the Restated Articles of Incorporation was May 8, 1997.
- 4. The amendment to the Restated Articles of Incorporation was approved by the members of the corporation in the manner prescribed by law.
- 5. These Articles of Amendment will be effective upon filing.

Dated this the 3 day of June 1997.

North Carolina Alternative Energy Corporation

By: Robert K Koger

Name: Robert Koger

Title: President



**North Carolina General Assembly  
Legislative Services Office**

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

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

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

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



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

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

February 15, 1999

**MEMORANDUM**

**TO: Senate Committee on Commerce**

**FROM:  Steven Rose and  Esther Manheimer, Committee Counsel for Public Utilities**

**RE: SJR 32; Confirmation of Dr. Robert K. Koger to Utilities Commission Vacancy**

Senate Joint Resolution 32 confirms the appointment of Dr. Robert K. Koger to the North Carolina Utilities Commission. The resolution is effective upon ratification.

Dr. Koger has been appointed by the Governor to fill the unexpired term of Allyson K. Duncan, who resigned from the Utilities Commission. The term expires June 30, 1999. The Legislature was not in session at the time of Dr. Koger's appointment, and the Governor designated Dr. Koger to begin service at the time of appointment, November 20, 1998, pending confirmation by the General Assembly. This is permitted by G.S. 62-10(g).

The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight-year terms. Commissioners are appointed by the Governor and must be confirmed by the General Assembly.

Utilities Commissioners are currently paid \$97,389 per year. However, because Dr. Koger is drawing income from the State Retirement System, he is being paid a salary of \$38,500 for the period beginning January 4, 1999 and ending June 30, 1999.

Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment.

During service on the Commission, a Commissioner may not engage in any other employment, business, profession or vocation. During the term of office the Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies which the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well as a judge in all contested matters relating to public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies from utility to utility, and there are limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, use of natural gas expansion funds, the provision of new utility services, and the adjudication of complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction varies from utility to utility and is affected in some cases by federal law.

SJR32-SMRL-001

cert. denied, 336 N.C. 602, 447 S.E.2d 384 (1994).

Cited in *In re Lower Cape Fear Water & Sewer Auth.*, 329 N.C. 675, 407 S.E.2d 155 (1991); State ex rel. *Utils. Comm'n v.*

*Mountain Elec. Coop.*, 108 N.C. App. 283, 423 S.E.2d 516 (1992); State ex rel. *Utils. Comm'n v. Empire Power Co.*, 112 N.C. App. 265, 435 S.E.2d 553 (1993).

#### OPINIONS OF ATTORNEY GENERAL

The Department of Correction, as a State agency, is not a public utility and is not subject to the fee requirements of § 62-302. See Opinion of Attor-

ney General to LaVee Hamer, General Counsel, North Carolina Department of Correction. — N.C.A.G. — (October 17, 1994).

#### ARTICLE 2.

##### *Organization of Utilities Commission.*

#### § 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner and that of the commissioner designated as chairman shall be set by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(i) The standards of judicial conduct provided for judges in Article 30 Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a). (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1116, s. 91; 1989, c. 781, s. 41.2; 1993 (Reg. Sess., 1994), c. 769, s. 7.4(b); 1996, 2nd Ex. Sess., c. 18, s. 28.2(b); 1997-443, s. 33.5.)

**Editor's Note.** — Session Laws 1993 "This act shall be known as 'The Current (Reg. Sess., 1994), c. 769, s. 2 provides: Operations and Capital Improvements

Appropriations Act of 1994.”

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 358, s. 2, as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that the salaries established by Session Laws 1993, c. 769, s. 7.4, shall remain until July 28, 1995, at the level set by or under that section as of June 30, 1995; and that no State employee or officer may prior to July 28, 1995, receive a merit increase or annual increment.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: “This act shall be known as the Current Operations Appropriations Act of 1996.”

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

Session Laws 1997-443, s. 1.1, pro-

vides: “This act shall be known as ‘The Current Operations and Capital Improvements Appropriations Act of 1997’.”

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

**Effect of Amendments.** — The 1996 Second Extra Session amendment, effective September 1, 1996, substituted “shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as the chairman shall receive one thousand dollars (\$1,000) additional per annum” for “and that of the commissioner designated as chairman shall be set by the General Assembly in the Current Operations Appropriations Act” in subsection (h).

The 1997 amendment, effective July 1, 1997, rewrote the first sentence of subsection (h).

### § 62-15. Office of executive director; public staff, structure and function.

(a) There is established in the Commission the office of executive director, whose salary shall be the same as that fixed for members of the Commission. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the Commission, after consultation with the Joint Legislative Utility Review Committee of the General Assembly. In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the executive director shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(b) There is established in the Commission a public staff. The public staff shall consist of the executive director and such other professional, administrative, technical, and clerical personnel as may be necessary in order for the public staff to represent the using and consuming public, as hereinafter provided. All such personnel shall be appointed, supervised, and directed by the executive director. The public staff shall not be subject to the supervision, direction, or control of the Commission, the chairman, or members of the Commission.

(c) Except for the executive director, the salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.

VISITOR REGISTRATION SHEET

Income Committee

2-16-99

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

JUP M-CLES	M <sup>c</sup> CLES Consulting
STU DIXON	NCNR Fayetteville
Don Monor	Sprint
Robert Koster	Public Staff - NCUA
Arne Sanford	Chair, NC Utilities Comm
Robert K Koser	N.C. Utilities Comm
Laura DeVine	DENR
Malcolm Blacklock	DEH
W. J. Gunn	Visitor
Barbara S. Peppox	✓
LYNN HOLMIST	Bell South
JEFF VAN DYKE	Bell South
BRENDA DOUGHERTY	Sprint
Robert Weiss	Fiscal Research Division
Jerry Koluth	C.U.C.A.
Sharon Miller	C.U.C.A.
Paul Johnson	Hickory
Jim Loffa	NCAT
Franklin Dream	Governor's Office
Etherine King	Electric Cities
Alice Barlow	"



VISITOR REGISTRATION SHEET

Immense Committee

2-16-99

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

Rob Schoheld	NCJCDC
David Simmons	ZOA, PA
John P. Pisciotta	AT&T
William McMill	AT&T
Gene Upchurch	CP&L
Christie Luella	CP&L
Pam Conato	CP&L
Bobby Dancer	UTILITIES COMM.
LIA REYES	THE INSIDER
John McAlister	Duke Energy
Charlotte Brewer	To Anne Sanford
John M. May	NC CWA Council
James Andrews	NC State AFL-CIO

SENATE COMMERCE COMMITTEE  
11:00 A.M. – TUESDAY, FEBRUARY 23, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, February 23, 1999. Twenty-one members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order and stated that the first item of business would be the consideration of SJR 78, A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENT OF HAL D. LINGERFELT AS COMMISSIONER OF BANKS. He recognized Mr. Paul Stock of the N. C. Bankers' Association, and Senator Ed Warren who spoke in favor of Mr. Lingerfelt's confirmation. Senator Soles recognized Mr. Lingerfelt for comments after which he answered general questions from members of the Committee. (Refer to the following attached information: Resume of Mr. Lingerfelt, Report of Mr. Bason, Chairman of the N. C. Board of Ethics, Fact Sheet presented by Mr. Lingerfelt and a Memorandum from Committee Co-Counsels dated February 23, 1999.)

Senator Hoyle moved that SJR 78 be given a favorable report. Motion carried.

SB 59, AN ACT TO AMEND THE PHARMACY PRACTICE ACT TO DEFINE THE TERM MOBILE PHARMACY AND TO ALLOW SUCH A PHARMACY TO REGISTER ANNUALLY WITH THE BOARD OF PHARMACY. Senator Cochrane moved the adoption of a Proposed Committee Substitute for SB 59. Motion carried. Senator Foxx was recognized to explain the bill. (See copy of Memorandum from Committee Co-Counsels for full explanation of the bill and also copies of handouts from the Bill Sponsor.)


Senator Rand moved that the Proposed Committee Substitute for SB 59 be given a favorable report. Motion carried.


SB 51, AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT BIDDING AND TO PROVIDE AN ALTERNATIVE PROCEDURE FOR RESOLVING STATE CONTRACT DISPUTES. Senator Larry Shaw, the bill sponsor, was recognized to explain his bill. Mr. Barry Jenkins with the Carolinas Association of General Contractors Association and former DOT employee assisted in answering questions raised by the Committee. (See copy of Memorandum from Linwood Jones, Committee Council for full explanation of the bill.)

Senator Commerce Committee  
February 23, 1999  
Page 2

Senator Ballance moved that the Proposed Committee Substitute be given a favorable report. Senator Carter seconded the motion which carried.

There being no further business, the meeting adjourned at 11:45 a.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
R. C. Soles, Jr., Chairman**

Tuesday, February 23, 1999

R. C. SOLES, JR.,  
submits the following with recommendations as to passage:

**FAVORABLE**

S.J.R. 78 Confirmation, Hal D. Lingerfelt, Commissioner of Banks  
Sequential Referral: None  
Recommended Referral: None

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

S.B. 51 Highway Contract Bonding Req'ments.  
Draft Number: PCS3565  
Sequential Referral: None  
Recommended Referral: None  
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment:

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
R. C. Soles, Jr., Chair**

Wednesday, February 24, 1999

R. C. SOLES, JR.,  
submits the following with recommendations as to passage:

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

S.B.	59	Mobile Pharmacies	
		Draft Number:	PCS6533
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

**SENATE COMMERCE COMMITTEE  
AGENDA  
Tuesday, February 23, 1999  
ROOM 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SJR 78, CONFIRMATION OF APPOINTMENT OF HAL D. LINGERFELT  
AS COMMISSIONER OF BANKS (Soles)**

**SB 59, MOBILE PHARMCIES (Foxy)**

**SB 51, HIGHWAY CONTRACT BONDING REQ'MENTS (L. Shaw)**

**ADJOURNMENT**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE JOINT RESOLUTION 78

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Sponsors: Senator Soles.

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Referred to: Commerce.

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February 15, 1999

1 A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE  
2 APPOINTMENT OF HAL D. LINGERFELT AS COMMISSIONER OF BANKS.

3           Whereas, under the provisions of G.S. 53-92, appointment by the  
4 Governor of the Commissioner of Banks is subject to confirmation by the General  
5 Assembly by joint resolution; and

6           Whereas, the term of the present Commissioner of Banks will end on  
7 March 31, 1999; and

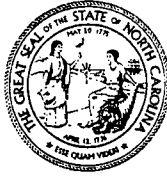
8           Whereas, the Governor has submitted to the presiding officers of the  
9 House of Representatives and the Senate the name of his appointee to fill the term of  
10 Commissioner of Banks which will begin April 1, 1999, and expire March 31, 2003;

11 Now, therefore,

12 Be it resolved by the Senate, the House of Representatives concurring:

13           Section 1. The appointment of Hal D. Lingerfelt as Commissioner of  
14 Banks for a term to expire March 31, 2003, is confirmed.

15           Section 2. This resolution is effective upon ratification.



STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR  
RALEIGH 27603-8001

JAMES B. HUNT JR.  
GOVERNOR

January 29, 1999

The Honorable Dennis Wicker  
President of the Senate  
State Capitol  
Raleigh, North Carolina 27603

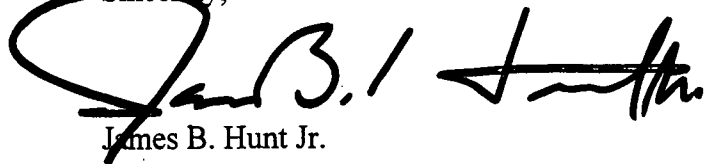
Dear Mr. President:

Pursuant to General Statute 53-92, I hereby appoint Hal D. Lingerfelt as Commissioner of Banks and submit his name for confirmation by the North Carolina General Assembly by joint resolution. Mr. Lingerfelt's term will begin on April 1, 1999 and will expire on March 31, 2003.

Enclosed is a copy of Mr. Lingerfelt's resume. Please feel free to contact him directly should you require additional information.

My warmest personal regards.

Sincerely,

  
James B. Hunt Jr.

cc: The Honorable Marc Basnight  
The Honorable Jim Black  
Ms. Janet Pruitt  
Ms. Denise Weeks

FEB 2 1999  
FEB 3 1999



## HAL D. LINGERFELT

Hal D. Lingerfelt was appointed North Carolina Commissioner of Banks in February, 1995, after serving as Deputy Commissioner of Banks since 1979. He joined the Office of the Commissioner of Banks in 1968 as a bank examiner. A native of Vale, Lincoln County, he is a graduate of Appalachian State University, Boone, where he received a B.S. degree in Economics, Business and Psychology in 1967. He is also a graduate of The Southeastern Trust School at Campbell University, Buies Creek, and the Government Executives Institute at the University of North Carolina at Chapel Hill. He served as Acting Commissioner of Banks from April 1, 1987, to May 31, 1987.

Commissioner Lingerfelt was presented with the Governor's Award of Excellence in 1988. He was a recipient of the 1995 Distinguished Alumni Award from Appalachian State University, and in 1998 was elected to the Board of Directors of the Appalachian State University Foundation.

Presently Commissioner Lingerfelt serves as Chairman of the Technology Committee of the Conference of State Bank Supervisors (CSBS), a position he has held since the committee was created in 1985. He was elected Treasurer of CSBS for the 1996-97 term, is currently a member of its Education Committee, and serves as an ex-officio member of its Board of Directors.



**NORTH CAROLINA BOARD OF ETHICS**

116 WEST JONES STREET  
RALEIGH, NC 27603-8003  
(919) 733-2780

GEORGE F. BASON  
CHAIRMAN

November 6, 1998

Secretary Rick Carlisle  
Department of Commerce  
Raleigh, North Carolina

Regarding: Evaluation of Statement of Economic Interest filed by  
Hal D. Lingerfelt, Banking Commissioner

Dear Secretary Carlisle:

In accordance with Section 4 of Executive Order 127, we have completed our evaluation of the statement of economic interest mentioned above.

**We did not find an actual conflict of interest or a potential for conflict of interest.**

Section 5 of Executive Order 127 addresses duties of the heads of state agencies. Section 7 of Executive Order 127 addresses rules of conduct for public officials. We recommend that all public officials become familiar with these provisions.

Sincerely,

*George F. Bason* /md

George F. Bason  
Chairman

cc: Mr. Lingerfelt  
Governor Hunt

NORTH CAROLINA BOARD OF ETHICS  
116 WEST JONES STREET  
RALEIGH 27603-8003  
(919) 733-2780 FAX (919) 733-2785

FILE COPY

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER 127 AS  
AMENDED BY EXECUTIVE ORDER NUMBER 131 BY GOVERNOR JAMES B. HUNT JR.

MAIL FORM TO — BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603  
OR INTEROFFICE MAIL TO THE ADMINISTRATION BUILDING, ROOM 2009Q  
COURIER 51-01-00 FOR ASSISTANCE, CALL MILLIE DONAVANT, 919-733-2780

Name of Person Filing Hal D. Lingerfelt  
Name of Spouse N/A  
Home Address 115 Brooks Avenue  
Raleigh, North Carolina 27607  
Home Telephone (919) 833-6221

STATE GOVERNMENT EMPLOYEES

Agency, Division, Position Department of Commerce - Banking Commission  
Commissioner of Banks  
Address (Include Building & Courier) 702 Oberlin Road  
Raleigh, North Carolina 27605-0709  
Telephone Number

APPOINTEES TO BOARDS, COMMISSIONS, OR COUNCILS

Your Employer, Your Position Title N/A  
Business Activity of Your Employer  
Your Office Address  
Your Telephone Number  
Name of Board on which you are serving

Are you, or your employer, licensed or regulated by the Board on which you are serving, or have business relationships with the same area of State Government with which you are associated?  
 Yes  No If so, please explain  
N/A

**USE ATTACHMENTS IF NEEDED**

1. List all parcels of real estate located in North Carolina in which you, or your spouse, have an ownership interest valued more than \$10,000. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel. Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

1. 115 Brooks Avenue - Home (100% owned)  
Raleigh, North Carolina 27607
2. 346 Rockdale Road - 2nd Home (100% owned)  
Vale, North Carolina 28168

2. Identify personal property sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

NONE

3. List the name of each publicly-owned company in which the value of securities held by you or your spouse exceeds \$10,000. You may attach a list from your broker.

NONE

4. List the name and business activity of each non-publicly-owned company or business entity in which the value of securities or other equity interests held by you or your spouse exceeds \$10,000, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

NONE

With respect to the entities listed, should any of the entities own securities or equity interests exceeding \$10,000 in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

N/A

Are you, your spouse, or any of the entities listed licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

N/A

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

- (1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or
- (2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

NONE

6. List all directorships on all boards on which you are serving. Please explain any situations which could appear to be a conflict of interest with your official duties.

None

7. Are you an elected official at the local government level? If so, please explain.

N/A

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest exceeding \$10,000.

N/A

9. List assets with a valuation of at least \$10,000 each held by you or your spouse which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

IRA

401K - (State Plan)

Dellwood Camp (State plan)

NC State Government Retirement

10. List liabilities with a valuation of at least \$10,000 each for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

N/A

11. List sources of income for you and your spouse where \$10,000 or more was received from each source as shown. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

None

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

N/A

12. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of \$10,000 from any of the following categories of legal representation:

- Admiralty  Taxation  Decedent's estates  Corporation law  Real property
- Negligence (representing plaintiffs)  Negligence (representing defendants)
- Criminal law  Labor law  Insurance law  Administrative law
- Utilities regulation or representation of regulated utilities  Representation of local governments

13. If the information has not been included in previous questions, list all non-publicly owned businesses you have been associated with during the past five years as an employee, officer, director, partner, or owner. For each business listed, state your association, and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of the business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

None

List your associations with civic organizations if the organizations receive grants or other funding from State Government. Include the type of funding and the name of the State Agency from which the funding is received.

NONE

14. List all gifts received with a value exceeding \$200 during the twelve months preceding the date of this statement from sources other than your spouse or relatives.

NONE

List all gifts received with a value exceeding \$100 from any source having business with or regulated by the State.

NONE

15. Within the preceding five years have you or your spouse filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceeding under the various laws of the various states of these United States? Within the preceding five years have you or your spouse owned 5% or more of any corporation that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States? Within the preceding five years have you or your spouse been a general partner in any partnership or owned 5% of any corporation which was a general partner in any partnership that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States? If so, provide a brief summary of facts and circumstances regarding each listed bankruptcy.

N/A



16. Having read Executive Order Number 127, as amended by Executive Order 131, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

None

### VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments, and to the best of my knowledge and belief it is true, correct and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

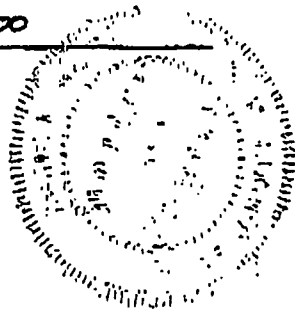
May 5, 1998  
Date

[Signature]  
Signature of Person Filing

STATE OF NORTH CAROLINA  
COUNTY OF Wake

Subscribed and sworn to before me this the 5th day of May, 1998.

My Commission Expires:  
10/12/2000



[Signature]  
Notary Public

# Commissioner of Banks Fact Sheet

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## Banks and Bank Holding Companies

The North Carolina Commissioner of Banks regulates banking under N.C.G.S. 53 *et seq.* Primarily this office ensures the safe conduct of banking business, maintains public confidence in state-chartered banks, and protects the banks' depositors, debtors, creditors, and shareholders.

### As of 12/31/98 we had:

- 40 Bank Holding Companies registered
- 19 Bank Holding Companies registered and regulated
- 5 Trust Representative Offices registered
- 10 Loan Production Offices registered

### As of 12/31/98 we regulated:

- 57 banks                      1,499 branches
- 4 limited purpose banks

### As of 12/31/98 57 state-chartered banks had:

- Total Deposits      \$45,559,825,000
- Total Assets              \$60,769,944,000

---

## Consumer Finance

The North Carolina Consumer Finance Act (N.C.G.S. 53-164 *et seq.*) authorizes the Commissioner of Banks to license and supervise small loan companies that make direct consumer loans of \$10,000 or less and charge rates in excess of those permitted by Chapter 24. These lenders may choose to make loans as a General Lender (N.C.G.S. 53-173) or as an Optional Rate Lender (N.C.G.S. 53-176).

### As of 12/31/98 we had licensed:

- 39 General Lenders (lend \$3,000 or less)
- 627 Optional Rate Lenders (lend \$10,000 or less)
- 666 Total Offices

---

## Refund Anticipation Loans

The Refund Anticipation Loan Act requires facilitators who make tax refund loans to register with the Commissioner of Banks

### As of 12/31/98 we had registered:

- 413 Refund Anticipation Lenders
- 806 Offices

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## Registration of Mortgage Bankers and Brokers

Under the provisions of N.C.G.S. 53-233 *et seq.* mortgage bankers and brokers must register with the Commissioner of Banks unless they are exempt. These exemptions include financial institutions presently regulated by the state or federal government and supervised and non-supervised lenders with the department of Housing and Urban Development.

### As of 12/31/98 we had:

- 428 Mortgage Bankers      1,152 branches
- 579 Mortgage Brokers      540 branches

**Totals: Registrants-1007 Branches-1692 Offices-2699**

---

## Money Transmitters

The Money Transmitters Act (N.C.G.S. 53-192 *et seq.*) provides that no one can sell or issue checks, drafts, money orders, or other instruments for the payment or transmission of money unless licensed by the Commissioner of Banks

### As of 12/31/98 we had:

- 30 Money Transmitter Licensees

---

## Reverse Mortgages

The Reverse Mortgage Act (N.C.G.S. 53-255 *et seq.*) authorizes the Commissioner of Banks to approve reverse mortgage lenders. Even though banks, savings institutions, and credit unions are exempt and do not have to obtain the Commissioner's approval, nevertheless they must notify him of their intent to offer reverse mortgages.

Reverse mortgages are available to homeowners over 62. They provide monthly loan advances which are repaid upon death or the sale of the house.

### As of 12/31/98 we had approved:

- 7 Reverse Mortgage Lenders
- 1 Exempt Lender

---

## Trust Licenses

Pursuant to N.C.G.S. 53-159.1, *et seq.*, banks wishing to act in a fiduciary capacity must make application to the Commissioner of Banks for a license, and renew the license annually thereafter. Licenses are granted or renewed upon a determination of applicant's solvency and receipt of a fee.

### As of 12/31/98 we had:

- 24 Trust Licensees

---

## Check-Cashing Businesses

Under N.C.G.S. 53-275 *et seq.*, persons or other entities providing check-cashing services for a fee, service charge, or other consideration must be licensed by the Commissioner of Banks. The law sets maximum fees for the check-cashing service. It also permits a licensee to accept a personal check up to \$300 and upon written agreement, defer the deposit of the check for up to 31 days.

### As of 12/31/98 we had:

- 158 Licensees              730 locations



**North Carolina General Assembly  
Legislative Services Office**

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(919) 733-7044

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(919) 733-2578

February 23, 1999

**Memorandum**

**To: Members of the Senate Commerce Committee**

**From: O. Walker Reagan and Esther Manheimer, Committee Co-Counselors**

**Re: Senate Joint Resolution 78 – Confirmation of the Appointment of Hal D. Lingerfelt as Commissioner of Banks – Senator Soles**

Senate Joint Resolution 78 confirms the appointment of Mr. Hal D. Lingerfelt as Commissioner of Banks. The resolution is effective upon ratification.

Mr. Lingerfelt served as acting Commissioner of Banks from and April 1, 1987, to May 31, 1987. In addition, he is currently serving a term as Commissioner of Banks that began February 14, 1995. Mr. Lingerfelt has been appointed by the Governor to again serve as the Commissioner of Banks. The term will begin April 1, 1999, and expire March 31, 2003. The Commissioner of Banks is paid \$97,389 per year.

The Commissioner of Banks regulates and supervises banking activities under Chapter 53 of the North Carolina General Statutes. The primary responsibilities of this office are to insure safe and conservative management of the banks under its supervision taking into consideration the interest of the banks' depositors, creditors, shareholders, and the public in their relations with such banks. The North Carolina Banking Commission adopts rules to provide direction and supervision of the Commissioner of Banks as he enforces the rules of the Commission and the banking laws of North Carolina. The Banking Commission may review the actions of the Commissioner of Banks.

The Office of the Commissioner of Banks, together with the North Carolina Banking Commission, is responsible for the regulation of every state chartered bank or corporation transacting the business of banking in North Carolina, as well as registration/licensing of various financial institutions operating in North Carolina. These financial institutions include:

1. Check-cashers,
2. Consumer finance companies,
3. Mortgage bankers and mortgage brokers,
4. Money transmitters,
5. Refund anticipation lenders
6. Bank holding companies, and
7. Reverse mortgage lenders.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 59\*

Short Title: Mobile Pharmacies.

(Public)

---

Sponsors: Senators Foxx; Allran, Ballantine, Carpenter, Carrington, Clodfelter, Cochrane, East, Forrester, Garrou, Garwood, Gulley, Hagan, Harris, Hartsell, Horton, Jordan, Kerr, Kinnaird, Lee, Lucas, Metcalf, Purcell, Robinson, Rucho, Shaw of Cumberland, Shaw of Guilford, Soles, Warren, Weinstein, and Wellons.

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Referred to: Commerce.

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February 9, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE PHARMACY PRACTICE ACT TO DEFINE THE  
3 TERM MOBILE PHARMACY AND TO ALLOW SUCH A PHARMACY TO  
4 REGISTER ANNUALLY WITH THE BOARD OF PHARMACY.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 90-85.3 is amended by adding a new subsection to read:  
7 "(12) "Mobile pharmacy" means a mobile unit that is either self-propelled or  
8 moveable by another vehicle that is self-propelled and from which prescription drugs  
9 are dispensed or compounded. Each mobile unit shall be considered a single  
10 pharmacy."  
11 Section 2. G.S. 90-85.21 is amended by adding a new subsection to read:  
12 "(a1) A mobile pharmacy shall register annually with the Board in the manner  
13 prescribed in subsection (a) of this section, and the registration shall be renewed  
14 annually."  
15 Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 59\*

Proposed Committee Substitute S59-PCS6533-LM001

Short Title: Mobile Pharmacies.

(Public)

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Sponsors:

---

Referred to:

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February 9, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE PHARMACY PRACTICE ACT TO PERMIT  
3 CERTAIN NONPROFIT CORPORATIONS TO OPERATE MOBILE  
4 PHARMACIES AND TO ALLOW SUCH PHARMACIES TO REGISTER  
5 ANNUALLY WITH THE BOARD OF PHARMACY.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 90-85.3 is amended by adding a new subsection to read:

8 "(12) 'Mobile pharmacy' means a mobile unit that is either self-propelled or  
9 moveable by another vehicle that is self-propelled and from which prescription drugs  
10 are dispensed or compounded. Each mobile unit shall be considered a single  
11 pharmacy."

12 Section 2. G.S. 90-85.21 is amended by adding a new subsection to read:

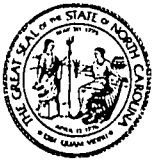
13 "(a1) A mobile pharmacy shall register annually with the Board in the manner  
14 prescribed in subsection (a) of this section, and the registration shall be renewed  
15 annually. A mobile pharmacy shall provide the Board with the address of every  
16 location from which prescription drugs will be dispensed by the mobile pharmacy. A  
17 mobile pharmacy shall not be required to pay a separate registration fee for each  
18 location but shall pay the annual registration fee prescribed in G.S. 90-85.24."

19 Section 3. This act applies only to mobile pharmacies operated by  
20 nonprofit corporations that dispense prescription drugs at no charge to persons whose  
21 family income is less than two hundred percent (200%) of the federal poverty level  
22 and do not receive reimbursement for the cost of the dispensed prescription drugs  
23 from Medicare, Medicaid, a private insurance company, or a governmental unit.

1

Section 4. This act is effective when it becomes law.





**North Carolina General Assembly  
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February 23, 1999

**Memorandum**

**To: Senator R.C. Soles, Chair, Senate Commerce Committee**

**From: O. Walker Reagan and Esther Manheimer, Committee Co-Counselors**

**Re: Proposed Committee Substitute for Senate Bill 59 - Mobile Pharmacies - Senator Foxx**

Senate Bill 59 would amend the law to add the definition of "mobile pharmacy," and require each mobile pharmacy to register with the Board of Pharmacy (Board) in the same manner as other pharmacies. This bill attempts to ensure that each individual mobile pharmacy register and pay a registration fee only once per year and not for each place it stops to dispense drugs.

Section 1 of the bill would define a "mobile pharmacy" for purposes of the NC Pharmacy Practice Act. This section clarifies that the mobile unit is a single pharmacy.

Section 2 amends G.S. 90-85.21 to add a new subsection to provide for the separate registration of mobile pharmacies. Under this subsection mobile pharmacies would be required to provide the Board with the addresses of every location from which the mobile pharmacy will dispense drugs.

Section 3 specifies that these statutory provisions being added by the bill would only allow mobile pharmacies that are operated by non-profit corporations that dispense drugs at no charge to certain individuals with low family incomes.

Under current law, all pharmacies must annually register with the Board for a fee of \$350.00 and renew that registration annually for a fee of \$175.00. Current law has been interpreted by the Board to require a mobile pharmacy to pay a separate fee for each location the mobile pharmacy might stop at to dispense drugs.

The bill would become effective when it becomes law.

S59-SMSK-001

### § 90-85.3. Definitions.

(a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion or other means.

(b) "Board" means the North Carolina Board of Pharmacy.

(c) "Compounding" means taking two or more ingredients and combining them into a dosage form of a drug, exclusive of compounding by a drug manufacturer, distributor, or packer.

(d) "Deliver" means the actual, constructive or attempted transfer of a drug, a device, or medical equipment from one person to another.

(e) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article including any component part or accessory, whose label or labeling bears the statement "Caution: federal law requires dispensing by or on the order of a physician." The term does not include:

(1) Devices used in the normal course of treating patients by health care facilities and agencies licensed under Chapter 131E or Article 2 of Chapter 122C of the General Statutes;

(2) Devices used or provided in the treatment of patients by medical doctors, dentists, physical therapists, occupational therapists, speech pathologists, optometrists, chiropractors, podiatrists, and nurses licensed under Chapter 90 of the General Statutes, provided they do not dispense devices used to administer or dispense drugs.

(f) "Dispense" means preparing and packaging a prescription drug or device in a container and labeling the container with information required by State and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a patient is "dispensing". Providing quantities of unit dose prescription drugs for subsequent administration is "dispensing".

(g) "Drug" means:

(1) Any article recognized as a drug in the United States Pharmacopeia, or in any other drug compendium or any supplement thereto, or an article recognized as a drug by the United States Food and Drug Administration;

(2) Any article, other than food or devices, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(3) Any article, other than food or devices, intended to affect the structure or any function of the body of man or other animals; and

(4) Any article intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection.

(h) "Emancipated minor" means any person under the age of 18 who is or has been married or who is or has been a parent; or whose parents or guardians have surrendered their rights to the minor's services and earnings as well as their right to custody and control of the minor's person; or who has been emancipated by an appropriate court order.

(i) "Health care provider" means any licensed health care professional; any agent or employee of any health care institution, health care insurer, health care professional school; or a member of any allied health profession.

(j) "Label" means a display of written, printed or graphic matter upon the immediate or outside container of any drug.

(k) "Labeling" means preparing and affixing a label to any drug container, exclusive of labeling by a manufacturer, packer or distributor of a nonprescription drug or a commercially packaged prescription drug or device.

(l) "License" means a license to practice pharmacy including a renewal license issued by the Board.



(11) "Medical equipment" means any of the following items that are intended for use by the consumer in the consumer's place of residence:

- (1) A device.
- (2) Ambulation assistance equipment.
- (3) Mobility equipment.
- (4) Rehabilitation seating.
- (5) Oxygen and respiratory care equipment.
- (6) Rehabilitation environmental control equipment.
- (7) Diagnostic equipment.
- (8) A bed prescribed by a physician to treat or alleviate a medical condition.

The term "medical equipment" does not include (i) medical equipment used or dispensed in the normal course of treating patients by or on behalf of home care agencies, hospitals, and nursing facilities licensed under Chapter 131E of the General Statutes or hospitals or agencies licensed under Article 2 of Chapter 122C of the General Statutes; (ii) medical equipment used or dispensed by professionals licensed under Chapters 90 or 93D of the General Statutes, provided the professional is practicing within the scope of that professional's practice act; (iii) upper and lower extremity prosthetics and related orthotics; or (iv) canes, crutches, walkers, and bathtub grab bars.

(m) "Permit" means a permit to operate a pharmacy, deliver medical equipment, or dispense devices, including a renewal license issued by the Board.

(n) "Person" means an individual, corporation, partnership, association, unit of government, or other legal entity.

(o) "Person in loco parentis" means the person who has assumed parental responsibilities for a child.

(p) "Pharmacist" means a person licensed under this Article to practice pharmacy.

(q) "Pharmacy" means any place where prescription drugs are dispensed or compounded.

(r) "Practice of pharmacy" means the responsibility for: interpreting and evaluating drug orders, including prescription orders; compounding, dispensing and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services. A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses and significant problems of drugs and devices; assess, record and report adverse drug and device reactions; take and record patient histories relating to drug and device therapy; monitor, record and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31. A pharmacist who has received special training may be authorized and permitted to administer drugs pursuant to a specific prescription order in accordance with rules and regulations adopted by each of the Boards of Pharmacy, the Board of Nursing, and the North Carolina Medical Board. Such rules and regulations shall be designed to ensure the safety and health of the patients for whom such drugs are administered.

(s) "Prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement:

"Caution: Federal law prohibits dispensing without prescription."

(t) "Prescription order" means a written or verbal order for a prescription drug, prescription device, or pharmaceutical service from a person authorized by law to prescribe such drug, device, or service. A prescription order includes an order entered in a chart or other medical record of a patient.

(u) "Unit dose medication system" means a system in which each dose of medication is individually packaged in a properly sealed and properly labeled container.





Hunger Coalition, Inc.  
 104 C Carrboro Plaza, Hwy 54 By-Pass  
 Carrboro, NC 27510-1597

2/16/98

To: Mr. David R. Work  
 Executive Director  
 North Carolina Board of Pharmacy  
 104 C Carrboro Plaza, HWY 54 By-Pass  
 Carrboro, NC 27510-1597

From: Ms. Ceia Webb  
 Executive Director  
 Watauga County Hunger Coalition  
 PO Box 70 DTS  
 Boone, NC 28607

Subject: Request for Reconsideration of the Pharmacy Board's Permit Requirement

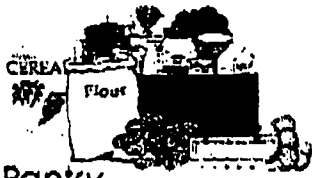
Dear Mr. Work:

The COUNTRY ROADS mobile pharmacy and the MEADOW VIEW Pharmacy of the Watauga County Hunger Coalition exist to provide free prescription medication to the poor and disadvantaged of Ashe, Avery and Watauga counties with limited access to transportation. The service is intended to meet the needs of it's client base in providing free prescription medication not provided through insurance or Medicare services to a growing segment of our population who, all too often, slip through society's shrinking safety net.

The majority of our medical supplies are provided through the compassionate donation of medical samples by area physicians and, in some cases, drug companies. Those needed medications not provided by donation are purchased through private donations and the very limited budget of the Hunger Coalition.

The Board of Pharmacy granted permission to operate a Mobile Pharmacy (Country Roads). The North Carolina Pharmacy Board can be rightly proud of helping the Watauga County Hunger Coalition lead the way through this vanguard program of aid to some of the state's neediest citizens. Country Roads is up and running but this nationally unique program needs the help of the Pharmacy Board one more time.

**Health Support**  
 Providing free prescription medication  
 (no controlled substances)



**Pantry**  
 Providing boxes of food to people in crisis.



**Faith Fund**  
 Providing assistance to those in need

**Board of Directors**

- President*  
Carol Gross, Ph.D.
- Vice-President*  
Marian Peters, Ph.D.
- Treasurer*  
Chip Callahan, M.P.A.
- Secretary*  
Angela Allen, B.S.W.
- Ernie Armstrong, Ph.D.
- Jim Greene, R.Ph.
- Carol Coalter, E.D.
- Diana White, M.A.R.
- Banks Finger, J.D.

Executive Director  
 Ceia Webb, B.S.W., CEAP

The Hunger Coalition  
 417 Meadowview Drive  
 Boone, North Carolina 28607  
 Phone: 828/262-1628  
 Fax: 828/262-0154

In granting permission to operate, The Pharmacy Board stipulated that the Hunger Coalition obtain a separate Pharmacy Permit for each designated stop (place) on its rounds (your letter of 4/6/98). The Pharmacy Regulations were, of course, written to regulate stationary pharmacy facilities. The need to inspect and regulate each facility of a chain of Pharmacies is easily understood. The problem that we have is that the understandable requirement for a permit for each place of business has been interpreted to require a separate permit for each stop of the Country Roads Mobile Pharmacy.

The Board has required that the Hunger Coalition obtain eight (8) permits to operate Country Roads. The effect of this requirement is to require the payment of eight fees at \$175 per fee to serve the poor and indigent of the three county area. This requirement strains an already over-taxed budget and diverts \$1225 per year ( the cost of 7 superfluous permits) that could better be spent purchasing needed food, drugs, and services for the poor and disadvantaged of the three-county area.

The Country Roads Mobile Pharmacy is a single recreational vehicle equipped and manned to provide mobile pharmacy services. It does not carry or dispense any Controlled Substances. It is inspected at least annually and complies with all requirements of the Pharmacy Board. It is a single "place" and the fact that it makes designated stops to service it's client base does not change that fact . Neither the facility nor the pharmacist changes at any of the designated stops.

Code section 90-85.34 grants the Board the power to regulate "unique" pharmacy practice, consistent with provisions of this Code. Country Roads is nothing if not "unique". To insure the safe administration of Pharmacy practice the Board has directed that Country Roads take certain steps to insure accountability, inspection and accessibility. To this end, we publish a schedule, maintain two sets of computer records (one on-board Country Roads and a duplicate at Meadow View) and carry a mobile phone, among other requirements. We are requesting that the Board exercise it's authority to regulate "unique" pharmacies and reconsider it's requirement that we obtain a separate Permit for each parking lot stop.

Section 90-85.24 (Fees collectible by Board) directs the collection of a single fee from a single "drug store". An interpretation that each stop is a separate "place" for the purposes of permitting penalizes this non-profit care organization for providing a needed service not provided by either the state or other county, private, or public care organizations.

The only Code provision that appears to address itself to the requirement for multiple "Registration" may be found in Title 21, Chapter 46, section -.1401. This provision requires the separate registration of "satellite pharmacies" when certain designated criteria exist. The criteria all relate to the relative independence of the "satellite pharmacies" and each "satellite" is only required to obtain a single permit. If Country Roads is to be considered a "satellite" of the Hunger Coalition Meadow View Pharmacy facility it should only be considered a single satellite, requiring a single permit.

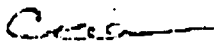
We recognize the need to provide the Pharmacy Board with a schedule of stops (date, time and place) to allow supervision and inspection. Surely there is no need to require the issuance of a separate permit ( with a separate fee) for each parking lot

where the Mobile Pharmacy stops on a given day. It is requested that the Board reconsider it's interpretation of the regulations. We request that we be required to obtain the issuance of a single permit for the Mobile Pharmacy. We recognize that this permit shall be issued with the understanding that the Board will be kept informed as to Country Road's schedule. We further recognize that the number and place of designated stops shall not be altered without prior notification to the Board.

On a lighter note, if each stop of Country Roads is a "place" for the purpose of permits, we may be creating a monster. It has often been said that home is where the heart is. Thus, wherever we go and are happy, warm and comfortable with our loved ones is "home". Not every house is a "home" but all homes are real estate and since home is where the heart is, all hearts have the possibility of being "home". Hopefully, we are not going to take this tortured, truncated syllogism and find a way to impose a building permit and real-estate tax on each Tar Heel heart.

Thank you, in advance, for your kind consideration of this matter.

Sincerely,



Ceia Webb



*if you feel better, take medication regularly*

**Hunger Coalition**

***Health Support Services - Country Roads Pharmacy***

**Thank you  
for your support letter  
when the Hunger Coalition wrote for a Kate B. Reynolds Grant  
to fund a mobile pharmacy unit  
to travel rural Ashe, Avery and Watauga Counties.**

**We were funded, as some of you may know already.**

**This mobile pharmacy is the first to give access to free prescription medications in the nation. The Country Roads Pharmacy will serve those who cannot purchase prescription medications on a routine and regular basis although their marginal health demands prescription regularity and for whom transportation is non existent or at best unreliable. All medications are given free of charge, are physicians samples and are supplied through the generosity of participating doctors. Pharmacists who staff the *Country Roads Pharmacy* are volunteers.**

**Eligibility guidelines are 200% of the Federal Poverty Index and in very real terms serves the working poor, including minimum wage workers, migrant laborers (tobacco and Christmas tree workers), those Medicare recipients who are chronically ill and underinsured, and North Carolina Medicaid recipients who cannot qualify for 100% coverage. To the greatest degree these are folks who fall through the health care cracks, they make too much money to qualify for 100% Medicaid coverage and have too little income to cover any health care costs. Without the *Country Roads Pharmacy* option they would make horrible choices between stabilizing their health and food or clothing. The second criteria is residency in either Ashe, Avery or Watauga.**

**Enclosed find additional information, please call with any questions, the more eligible folks who use this pharmacy, the better we'll all be.**

**We invite anyone  
who would like to ride  
the *Country Roads Pharmacy* with us  
to call well in advance of the possible date.**

*Again, thank you for your continuing support*

*Celia Webb*

**Executive Director**

**417 Meadowview Drive, Boone, NC 828.262-1628 / FAX 828.262-0154**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 51

Short Title: Highway Contract Bonding Req'ments.

(Public)

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Sponsors: Senator Shaw of Cumberland.

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Referred to: Commerce.

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February 8, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT  
3 BIDDING AND TO PROVIDE AN ALTERNATIVE PROCEDURE FOR  
4 RESOLVING STATE CONTRACT DISPUTES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 136-28.10(a) reads as rewritten:

7 "(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or  
8 Highway Trust Fund projects of ~~three hundred thousand dollars (\$300,000)~~ five  
9 hundred thousand dollars (\$500,000) or less, the Board of Transportation may, after  
10 soliciting at least three informal bids in writing from Small Business Enterprises,  
11 award contracts to the lowest responsible bidder. The Department of Transportation  
12 may identify projects likely to attract increased participation by Small Business  
13 Enterprises, and restrict the solicitation and award to those bidders. The Board of  
14 Transportation may delegate full authority to award contracts, adopt necessary rules,  
15 and administer the provisions of this section to the Secretary of Transportation."

16 Section 2. G.S. 143-135.3 reads as rewritten:

17 "**§ 143-135.3. Adjustment and resolution of State ~~board construction~~ contract claim.**

18 (a) Definitions. -- The following definitions apply in this section:

19 (1) ~~The word "board" as used in this section shall mean the State of~~  
20 ~~North Carolina~~ The State or any board, bureau, commission,  
21 institution, or other agency of the State, as distinguished from a  
22 board or governing body of a subdivision of the State.

23 (2) ~~"A contract for construction or repair work," as used in this~~  
24 ~~section, is defined as any contract for the construction of buildings~~

1 and appurtenances thereto, including, but not by way of limitation,  
2 utilities, plumbing, heating, electrical, air conditioning, elevator,  
3 excavation, grading, paving, roofing, masonry work, tile work and  
4 painting, and repair work as well as any contract for the  
5 construction of airport runways, taxiways and parking aprons,  
6 sewer and water mains, power lines, docks, wharves, dams,  
7 drainage canals, telephone lines, streets, site preparation, parking  
8 areas and other types of construction on which the Department of  
9 Administration or The University of North Carolina enters into  
10 contracts.

11 "Contractor" as used in this section includes any person, firm,  
12 association or corporation which has contracted with a State board  
13 for architectural, engineering or other professional services in  
14 connection with construction or repair work as well as those  
15 persons who have contracted to perform such construction or  
16 repair work. Construction contract. -- A contract for any of the  
17 following:

18 a. The construction or repair of buildings or  
19 appurtenances to those buildings, including utilities,  
20 plumbing, heating, electrical, air conditioning,  
21 elevator, excavation, grading, paving, roofing,  
22 masonry work, tile work, and painting.

23 b. The construction or repair of airport runways,  
24 taxiways and parking aprons, sewer and water mains,  
25 power lines, docks, wharves, dams, drainage canals,  
26 telephone lines, streets, site preparation, parking  
27 areas, and other capital improvements.

28 c. Architectural, engineering, or other professional  
29 services in connection with a contract described in  
30 this subdivision.

31 (3) Contract. -- A contract for goods, services, construction, or  
32 repair administered by the Department of Administration.

33 (4) Contractor. -- A person who submits a bid on or enters into  
34 a contract with a board.

35 (b) Uncompleted Construction Contract. -- A contractor who has not completed a  
36 contract with a board for construction or repair work and who has not received the  
37 amount he the contractor claims is due under the contract may submit a verified  
38 written claim to the Director of the Office of State Construction of the Department of  
39 Administration for the amount the contractor claims is due. The Director may deny,  
40 allow, or compromise the claim, in whole or in part. ~~A~~ The Director's decision is not  
41 a final decision of the Department of Administration under subsection (d) of this  
42 section and a claim under this subsection is not a contested case under Chapter 150B  
43 of the General Statutes.



1 (c) Completed Construction Contract. -- A contractor who has completed a  
2 contract with a board ~~for construction or repair work~~ and who has not received the  
3 amount ~~he~~ the contractor claims is due under the contract may submit a verified  
4 written claim to the Director of the Office of State Construction of the Department of  
5 Administration for the amount the contractor claims is due. The claim shall be  
6 submitted within 60 days after the contractor receives a final statement of the board's  
7 disposition of ~~his~~ the contractor's claim and shall state the factual basis for the claim.

8 The Director shall investigate a submitted claim within 90 days of receiving the  
9 claim, or within any longer time period upon which the Director and the contractor  
10 agree. The contractor may appear before the Director, either in person or through  
11 counsel, to present facts and arguments in support of his claim. The Director may  
12 allow, deny, or compromise the claim, in whole or in part. The Director shall give  
13 the contractor a written statement of the Director's decision on the contractor's  
14 claim.

15 A contractor who is dissatisfied with the Director's decision on a claim submitted  
16 under this subsection may commence a contested case on the claim under Chapter  
17 150B of the General Statutes. The contested case shall be commenced within 60 days  
18 of receiving the Director's written statement of the decision.

19 ~~(e1) A contractor who is dissatisfied with the Director's decision on a claim~~  
20 ~~submitted under subsection (e) of this section may commence a contested case on the~~  
21 ~~claim under Chapter 150B of the General Statutes. The contested case shall be~~  
22 ~~commenced within 60 days of receiving the Director's written statement of the~~  
23 ~~decision.~~

24 ~~(d) As to any portion of a claim that is denied by the Director, the contractor~~  
25 ~~may, in lieu of the procedures set forth in the preceding subsection of this section,~~  
26 Alternate Procedure. -- Notwithstanding the provisions of subsection (c) of this  
27 section and of Chapter 150B of the General Statutes, in the case of any contract  
28 dispute between a board and a contractor, if the contractor and the Department of  
29 Administration cannot agree to a resolution through informal procedures, the  
30 contractor may, in lieu of filing a petition for a contested case under Article 3 of  
31 Chapter 150B of the General Statutes, within six months of receipt of the Director's  
32 final decision, after a final decision by the Department of Administration, institute a  
33 civil action for the sum he claims to be entitled to determine the contractor's rights,  
34 duties, or privileges under the contract by filing a verified complaint and the issuance  
35 of a summons in the Superior Court of Wake County or in the superior court of any  
36 county where the work under the contract was performed. The procedure shall be  
37 the same as in all civil actions except that all issues shall be tried by the judge,  
38 without a jury.

39 (e) Incorporation in Contracts. -- The provisions of this section are part of every  
40 contract ~~for construction or repair work~~ made by a board and a contractor. A  
41 provision in a contract that conflicts with this section is invalid."

42 Section 3. Section 2 of this act becomes effective January 1, 2000, and  
43 applies to contract disputes arising on or after that date. The remainder of this act is  
44 effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 51  
Proposed Committee Substitute S51-PCS3565-RN

Short Title: Highway Contract Bonding Req'ments.

(Public)

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Sponsors:

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Referred to:

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February 8, 1999

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT  
3 BIDDING.  
4 The General Assembly of North Carolina enacts:  
5                   Section 1. G.S. 136-28.10(a) reads as rewritten:  
6       "(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or  
7 Highway Trust Fund projects of ~~three hundred thousand dollars (\$300,000)~~ five  
8 hundred thousand dollars (\$500,000) or less, the Board of Transportation may, after  
9 soliciting at least three informal bids in writing from Small Business Enterprises,  
10 award contracts to the lowest responsible bidder. The Department of Transportation  
11 may identify projects likely to attract increased participation by Small Business  
12 Enterprises, and restrict the solicitation and award to those bidders. The Board of  
13 Transportation may delegate full authority to award contracts, adopt necessary rules,  
14 and administer the provisions of this section to the Secretary of Transportation."  
15                   Section 2. This act is effective when it becomes law.



**North Carolina General Assembly  
Legislative Services Office**

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**February 23, 1999**

**MEMORANDUM**

**TO:** Senate Commerce Committee

**FROM:** Linwood Jones, Counsel

**RE:** Senate Bill 51 – Proposed Committee Substitute

The Proposed Committee Substitute deletes the provisions of the original bill relating to the appeal of contract disputes but retains the change concerning DOT's Small Business Enterprise Program.

The Small Business Enterprise Program was created in 1993 to increase the opportunities for small businesses to participate in highway contracts. DOT has identified certain types of projects, such as hauling stone, clearing and cutting, signal installation, landscape planting, and fencing and guardrail, that can appropriately be set aside for only small businesses to bid on. Currently, projects up to the amount of \$300,000 can be placed in the Small Business Enterprise Program, although the average project amount is much lower. For each project, bids are solicited in writing only from small businesses that are capable of performing the work, and the contract is awarded to the lowest responsible bidder. Currently, to qualify as a small business, a firm must have a gross annual income of less than \$1.2 million (based on previous year's income). The SBE program is separate from the program for Disadvantaged Business Enterprises.

The Proposed Committee Substitute for Senate Bill 51 will raise the \$300,000 threshold for the SBE program to \$500,000. This increase is consistent with the change that was made in 1995 to the formal bidding law for highway construction. The formal bidding law (GS 136-28.1) requires formal sealed bidding on projects over \$500,000, but allows informal bidding on projects below that amount. Prior to 1995, that threshold also stood at \$300,000.

The bill would take effect upon becoming law.

S51-SMRN99-001

VISITOR REGISTRATION SHEET

AMCER  
 \_\_\_\_\_  
 Clerk of Committee

2-23-99  
 \_\_\_\_\_  
 Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Richard G. Vanett	Gov. Office
Henry Jones	Attorney - Raleigh
Peter Weber	Bank of America
John Leuston	DOA P/C
Andy Cull	Atty Gen. Ofc
Jerry White	Atty Gen. Ofc
James W. [unclear]	Justice Center
Jim [unclear]	DAFT
BERRY Jenkins	CAROLINAS AGC
Mary Murchison	Fayrer & Spruill
Alida Gregory	Polmi & Spruill
Smartman	JEHS
Steve Simpson	CAROLINAS AGC
Spencer Duffin	State Const. Office
Howe Carstens	State Const. Office
Jerry [unclear]	JDAL
Wayne Peters	JP Assoc/Exec. Ctr.
Tim KENT	American Institute of Architects
Jim Blackburn	Friend of Tim Kent
Lisa Piercy	Capitol Group
Phil Leburon	NC AGC

VISITOR REGISTRATION SHEET

Finance Committee  
 Name of Committee

2-23-99  
 Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
David Simmon	ZDA, PA
John Bordish	" "
Ann Case	NCRMA
Wilthe Riadude	DOR
Mike James	NCRPA
Charles De Rose	NCDHHS/COMMUNITY HEALTH
Jeff Van Dyke	BellSouth
LYNN Hornes	BellSouth
Paul Laule	Laule Consulting
DAVID BECK	SIF-App
Wm. Joe Bain	NCMS
Hubert Tilson	NCHA
Brenda Dougherty	SPRINT
Mancy Thompson	NCCBO
Leslie Beracqua	NCCBO
VLM Brides	NCHA
Bill Scobain	NCBA
Ruth Sappie	NCDOT
Danny Rogers	NCDOT

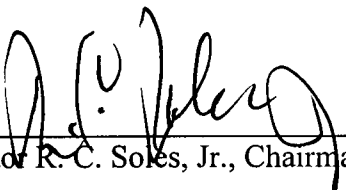
SENATE COMMERCE COMMITTEE  
11:00 A.M. TUESDAY, MARCH 16, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

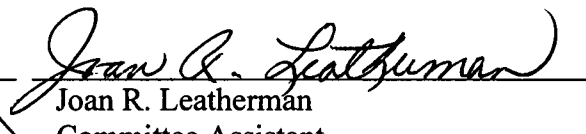
The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, March 16, 1999. Twenty-one members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order and stated that at the sponsor's request Senate Bills 192 and 284 were postponed for consideration until a later date. The following bill was considered by the Committee:

S.B. 212, AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS. (See Committee Counsel's memorandum of March 16<sup>th</sup> for complete explanation of the bill.) Senator Rand, the bill sponsor, said that the Mortuary Science Board had been working on the bill for quite sometime and he had introduced it at their request. Mr. Jack Nichols who represents the Board was present to assist in the explanation and to answer questions from the Committee. Additional information on the bill was requested by various members of the Committee and Senator Rand asked that the bill be delayed until Mr. Andrew Ritter could be present. Senator Soles said the bill would be taken up at the Committee's next meeting.

There being no further business, the meeting was adjourned at 11:15 a.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
Tuesday, March 16, 1999  
ROOM 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 192, FILING OF FOREIGN AGREEMENTS (Senator Reeves)**

**SB 212, MORTUARY SCIENCE CHANGES (Senator Rand)**

**SB 284, SMALL BUSINESS PROCUREMENT ACT (Senator L. Shaw)**

**ADJOURNMENT**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

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SENATE BILL 212

Short Title: Mortuary Science Changes.

(Public)

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Sponsors: Senator Rand.

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Referred to: Commerce.

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March 2, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH  
3 CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL  
4 ASSOCIATIONS.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 143B-472.2 reads as rewritten:  
7 "§ 143B-472.2. Duties of Board; meetings.  
8 It shall be the duty of the North Carolina Board of Mortuary Science to supervise,  
9 pursuant to this Article, all burial associations authorized by this Article to operate in  
10 North Carolina, to determine that such associations are operated in conformity with  
11 this Article and the rules adopted pursuant to this Article; to ~~assist the Board of~~  
12 ~~Mortuary Science with prosecution of~~ prosecute violations of this Article or rules  
13 adopted pursuant thereto; and to protect the interest of members of mutual burial  
14 associations.  
15 The North Carolina Board of Mortuary Science, after a public hearing, may  
16 promulgate reasonable rules and regulations for the enforcement of this Article and  
17 in order to carry out the intent thereof. The Board is authorized and directed to  
18 adopt specific rules to provide for the orderly transfer of a member's benefits in cash  
19 or merchandise and services from the funeral director sponsoring the member's  
20 association to the funeral establishment which furnishes a funeral service, or  
21 merchandise, or both, for the burial of the member, provided that any funeral  
22 establishment to which the member's benefits are transferred in accordance with such  
23 rules shall, if located in North Carolina, be a funeral establishment registered and  
24 permitted under the provisions of G.S. 90-210.25 or shall, if located in any other



1 state, territory or foreign country, be a funeral establishment recognized by and  
2 operating in conformity with the laws of such other state, territory or foreign country.  
3 One or more burial associations operating in North Carolina may merge into another  
4 burial association operating in North Carolina and two or more burial associations  
5 operating in North Carolina may consolidate into a new burial association provided  
6 that any such plan of merger or plan of consolidation shall be adopted and carried  
7 out in accordance with rules adopted by the Board pursuant to this Article.

8 All rules heretofore adopted by the North Carolina Mutual Burial Association  
9 Commission or the North Carolina Board of Mortuary Science in accordance with  
10 prior law and which have not been amended, rescinded, revoked or otherwise  
11 changed, or which have not been nullified or made inoperative or unenforceable  
12 because of any statute enacted after the adoption of any such rule, shall remain in full  
13 force and effect until amended, rescinded, revoked or otherwise changed by action of  
14 the North Carolina Board of Mortuary Science as set out above, or until nullified or  
15 made inoperative or unenforceable because of statutory enactment or court decision.

16 Members of the Board shall receive, when attending such regular or special  
17 meetings such per diem, expense allowance and travel allowance as are allowed other  
18 commissions and boards of the State. The legal adviser to the Board shall be entitled  
19 to actual expenses when attending regular or special meetings of the Board held other  
20 than in Raleigh. All expenses of the Board shall be paid from funds coming to the  
21 Board pursuant to this Article or appropriated for this purpose."

22 Section 2. Article 4 of G.S. 143B-472.3 reads as rewritten:

23 "Article 4. The annual meeting of the association shall be held at ..... (here  
24 insert the place, date and hour); each member shall have one vote at said annual  
25 meeting and 15 members of the association shall constitute a quorum. There shall be  
26 elected at the annual meeting of said association a board of directors of seven  
27 members, each of whom shall serve for a period of from one to five years as the  
28 membership may determine and until his or her successor shall have been elected  
29 and qualified. Any member of the board of directors who shall fail to maintain his or  
30 her membership, as provided in the rules and bylaws of said association, shall cease  
31 to be a member of the board of directors and a director shall be appointed by the  
32 president of said association for the unexpired term of such disqualified member.  
33 There shall be at least an annual meeting of the board of directors, and such meeting  
34 shall be held immediately following the annual meeting of the membership of the  
35 association. The directors of the association may, by a majority vote, hold other  
36 meetings of which notice shall be given to each member by mailing such notice five  
37 days before the meeting to be held. At the annual meetings of the directors of the  
38 association, the board of directors shall elect a president, a vice-president, and a  
39 secretary-treasurer. The president and vice-president shall be elected from among the  
40 directors, but the secretary-treasurer may be selected from the director membership  
41 or from the membership of the association, it being provided that it is not necessary  
42 that the secretary-treasurer shall be a member of the board of directors. Among other  
43 duties that the secretary-treasurer may perform, he shall be chargeable with keeping  
44 an accurate and faithful roll of the membership of this association at all times and he

1 shall be chargeable with the duty of faithfully preserving and faithfully applying all  
2 moneys coming into his hands by virtue of his said office. The president, vice-  
3 president and secretary-treasurer shall constitute a board of control who shall direct  
4 the affairs of the association in accordance with these Articles and bylaws of the  
5 association, and subject to such modification as may be made or authorized by an act  
6 of the General Assembly. The secretary-treasurer shall keep a record of all  
7 assessments made, dues collected and benefits paid. The books of the association,  
8 together with all records and bank accounts shall be at all times open to the  
9 inspection of the Board of Mortuary Science or its duly constituted auditors or  
10 representatives. It shall be the duty of the secretary or secretary-treasurer of each  
11 association to keep the books of the association posted up-to-date so that the financial  
12 standing of the association may be readily ascertained by the Board of Mortuary  
13 Science or any auditor or representative employed by it. ~~Upon the failure of any  
14 secretary or secretary-treasurer to comply with this provision, it shall be the duty of  
15 the Board of Mortuary Science to take charge of the books of the association and do  
16 whatever work is necessary to bring the books up-to-date. The actual costs of said  
17 work may be charged the burial association and shall be paid from the thirty percent  
18 (30%) allowed by law for the operation of the burial association.~~

19 Whenever in the opinion of the Board of Mortuary Science, it is necessary to audit  
20 the books of any burial association more than once in any calendar year, the Board of  
21 Mortuary Science shall have authority to assess such burial association the actual cost  
22 of any audit in excess of one per calendar year, provided that no more than one audit  
23 may be deemed necessary unless a discrepancy exists at the last regular audit. Such  
24 cost shall be paid from the thirty percent (30%) allowed by law for the operation of  
25 the burial association.

26 Every burial association shall file with the Board of Mortuary Science an annual  
27 report of its financial condition on a form furnished to it by the Board of Mortuary  
28 Science. Such report shall be certified by an accountant who is certified in this State  
29 under Chapter 93 of the General Statutes. The burial association shall be responsible  
30 for paying the cost of the certification. The report shall be filed on or before  
31 February 15 of each calendar year and shall cover the complete financial condition of  
32 the burial association for the immediate preceding calendar year. The Board of  
33 Mortuary Science shall levy and collect a penalty of twenty-five dollars (\$25.00) for  
34 each day after February 15 that the report called for herein is not filed. The Board  
35 may, in its discretion, grant any reasonable extension of the above filing date without  
36 the penalty provided in this section. Such penalty shall be paid from the thirty  
37 percent (30%) allowed by law for the operation of the burial association. Any  
38 secretary or secretary-treasurer who fails to file such financial report on or before  
39 February 15 of each calendar year or on or before the last day of any period of  
40 extension for the filing of such report granted by the Board to the burial association  
41 of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each  
42 day after February 15, or the last day of any period of extension for the filing of the  
43 report granted by the Board to the burial association of such secretary or secretary-

1 treasurer, that said report is not filed by the secretary or secretary-treasurer of a  
2 burial association, shall constitute a separate offense."

3 Section 3. Article 10 of G.S. 143B-472.3 reads as rewritten:

4 "Article 10. It is understood and stipulated that the benefits provided for shall be  
5 payable only to a funeral establishment which provides a funeral service for a  
6 deceased member and which, if located in North Carolina, is a funeral establishment  
7 registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or which, if located in any  
8 other state, territory or foreign country, is a funeral establishment recognized by and  
9 operating in conformity with the laws of such other state, territory or foreign country.  
10 Upon the death of any member, it shall be the duty of the person or persons making  
11 the funeral arrangements for such deceased member to notify the secretary of the  
12 member's burial association of the death of such member. The person or persons  
13 making the funeral arrangements for such deceased member shall have 30 days from  
14 the date of the death of such member in which to make demand upon the burial  
15 association for the funeral benefits to which such member is entitled.

16 The benefits provided for are to be paid by the burial association to the funeral  
17 director providing such funeral and burial service either in cash or in merchandise  
18 and service as elected by the person or persons making the funeral arrangements for  
19 such deceased member. If the burial association shall fail, on demand, to provide the  
20 benefits to which the deceased member was entitled to the funeral establishment  
21 which provided the funeral service for the deceased member, then the benefits shall  
22 be paid in cash to the representative of the deceased member qualified under law to  
23 receive such benefits."

24 Section 4. Part 13 of Article 10 of Chapter 143B is amended by adding  
25 the following new section:

26 "§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial  
27 associations.

28 (a) Any insurance company which desires to purchase the assets of or to merge  
29 with a burial association as provided in G.S. 143B-472.28 shall submit to the Board of  
30 Mortuary Science and to the secretary of the association a written proposal  
31 containing the terms and conditions of the proposed purchase or merger. A proposal  
32 may be conditioned upon an increase in the assessments of an association in the  
33 manner set out in subsection (g) of this section. In such a case, the issues of purchase  
34 or merger and an increase in assessments may be considered at the same meeting of  
35 the association.

36 (b) Upon receipt of a written proposal:

37 (1) The Board shall issue an order directing the association to hold a  
38 meeting of the membership within 30 days following receipt of the  
39 order for the purpose of voting on the proposal.

40 (2) Within 10 days of receiving the order from the Board, the  
41 association shall give at least 10 days' written notice of the meeting  
42 to each of its members. The notice shall:

43 a. State the date, time, and place of the meeting.

44 b. State the purpose of the meeting.

1           c. Contain or have attached the proposal submitted by the  
2           insurance company.

3           d. Contain a statement limiting the time that each member will  
4           be permitted to speak to the proposal, if the association  
5           deems it advisable.

6       (c) A representative of the insurance company shall be permitted to attend the  
7 meeting held by the association for the purposes of explaining the proposal and  
8 answering any questions from the members. The officers of the association may  
9 present their views concerning the proposal. Any member of the association who  
10 wishes to speak to the proposal shall be permitted to do so subject to any time  
11 limitation stated in the notice of the meeting.

12       (d) The secretary of the association shall record the name of every member who is  
13 present at the meeting and shall determine whether there is a quorum. The presence  
14 of 15 paid-up members or fifteen percent (15%) of the paid-up membership,  
15 whichever is less, shall constitute a quorum. Acceptance or rejection of the proposal  
16 shall be by majority vote of the members present and voting. Any paid-up member  
17 who is at least 18 years of age shall be permitted to vote. A parent or guardian of  
18 any member who is under 18 years of age may vote on behalf of his or her child or  
19 ward, but only one vote may be cast on behalf of that member.

20       (e) The secretary of the association shall certify the result of the vote and the  
21 presence of a quorum to the Board within five days following the meeting and shall  
22 include with the certification a copy of the notice of the meeting that was sent to the  
23 members of the association.

24       (f) The Board shall immediately review the certification, the notice, and any other  
25 records that may be necessary to determine the adequacy of notice, the presence of a  
26 quorum, and the validity of the vote. Upon determining that the meeting and vote  
27 were regular and held following proper notice and that a majority of a quorum of the  
28 paid-up members voted in favor of the proposal, the Board shall issue an order  
29 approving the purchase or merger and directing that the purchase or merger proceed  
30 in accordance with the proposal.

31       (g) Any burial association whose current assessments are not, or are unlikely to be  
32 within the next three years, adequate to reach or maintain a reserve of at least  
33 twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements  
34 of a proposal from an insurance company to acquire the assets of or to merge with  
35 the association may increase its assessments by an amount necessary to reach and  
36 maintain the reserve or to meet the proposal. The increase shall be approved by a  
37 vote of the members of the association at a regular meeting of the association or at a  
38 special meeting called for the purpose of increasing assessments.

39           (1) Any officer or director of the association may call a special  
40 meeting for the purpose of increasing assessments, and the  
41 secretary shall call a special meeting for such purpose upon the  
42 request of at least ten percent (10%) of the members or upon  
43 receipt of a proposal from an insurance company that is  
44 conditioned upon an increase in assessments.

1           (2) Written notice setting out the date, time, place, and the purpose of  
2 the meeting shall be hand delivered or sent by first-class mail,  
3 postage prepaid, to the last known address of each member of the  
4 association at least 10 days in advance of the meeting.

5           (3) No vote may be had on the question of an increase in assessments  
6 unless a quorum of the paid-up members of the association is  
7 present at the meeting. A quorum shall be conclusively presumed  
8 if 15 paid-up members or fifteen percent (15%) of the paid-up  
9 membership of the association, whichever is less, is present at the  
10 meeting.

11           (4) The proposal to increase the assessments shall be approved by an  
12 affirmative vote of a simple majority of the paid-up members  
13 present and voting.

14           (5) The secretary of the association within five days following the  
15 meeting shall certify the result of the vote and the presence of a  
16 quorum to the Board in the manner and for the purposes set out in  
17 subsections (e) and (f) of this section.

18           (h) Every association shall submit to the Board on or before June 1, 2000, and  
19 thereafter as may be required by the Board, but not more frequently than once each  
20 calendar year, a written report of financial soundness prepared by a qualified actuary.  
21 The report shall indicate the adequacy of reserves and other items to pay current and  
22 future claims of deceased members and shall reflect a consideration of the following:

23           (1) The current number of members of the association.

24           (2) The age of the members.

25           (3) The sex of the members.

26           (4) The amount of the association's annual assessments.

27           (5) The amount of the association's current reserves.

28           (6) The projected amount of the association's reserves for each of the  
29 next three years.

30           (7) The net gain in membership of the association during the  
31 preceding three years.

32           (8) The projected net gain in membership of the association for each  
33 of the next three years.

34           (9) The association's current liability for benefits to its members.

35           (10) The association's projected net liability for benefits to its members  
36 for each of the next three years.

37           (i) Upon a written request from an association that has held a valid meeting and  
38 vote for voluntary dissolution in accordance with G.S. 143B-472.3, the Board shall  
39 issue an order of liquidation for that association. The Board shall issue an order of  
40 liquidation to every association that has not been acquired by or merged with an  
41 insurance company if the association is not financially sound on June 1, 2001, as  
42 shown by the actuary's report required in subsection (h) of this section. The Board's  
43 order may direct that all members in good standing be transferred to a financially  
44 sound association as well as all records, property, and unexpended balances of funds

1 of the association to be liquidated, if the financially sound association agrees in  
2 writing to accept the transfer. The order shall direct the association to complete the  
3 liquidation and to file a final report with the Board no later than December 31, 2001.  
4 If the transfer of members cannot be accomplished, the association, upon receipt of  
5 an order of liquidation, shall:

- 6 (1) Cease accepting new members.
- 7 (2) Collect all debts owed to the association and pay all debts owed by  
8 the association from monies on hand, including the reserve.
- 9 (3) Distribute any remaining monies on hand and in the reserve pro  
10 rata among those who were members of the association on the date  
11 the liquidation order was issued by the Board. Each member's  
12 distributive share shall be determined by dividing the amount of  
13 that member's benefit by the aggregate benefits of all members of  
14 the association and then multiplying the total amount of money  
15 available for distribution by the percentage so derived.  
16 Assessments owed by the members to the association at the time of  
17 distribution shall be taken into account and shall be offset against  
18 the members' distributive shares.
- 19 (4) Issue a certificate to members in an amount that equals the  
20 difference between the distributive share issued in subdivision (3)  
21 of this subsection and the full amount of the member's association  
22 benefit. Any certificate issued shall supersede and supplant any  
23 other certificate already issued by the association. The certificate  
24 shall be on a form prescribed by the Board and shall be prepared  
25 and distributed by the association at its expense.
- 26 (5) File a final report with the Board on or before December 31, 2001,  
27 which shall show all receipts and disbursements, including the  
28 amount distributed to each member, since the last annual report of  
29 the association was filed with the Board.

30 (j) A certificate issued under subsection (i) of this section may be used as a credit  
31 toward the cost of funeral services, facilities, and merchandise at any funeral  
32 establishment that agrees on forms prescribed by the Board to accept such  
33 certificates. A funeral establishment that agrees to accept certificates shall do so until  
34 the agreement with the Board expires. The Board shall maintain and distribute to  
35 the public a list of funeral establishments that will accept certificates.

36 (k) If after June 1, 2001, the Board determines, upon receipt of a written report  
37 submitted by an association under subsection (h) of this section, that an association is  
38 no longer financially sound, the Board shall issue an order of liquidation, and the  
39 association shall comply with such order in the manner prescribed in subsection (i) of  
40 this section.

41 (l) The Board shall immediately review the final report filed pursuant to  
42 subdivision (i)(5) of this section and shall notify the association whether the report  
43 has been accepted. All licenses issued to soliciting agents of the association pursuant  
44 to G.S. 143B-472.4 and the written authority to operate issued to the association

1 pursuant to G.S. 143B-472.6 are automatically canceled upon acceptance of the final  
2 report by the Board.

3 (m) No new association may be authorized, organized, or licensed on or after  
4 January 1, 2000, but associations existing on that date may merge or consolidate as  
5 provided in G.S. 143B-472.2 and G.S. 143B-472.28."

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



**North Carolina General Assembly  
Legislative Services Office**

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**March 16, 1999**

**To: Members of the Senate Commerce Committee**  
**From: Esther Manheimer, Committee Counsel**  
**Re: Senate Bill 212 – Mortuary Science Changes – Senator Rand**

Senate Bill 212 changes current law so as to require burial associations to comply with certain financial accounting requirements. Additionally, SB 212 establishes procedures for insurance companies to purchase the assets of or merge with burial associations. The bill provides conditions whereby an association may increase their assessments and the procedures the associations must follow to effect such an increase. Finally, SB 212 requires associations to submit a report of financial soundness and mandates when an association is subject to an order of liquidation by the Board of Mortuary Science.

**Section 1.** Includes technical changes to G.S. 143B-472.2 that are necessary due to the 1987 abolition of the North Carolina Mutual Burial Association Commission.

**Section 2.** Repeals the portion of G.S. 143B-472.3 that imposes a duty on the Board of Mortuary Science (the Board) to take charge of the books of any burial association that fails to keep their books up-to-date. G.S. 143B-472.3 is amended to require all burial associations to file an annual report on the financial condition of the burial association. An accountant must certify the report, and the burial association must pay for the cost of the certification.

**Section 3.** Makes a technical change to 143B-472.3.

**Section 4.** Part 13 of Article 10 of Chapter 143B is amended by adding a new section (G.S. 143B-472.29). Under current law, insurance companies may purchase the assets of or merge with burial associations (G.S. 143B-472.28).

**Asset Purchase or Merger.**

The proposed new section, G.S. 143B-472.29, provides guidelines for such an asset purchase or merger. The guidelines include:

- Insurance companies desiring to purchase the assets of or merge with a burial association must submit to the Board of Mortuary Science and to the secretary of the burial association a written proposal of the proposed purchase or merger.
- Upon receiving the written proposal, the Board shall direct the association to meet.



- The association must meet regarding the proposal and a representative of the insurance company shall be permitted to explain the proposal at this meeting.
- The Board shall review the procedures of the meeting (which are specified in this section of the bill), and, in the event that a purchase or merger was approved at the association's meeting, shall issue an order approving of the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

**Increase in Assessments.**

An association may increase its assessments if the association's current assessments are unlikely to be, within the next three years,:

- Adequate to reach or maintain a reserve of at least \$21.00 per member, or
- Adequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association.

The bill provides requirements for the association to meet regarding an assessment increase.

**Written Report of Financial Soundness.**

By June 1, 2000, every association must submit to the Board a written report of financial soundness prepared by an actuary, and may be required to submit such a report annually thereafter. The report shall include information regarding the association's membership, amount of assessments, reserves, and liabilities.

**Liquidation and Dissolution of an Association.**

The Board must issue an order of liquidation for every association that has not been acquired by or merged with an insurance company and is not financially sound by June 1, 2001. Financial soundness will be based on the actuary's report. Additionally, an association may also vote for voluntary dissolution.

*Board Order of Liquidation:*

- The Board may direct that all association members in good standing be transferred to financially sound associations with the financially sound association's approval.
- The Board may direct that the association's record's, property, and unexpended balances of funds be liquidated.
- Ordered liquidations must be complete by December 31, 2001.
- Where the transfer of members cannot be accomplished, the association must follow various requirements including the issuance of a certificate to members that can be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees to accept such certificates.

**No New Associations.**

No new associations may be authorized, organized, or licensed on or after January 1, 2000, but associations existing on that date may merge or consolidate.

This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Name of Committee

COMMERCE

Date

3-16-99

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

Bernard Allen	SOS
Alfred Anderson	Int'l Airline Bill
Jon Carr	Jordan Price
Stephanie Munn	NC Assoc. of Realtors
Dale McKeel	Scenic NC
David Prendergast	NC Dental Hygiene Assoc member
Walt Benson	The Capital Group
Jim Dunt	
Ray Peters	SE Assoc
Della P. Hatcher	NE Electric Coops
John Patenaude	AREP
Jeff Van Dyke	BellSouth

SENATE COMMERCE COMMITTEE  
11:00 A.M. – TUESDAY, MARCH 30, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, March 30, 1999. Twenty-two members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order and the following bills were considered by the Committee:

SB 112, AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION. Representative Barefoot was recognized to explain the bill. He said the bill allows owners of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation by registration. The legislation was a recommendation of the General Statutes Commission and is modeled after the Uniform Transfer on Death (TOD) Securities Registration Act. The Uniform Act has been adopted in at least 44 other states. (See copy of memorandum from the General Statutes Commission dated March 29, 1999, and also a memorandum prepared by Committee Counsel dated March 30, 1999, which summarizes the legislation. Also attached is a fact sheet relating to The TOD Security Registration Act.)

Professor Link from the UNC Law School assisted Representative Barefoot in answering questions from the Committee.

Senator Hoyle moved that HB 112 be given a favorable report. Motion carried. The question was raised if the bill should be re-referred to Finance, and the Chairman said this would be researched before reporting the bill in.

SB 284, AN ACT TO REQUIRE THE SECRETARY OF ADMINISTRATION TO SET BUSINESS SIZE STANDARDS AND APPLY THEM TO THE PROCUREMENT PROCEDURES TO PROMOTE INCREASED PROCUREMENTS FROM SMALL AND MEDIUM-SIZED BUSINESSES. Senator Larry Shaw, the bill sponsor, offered a Committee Substitute to the bill and moved its adoption. Motion carried. Senator Shaw said the legislation requires the Department of Administration to delineate different categories of small and medium sized businesses and give the legislature annual reports on how each category is faring under the State contract system and how they have fared historically. It also requires the Department of Administration to study methods that can be used to increase participation by small businesses and medium size businesses in State contracts. (See memorandum from Committee Counsel dated March 30, 1999, for full explanation.)

Ms. Perry Morgan, representing the National Federation of Independent Businesses, said there were 15,000 small businesses in North Carolina, and this bill is a start in opening up the system for small businesses. Her organization is in full support of the legislation. Mr. John Leaston from the Department of Administration, Purchase and Contract Division, said the Department also favors the bill.

Senator Rand pointed out a grammatical change that needed to be made in the bill and staff was authorized to make this change to the Committee Substitute. Upon motion of Senator Shaw the Committee Substitute for SB 284 was given a favorable report with the above-mentioned correction incorporated.

SB 212, AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS. Senator Rand stated that at the previous meeting there were a number of questions about the bill. He offered two amendments (copies attached) and explained each one. Upon his motion, both amendments were adopted by the Committee.

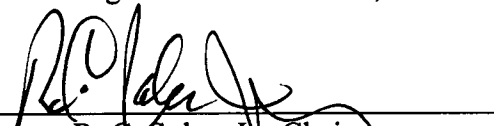
Mr. Jack Nichols, representing the Board of Mortuary Science, presented information to the Committee in response to questions posed at the previous meeting.

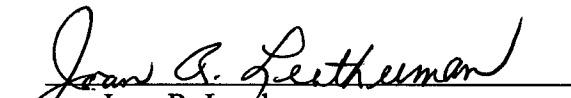
Senator Larry Shaw moved that SB 212, as amended, be given a favorable report and that it be rolled into a Committee Substitute.

Mr. Dean Wilkinson of Greenville, North Carolina, who operates a Burial Association and is a funeral home owner, was recognized by Senator Soles for comments. Mr. Wilkinson spoke in opposition to the legislation. Mr. Jim Swearington, President of the Piedmont Mutual Burial Association, spoke in favor of the legislation. Mr. John Carr, Attorney for the North Carolina Funeral Directors' Association, said the Association did not have a position on the bill.

After many questions from members of the Committee, Senator Kerr offered a substitute motion that SB 212 be re-calendared and placed on the agenda for next Tuesday's meeting. The substitute motion carried.

There being no further business, the meeting adjourned at 12 Noon.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
Tuesday, March 30,1999  
ROOM 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 212, MORTUARY SCIENCE CHANGES (Senator Rand)**

**SB 284, SMALL BUSINESS PROCUREMENT ACT (Senator L. Shaw)**

**HB 112, SECURITIES TRANSFER ON DEATH (Barefoot)**

**ADJOURNMENT**

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
R. C. Soles, Jr., Chair**

Wednesday, March 31, 1999

R. C. SOLES, JR.,  
submits the following with recommendations as to passage:

**FAVORABLE**

H.B.(CS)112                   Securities Transfer on Death  
                                  Sequential Referral:   None  
                                  Recommended Referral: None

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

S.B.     284                   Small Business Procurement Act  
                                  Draft Number:       PCS1126  
                                  Sequential Referral:   None  
                                  Recommended Referral: None  
                                  Long Title Amended:   Yes

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

2

HOUSE BILL 112  
Committee Substitute Favorable 3/9/99

Short Title: Securities Transfer on Death.

(Public)

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Sponsors:

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Referred to:

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February 22, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD)  
3 SECURITY REGISTRATION ACT AS RECOMMENDED BY THE GENERAL  
4 STATUTES COMMISSION.

5 The General Assembly of North Carolina enacts:

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

9 "ARTICLE 4.  
10 "The Uniform Transfer on Death (TOD)  
11 Security Registration Act.

12 "§ 41-40. Definitions.

13 In this Article, unless the context otherwise requires:

- 14 (1) 'Beneficiary form' means a registration of a security which  
15 indicates the present owner of the security and the intention of the  
16 owner regarding the person who will become the owner of the  
17 security upon the death of the owner.  
18 (2) 'Devisee' means any person designated in a will to receive a  
19 disposition of real or personal property.  
20 (3) 'Heirs' means those persons, including the surviving spouse, who  
21 are entitled under Chapter 29 of the General Statutes or the  
22 statutes of intestate succession of other states to take the property  
23 of a decedent by intestate succession.

- 1           (4) 'Person' means an individual, a corporation, an organization, or  
2           other legal entity.
- 3           (5) 'Personal representative' includes executor, administrator,  
4           collector, successor personal representative, special administrator,  
5           and persons who perform substantially the same function under the  
6           law governing their status.
- 7           (6) 'Property' includes both real and personal property or any interest  
8           in real or personal property and means anything that may be the  
9           subject of ownership.
- 10          (7) 'Register', including its derivatives, means to issue a certificate  
11          showing the ownership of a certificated security or, in the case of  
12          an uncertificated security, to initiate or transfer an account  
13          showing ownership of securities.
- 14          (8) 'Registering entity' means a person who originates or transfers a  
15          security title by registration and includes a broker maintaining  
16          security accounts for customers and a transfer agent or other  
17          person acting for or as an issuer of securities.
- 18          (9) 'Security' means a share, participation, or other interest in  
19          property, in a business, or in an obligation of an enterprise or  
20          other issuer, and includes a certificated security, an uncertificated  
21          security, a security account, and a security entitlement as defined  
22          in G.S. 25-8-102.
- 23          (10) 'Security account' means (i) a reinvestment account associated  
24          with a security, a securities account with a broker, a cash balance  
25          in a brokerage account, cash, interest, earnings, or dividends  
26          earned or declared on a security in an account, a reinvestment  
27          account, or a brokerage account, whether or not credited to the  
28          account before the owner's death, or (ii) a cash balance or other  
29          property held for or due to the owner of a security as a  
30          replacement for or product of an account security, whether or not  
31          credited to the account before the owner's death.
- 32          (11) 'State' includes any state of the United States, the District of  
33          Columbia, the Commonwealth of Puerto Rico, and any territory or  
34          possession subject to the legislative authority of the United States.

35 **"§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

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

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

43 A security may be registered in beneficiary form if the form is authorized by this  
44 or a similar statute of the state of organization of the issuer or registering entity, the



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

7 **"§ 41-43. Origination of registration in beneficiary form.**

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

11 **"§ 41-44. Form of registration in beneficiary form.**

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

16 **"§ 41-45. Effect of registration in beneficiary form.**

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

21 **"§ 41-46. Ownership on death of owner.**

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

32 **"§ 41-47. Protection of registering entity.**

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

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

40 (c) A registering entity is discharged from all claims to a security by the estate,  
41 creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security  
42 in accordance with G.S. 41-46 and does so in good faith reliance (i) on the  
43 registration, (ii) on this Article, and (iii) on information provided to it by affidavit of  
44 the personal representative of the deceased owner, or by the surviving beneficiary or

1 by the surviving beneficiary's representatives, or other information available to the  
2 registering entity. The protections of this Article do not extend to a reregistration or  
3 payment made after a registering entity has received written notice from any claimant  
4 to any interest in the security objecting to implementation of a registration in  
5 beneficiary form. No other notice or other information available to the registering  
6 entity affects its right to protection under this Article.

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

10 **"§ 41-48. Nontestamentary transfer on death.**

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

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

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

25 **"§ 41-49. Terms, conditions, and forms for registration.**

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

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

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

42 (2) Multiple owners-sole beneficiary: 'John S. Brown, Mary B. Brown  
43 JT TEN TOD John S. Brown, Jr.'

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

4 "§ 41-50. Short title; rules of construction.

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

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

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

11 "§ 41-51. Application of Article.

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

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

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

18           (1) Tentative trusts created by the decedent in savings accounts for  
19 other ~~persons~~; persons.

20           (2) Gifts causa mortis made by the ~~decedent~~; decedent.

21           (3) Joint deposit accounts with right of survivorship created by  
22 decedent pursuant to the provisions of G.S. 41-2.1 or otherwise;  
23 and joint tenancies with right of survivorship created by decedent  
24 in corporate stocks or other investment securities.

25           (4) An interest in a security passing to a beneficiary pursuant to the  
26 provisions of Article 4 of Chapter 41 of the General Statutes.

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

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

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



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

**MEMORANDUM**

TO: Senate Commerce Committee

FROM: General Statutes Commission

DATE: March 29, 1999

RE: House Bill 112 (Securities Transfer on Death)

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

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

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

Please note also the following specific points:

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

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

- (2) The designated beneficiary or beneficiaries “take” on the death of the sole owner or the last surviving joint tenant. Multiple beneficiaries “take” as tenants in common.
- (3) An issuer or transfer agent is not required to accept TOD designations and may establish the terms and conditions under which it will receive TOD registrations.
- (4) This bill differs from the Uniform Act in five respects. First, it includes in the definition of “heirs” a specific citation to North Carolina’s intestate succession statutes. Second, it includes in § 41-48 two subsections, (b) and (c), not found in the Uniform Act that are designed to protect the interest of creditors and the Department of Revenue. These provisions are similar to other provisions dealing with nontestamentary transfers on death such as joint bank accounts. Third, it omits an illustration and supporting language from § 41-49 that would have defined a particular, commonly used legal term (“per stirpes”) in a way different from the usual meaning in this State, thereby avoiding a trap for the unwary. Fourth, it includes in § 41-50 a subsection (c) stating that the Act does not repeal G.S. 41-2.2 to avoid any argument that that section was partially repealed by implication. Fifth, it includes in the definition of “security” in § 41-40(9) a specific reference to security entitlements as defined in the revised Article 8 of the Uniform Commercial Code, which was enacted by the General Assembly in 1997.

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



# HOUSE BILL 112: Securities Transfer on Death

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** March 30, 1999  
**Version:** Second Edition

**Introduced by:** Rep. Barefoot  
**Summary by:** O. Walker Reagan,  
Committee Co-Counsel

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

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

**CURRENT LAW:** Under current law securities can only be passed upon death by probate or by joint tenancy with right of survivorship.

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

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

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

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

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

**EFFECTIVE DATE:** The bill would take effect October 1, 1999, and would apply to persons dying on or after that date who had registered such a designation on their securities at anytime prior to their death. This will ratify the designations made by people before October 1, 1999, including people who may have made such designations under the laws of other states.

This summary was contributed to by Robin Johnson

H112-SMRU-001

## CITED STATUTES

### § 25-8-102. Definitions.

(a) In this Article [Investment Securities]:

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

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

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

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

(5) "Clearing corporation" means:

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

(ii) A federal reserve bank; or

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

(6) "Communicate" means to:

(i) Send a signed writing; or

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

(7) **"Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of G.S. 25-8-501(b)(2) or (3), that person is the entitlement holder.**

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

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

(i) A security;

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

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

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

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

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

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

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

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

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

(14) "Securities intermediary" means:



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(i) A clearing corporation; or

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

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

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

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

(iii) Which:

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

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

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

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

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

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

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

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

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

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

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

H112-SMRU-001

## A Few Facts About THE TOD SECURITY REGISTRATION ACT

**PURPOSE:** This act provides for transfer-on-death (TOD) investment securities - stocks, bonds, mutual fund shares, security accounts, and the like. Such securities can be transferred on death to named beneficiaries. The transfers, like pay-on-death deposit accounts, are nontestamentary and do not fall into the probate estate of the deceased holder of these securities. A whole new echelon of property can be kept out of the probate estate, therefore, and estate planning for the purpose of avoiding probate becomes easier.

**ORIGIN:** Completed by the Uniform Law Commissioners in 1989.

**ENDORSED BY:** American Bar Association  
American Association of Retired Persons  
Securities Industry Association

<b>STATE ADOPTIONS:</b>	Alabama	Missouri
	Alaska	Montana
	Arizona	Nebraska
	Arkansas	Nevada
	California	New Hampshire
	Colorado	New Jersey
	Connecticut	New Mexico
	Delaware	North Dakota
	Florida	Pennsylvania
	Hawaii	Ohio
	Idaho	Oklahoma
	Illinois	Oregon
	Indiana	Rhode Island
	Iowa	South Carolina
	Kansas	South Dakota
	Kentucky	Tennessee
	Maine	Utah
	Maryland	Virginia
	Massachusetts	Washington
	Michigan	West Virginia
	Minnesota	Wisconsin
	Mississippi	Wyoming

1999  
**INTRODUCTIONS:** Georgia  
Vermont

For any further information regarding the TOD Security Registration Act, please contact John McCabe or Katie Robinson at 312-915-0195.

(2/1/99)

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 284

Short Title: Small Business Procurement Act.

(Public)

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Sponsors: Senators Shaw of Cumberland; Jordan and Lucas.

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Referred to: Commerce.

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March 8, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THE SECRETARY OF ADMINISTRATION TO SET  
3 BUSINESS SIZE STANDARDS AND APPLY THEM TO THE  
4 PROCUREMENT PROCEDURES TO PROMOTE INCREASED  
5 PROCUREMENTS FROM SMALL AND MEDIUM-SIZED BUSINESSES.

6 Whereas, current procurement procedures provide for the consolidation  
7 of estimates for supplies, materials, equipment, and contractual services and provide  
8 an institutional bias toward awarding State contracts to large businesses; and

9 Whereas, in this era of large corporate merging, restructuring, and  
10 downsizing, with the attendant employee reductions, it is the small and medium-sized  
11 businesses that are providing for new employment opportunities and economic  
12 growth in North Carolina; and

13 Whereas, the development of small and medium-sized businesses should  
14 be encouraged in North Carolina; Now, therefore,  
15 The General Assembly of North Carolina enacts:

16 Section 1. G.S. 143-52 reads as rewritten:

17 "**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary;**  
18 **bids; awarding of contracts.**

19 As feasible, the Secretary of Administration will compile and consolidate all such  
20 estimates of supplies, materials, printing, equipment and contractual services needed  
21 and required by State departments, institutions and agencies to determine the total  
22 requirements of any given commodity. Where such total requirements will involve an  
23 expenditure in excess of the expenditure benchmark established under the provisions  
24 of G.S. 143-53.1 and where the competitive bidding procedure is employed as

1 hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper  
2 widely distributed in this State or through electronic means, or both, as determined  
3 by the Secretary to be most advantageous, at least once and at least 10 days prior to  
4 the date designated for opening. Except as otherwise provided under this Article,  
5 contracts for the purchase of supplies, materials or equipment shall be based on  
6 competitive bids and acceptance made of the lowest and best bid(s) most  
7 advantageous to the State as determined upon consideration of the following criteria:  
8 prices offered; the quality of the articles offered; the general reputation and  
9 performance capabilities of the bidders; the substantial conformity with the  
10 specifications and other conditions set forth in the request for bids; the suitability of  
11 the articles for the intended use; the personal or related services needed; the  
12 transportation charges; the date or dates of delivery and performance; and such other  
13 factor(s) deemed pertinent or peculiar to the purchase in question, which if  
14 controlling shall be made a matter of record. Competitive bids on such contracts shall  
15 be received in accordance with rules and regulations to be adopted by the Secretary  
16 of Administration, which rules and regulations shall prescribe for the manner, time  
17 and place for proper advertisement for such bids, the time and place when bids will  
18 be received, the articles for which such bids are to be submitted and the  
19 specifications prescribed for such articles, the number of the articles desired or the  
20 duration of the proposed contract, and the amount, if any, of bonds or certified  
21 checks to accompany the bids. Bids shall be publicly opened. Any and all bids  
22 received may be rejected. Each and every bid conforming to the terms of the  
23 invitation, together with the name of the bidder, shall be tabulated and that  
24 tabulation shall become public record in accordance with the rules adopted by the  
25 Secretary. All contract information shall be made a matter of public record after the  
26 award of contract. Provided, that trade secrets, test data and similar proprietary  
27 information may remain confidential. A bond for the faithful performance of any  
28 contract may be required of the successful bidder at bidder's expense and in the  
29 discretion of the Secretary of Administration. After contracts have been awarded, the  
30 Secretary of Administration shall certify to the departments, institutions and agencies  
31 of the State government the sources of supply and the contract price of the supplies,  
32 materials and equipment so contracted for. Prior to adopting other methods of  
33 advertisement under this section, the Secretary of Administration may consult with  
34 the Advisory Budget Commission. Prior to adopting rules and regulations under this  
35 section, the Secretary of Administration may consult with the Advisory Budget  
36 Commission.

37 The Secretary shall establish procedures for the division of estimates of supplies,  
38 materials, equipment, and contractual services or for allowable consolidation of bids  
39 from small and medium-sized firms, to provide opportunities for these businesses to  
40 bid on State contracts and, at the same time, promote sound purchasing management.  
41 The Secretary shall establish business size standards for small and medium-sized  
42 businesses in this State."

43 Section 2. G.S. 143-49(8) reads as rewritten:  
44 "§ 143-49. Powers and duties of Secretary.

1 The Secretary of Administration shall have power and authority, and it shall be his  
2 duty, subject to the provisions of this Article:

3 ...

4 (8) To allow consideration for encouraging the use of small and  
5 medium-sized businesses through the division of requirements and  
6 the consolidation of bids from these firms."

7 Section 3. G.S. 143-54 reads as rewritten:

8 "§ 143-54. Certification that bids were submitted without collusion.

9 The Director of Administration shall require bidders to certify that each bid is  
10 submitted competitively and without collusion. False certification is a Class I felony.

11 The combining of bids pursuant to rules issued under G.S. 143-53(7) is not prima  
12 facie evidence of collusion."

13 Section 4. The Department of Administration shall study measures to  
14 encourage the use of small and medium-sized businesses to provide the supplies,  
15 materials, equipment, and contractual services required by the State. In the course of  
16 the study, the Department shall contact the general counsel of the United States  
17 Office of Small Business Advocacy about measures taken in other states to encourage  
18 the participation of small and medium-sized businesses in government contracts.

19 The Department shall consider and propose new procedures and policies  
20 to eliminate disincentives for small and medium-sized businesses to bid on State  
21 contracts. These new policies and procedures may include prompt payment for  
22 completed contracts and elimination of discounts for prompt payment.

23 The Department shall report the results of its study and any proposed  
24 legislation to the General Assembly prior to May 1, 2000.

25 Section 5. This act is effective when it becomes law.  
26

Handwritten scribbles and numbers at the bottom of the page. There are several large, overlapping loops and lines. Some numbers are visible, including '700,000' written upside down, '12', and '11'.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 284  
PROPOSED COMMITTEE SUBSTITUTE  
S284-CSRN-001

Short Title: Small Business Procurement Review (Public)

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Sponsors:

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Referred to: Commerce.

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March 8, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REVIEW  
3 STATE PROCUREMENT CONTRACT AWARDS BY BUSINESS SIZE CATEGORY AND  
4 TO REVIEW MEASURES TO ENCOURAGE PARTICIPATION BY SMALL AND  
5 MEDIUM SIZE BUSINESSES IN STATE PROCUREMENT CONTRACTS.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 143-48 reads as rewritten:  
8 "§143-48. (See editor's note) State policy; cooperation in  
9 promoting the use of small, minority, physically handicapped and  
10 women contractors; purpose; required annual reports.  
11 (a) Policy. -- It is the policy of this State to encourage and  
12 promote the use of small, minority, physically handicapped and  
13 women contractors in State purchasing of goods and services. All  
14 State agencies, institutions and political subdivisions shall  
15 cooperate with the Department of Administration and all other  
16 State agencies, institutions and political subdivisions in  
17 efforts to encourage the use of small, minority, physically  
18 handicapped and women contractors in achieving the purpose of  
19 this Article, which is to provide for the effective and  
20 economical acquisition, management and disposition of goods and  
21 services by and through the Department of Administration.

1 (b) Reporting. -- Every governmental entity required by  
2 statute to use the services of the Department of Administration  
3 in the purchase of goods and services and every private,  
4 nonprofit corporation other than an institution of higher  
5 education or a hospital that receives an appropriation of five  
6 hundred thousand dollars (\$500,000) or more during a fiscal year  
7 from the General Assembly shall report to the department of  
8 Administration annually on what percentage of its contract  
9 purchases of goods and services, through term contracts and open-  
10 market contracts, were from minority-owned businesses, what  
11 percentage from female-owned businesses, what percentage from  
12 disabled-owned businesses, what percentage from disabled business  
13 enterprises and what percentage from nonprofit work centers for  
14 the blind and the severely disabled. The same governmental  
15 entities shall include in their reports what percentages of the  
16 contract bids for such purchases were from such businesses. The  
17 Department of Administration shall provide instructions to the  
18 reporting entities concerning the manner of reporting and the  
19 definitions of the businesses referred to in this act, provided  
20 that, for the purposes of this act:

21 (1) Except as provided in subdivision (1a) of this  
22 section, a business in one of the categories above  
23 means one:

- 24 a. In which at least fifty-one percent (51%) of  
25 the business, or of the stock in the case of a  
26 corporation, is owned by one or more persons  
27 in the category; and  
28 b. Of which the management and daily business  
29 operations are controlled by one or more  
30 persons in the category who own it.

31 (1a) A "disabled business enterprise" means a nonprofit  
32 entity whose main purpose is to provide ongoing  
33 habilitation, rehabilitation, independent living,  
34 and competitive employment for persons who are  
35 handicapped through supported employment sites or  
36 business operated to provide training and  
37 employment and competitive wages.

38 (1b) A "nonprofit work center for the blind and the  
39 severely disabled" means an agency:

- 40 a. Organized under the laws of the United States  
41 or this State, operated in the interest of the  
42 blind and the severely disabled, the net  
43 income of which agency does not inure in whole

- 1 or in part to the benefit of any shareholder  
2 or other individual;
- 3 b. In compliance with any applicable health and  
4 safety standard prescribed by the United  
5 States Secretary of Labor; and
- 6 c. In the production of all commodities or  
7 provision of services, employs during the  
8 current fiscal year severely handicapped  
9 individuals for (i) a minimum of seventy-five  
10 percent (75%) of the hours of direct labor  
11 required for the production of commodities or  
12 provision of services, or (ii) in accordance  
13 with the percentage of direct labor required  
14 under the terms and conditions of Public Law  
15 92-28 (41 U.S.C. § 46, et seq.) for the  
16 production of commodities or provision of  
17 services, whichever is less.
- 18 (2) A female or a disabled person is not a minority,  
19 unless the female or disabled person is also a  
20 member of one of the minority groups described in  
21 G.S. 143-128(2)a through d.
- 22 (3) A disabled person means a person with a  
23 handicapping condition as defined in G.S. 168-1 or  
24 G.S. 168A-3.
- 25 (c) The Department of Administration shall compile information  
26 on small and medium size business participation in State  
27 contracts subject to this Article and report the information as  
28 provided in subsection (d) of this section. The report shall  
29 analyze (i) contract awards by business size category, (ii)  
30 historical trends in small and medium size business participation  
31 in these contracts, and (iii) to the extent feasible,  
32 participation by small and medium sized businesses in the State  
33 procurement process as dealers, service companies, and other  
34 indirect forms of participation. The Department may require  
35 reports on contracting by business size in the same manner as  
36 reports are required under subsection (b) of this section.
- 37 (d) The Department of Administration shall collect and compile  
38 the data described in this section and report it annually to the  
39 General Assembly.
- 40 (e) In seeking contracts with the State, a disabled business  
41 enterprise must provide assurances to the Secretary of  
42 Administration that the payments that would be received from the  
43 State under these contracts are directed to the training and



1 employment of and payment of competitive wages to handicapped  
2 employees."

3           Section 2. The Department of Administration shall study  
4 measures to encourage and foster participation by small and  
5 medium sized businesses in State procurement contract awards.  
6 The study shall review and consider, among other issues:

7           (1) Methods to increase small and medium sized  
8 businesses' knowledge of State procurement  
9 opportunities.

10           (2) Methods to assist small and medium sized businesses  
11 in bidding on State procurement contracts.

12           (3) Submission of bids on State procurement contracts  
13 through joint ventures, partnerships, or other  
14 lawful means by which small and medium businesses  
15 can submit consolidated bids for State procurement  
16 contracts.

17           (4) Impact of current purchasing policies and  
18 procedures on small and medium sized businesses.

19 No later than April 15, 2000, the Department shall report its  
20 findings and recommendations, including any legislative proposals  
21 to the General Assembly by filing copies of the report with the  
22 President Pro Tempore of the Senate, the Speaker of the House of  
23 Representatives, and the Legislative Library.

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



# SB 284: Small Business Procurement Review

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** March 30, 1999  
**Version:** PCS for 1st Edition

**Introduced by:** Sen. L. Shaw  
**Summary by:** Linwood Jones  
Committee Counsel

### SUMMARY:

It is already the State's policy under existing law to encourage the use of small businesses in State purchasing – the same policy that encourages the use of minority, women-owned, and disabled-owned businesses. However, there are no official reporting requirements for small businesses as there are for these other types of businesses.

Section 1 of the committee substitute requires the Department of Administration to delineate different categories of small and medium sized businesses and give the legislature annual reports on how each category is faring under the State contract system and how they have fared historically. In addition, small and medium sized businesses often indirectly benefit from State contract awards to large manufacturers by serving as dealers or service technicians on those contracts. To the extent P&C can track this, that information will also be included in the report.

Section 2 of the proposed committee substitute requires a study by the Department of Administration on methods that can be used to increase participation by small businesses and medium-size businesses in State contracts, how to help these businesses with bidding requirements, and how current policies and procedures impact small and medium sized businesses. The Department would also look at the issue of small businesses forming together in some type of partnership or joint venture to submit a bid on a particular contract. Small businesses may already be able to do this, but the bill will have the Department review this issue to determine whether it is an idea that the Department should use to encourage bidding by small and medium sized vendors. The Department must report its findings and recommendations, including any proposed legislation, to the General Assembly by April 15, 2000.

Section 3 provides that this act takes effect when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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D

SENATE BILL 284  
Proposed Committee Substitute S284-PCS1126-RN

Short Title: Small Business Procurement Review.

(Public)

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Sponsors:

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Referred to:

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March 8, 1999

1 A BILL TO BE ENTITLED

2 AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO  
3 REVIEW STATE PROCUREMENT CONTRACT AWARDS BY BUSINESS  
4 SIZE CATEGORY AND TO REVIEW MEASURES TO ENCOURAGE  
5 PARTICIPATION BY SMALL AND MEDIUM-SIZED BUSINESSES IN STATE  
6 PROCUREMENT CONTRACTS.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 143-48 reads as rewritten:

9 "**§ 143-48. (See editor's note) State policy; cooperation in promoting the use of ~~small,~~**  
10 **~~minority, physically handicapped~~ small contractors, minority contractors, physically**  
11 **handicapped contractors, and women contractors; purpose; required annual reports.**

12 (a) Policy. -- It is the policy of this State to encourage and promote the use of  
13 ~~small, minority, physically handicapped~~ small contractors, minority contractors,  
14 physically handicapped contractors, and women contractors in State purchasing of  
15 goods and services. All State agencies, institutions and political subdivisions shall  
16 cooperate with the Department of Administration and all other State agencies,  
17 institutions and political subdivisions in efforts to encourage the use of ~~small,~~  
18 ~~minority, physically handicapped~~ small contractors, minority contractors, physically  
19 handicapped contractors, and women contractors in achieving the purpose of this  
20 Article, which is to provide for the effective and economical acquisition, management  
21 and disposition of goods and services by and through the Department of  
22 Administration.

1 (b) Reporting. -- Every governmental entity required by statute to use the services  
2 of the Department of Administration in the purchase of goods and services and every  
3 private, nonprofit corporation other than an institution of higher education or a  
4 hospital that receives an appropriation of five hundred thousand dollars (\$500,000) or  
5 more during a fiscal year from the General Assembly shall report to the department  
6 of Administration annually on what percentage of its contract purchases of goods and  
7 services, through term contracts and open-market contracts, were from minority-  
8 owned businesses, what percentage from female-owned businesses, what percentage  
9 from disabled-owned businesses, what percentage from disabled business enterprises  
10 and what percentage from nonprofit work centers for the blind and the severely  
11 disabled. The same governmental entities shall include in their reports what  
12 percentages of the contract bids for such purchases were from such businesses. The  
13 Department of Administration shall provide instructions to the reporting entities  
14 concerning the manner of reporting and the definitions of the businesses referred to  
15 in this act, provided that, for the purposes of this act:

16 (1) Except as provided in subdivision (1a) of this section, a business in  
17 one of the categories above means one:

18 a. In which at least fifty-one percent (51%) of the business, or  
19 of the stock in the case of a corporation, is owned by one or  
20 more persons in the category; and

21 b. Of which the management and daily business operations are  
22 controlled by one or more persons in the category who own  
23 it.

24 (1a) A "disabled business enterprise" means a nonprofit entity whose  
25 main purpose is to provide ongoing habilitation, rehabilitation,  
26 independent living, and competitive employment for persons who  
27 are handicapped through supported employment sites or business  
28 operated to provide training and employment and competitive  
29 wages.

30 (1b) A "nonprofit work center for the blind and the severely disabled"  
31 means an agency:

32 a. Organized under the laws of the United States or this State,  
33 operated in the interest of the blind and the severely  
34 disabled, the net income of which agency does not inure in  
35 whole or in part to the benefit of any shareholder or other  
36 individual;

37 b. In compliance with any applicable health and safety  
38 standard prescribed by the United States Secretary of Labor;  
39 and

40 c. In the production of all commodities or provision of  
41 services, employs during the current fiscal year severely  
42 handicapped individuals for (i) a minimum of seventy-five  
43 percent (75%) of the hours of direct labor required for the  
44 production of commodities or provision of services, or (ii) in

1 accordance with the percentage of direct labor required  
2 under the terms and conditions of Public Law 92-28 (41  
3 U.S.C. § 46, et seq.) for the production of commodities or  
4 provision of services, whichever is less.

5 (2) A female or a disabled person is not a minority, unless the female  
6 or disabled person is also a member of one of the minority groups  
7 described in G.S. 143-128(2)a through d.

8 (3) A disabled person means a person with a handicapping condition  
9 as defined in G.S. 168-1 or G.S. 168A-3.

10 (c) The Department of Administration shall compile information on small and  
11 medium-sized business participation in State contracts subject to this Article and  
12 report the information as provided in subsection (d) of this section. The report shall  
13 analyze (i) contract awards by business size category, (ii) historical trends in small  
14 and medium-sized business participation in these contracts, and (iii) to the extent  
15 feasible, participation by small and medium-sized businesses in the State procurement  
16 process as dealers, service companies, and other indirect forms of participation. The  
17 Department may require reports on contracting by business size in the same manner  
18 as reports are required under subsection (b) of this section.

19 (d) The Department of Administration shall collect and compile the data described  
20 in this section and report it annually to the General Assembly.

21 (e) In seeking contracts with the State, a disabled business enterprise must provide  
22 assurances to the Secretary of Administration that the payments that would be  
23 received from the State under these contracts are directed to the training and  
24 employment of and payment of competitive wages to handicapped employees."

25 Section 2. The Department of Administration shall study measures to  
26 encourage and foster participation by small and medium-sized businesses in State  
27 procurement contract awards. The study shall review and consider, among other  
28 issues:

29 (1) Methods to increase small and medium-sized businesses'  
30 knowledge of State procurement opportunities.

31 (2) Methods to assist small and medium-sized businesses in bidding on  
32 State procurement contracts.

33 (3) Submission of bids on State procurement contracts through joint  
34 ventures, partnerships, or other lawful means by which small and  
35 medium-sized businesses can submit consolidated bids for State  
36 procurement contracts.

37 (4) Impact of current purchasing policies and procedures on small and  
38 medium-sized businesses.

39 No later than April 15, 2000, the Department shall report its findings and  
40 recommendations, including any legislative proposals, to the General Assembly by  
41 filing copies of the report with the President Pro Tempore of the Senate, the Speaker  
42 of the House of Representatives, and the Legislative Library.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 212

Short Title: Mortuary Science Changes.

(Public)

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Sponsors: Senator Rand.

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Referred to: Commerce.

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March 2, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH  
3 CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL  
4 ASSOCIATIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143B-472.2 reads as rewritten:

7 "§ 143B-472.2. Duties of Board; meetings.

8 It shall be the duty of the North Carolina Board of Mortuary Science to supervise,  
9 pursuant to this Article, all burial associations authorized by this Article to operate in  
10 North Carolina, to determine that such associations are operated in conformity with  
11 this Article and the rules adopted pursuant to this Article; to ~~assist the Board of~~  
12 ~~Mortuary Science with prosecution of~~ prosecute violations of this Article or rules  
13 adopted pursuant thereto; and to protect the interest of members of mutual burial  
14 associations.

15 The North Carolina Board of Mortuary Science, after a public hearing, may  
16 promulgate reasonable rules and regulations for the enforcement of this Article and  
17 in order to carry out the intent thereof. The Board is authorized and directed to  
18 adopt specific rules to provide for the orderly transfer of a member's benefits in cash  
19 or merchandise and services from the funeral director sponsoring the member's  
20 association to the funeral establishment which furnishes a funeral service, or  
21 merchandise, or both, for the burial of the member, provided that any funeral  
22 establishment to which the member's benefits are transferred in accordance with such  
23 rules shall, if located in North Carolina, be a funeral establishment registered and  
24 permitted under the provisions of G.S. 90-210.25 or shall, if located in any other

1 state, territory or foreign country, be a funeral establishment recognized by and  
2 operating in conformity with the laws of such other state, territory or foreign country.  
3 One or more burial associations operating in North Carolina may merge into another  
4 burial association operating in North Carolina and two or more burial associations  
5 operating in North Carolina may consolidate into a new burial association provided  
6 that any such plan of merger or plan of consolidation shall be adopted and carried  
7 out in accordance with rules adopted by the Board pursuant to this Article.

8 All rules heretofore adopted by the North Carolina Mutual Burial Association  
9 Commission or the North Carolina Board of Mortuary Science in accordance with  
10 prior law and which have not been amended, rescinded, revoked or otherwise  
11 changed, or which have not been nullified or made inoperative or unenforceable  
12 because of any statute enacted after the adoption of any such rule, shall remain in full  
13 force and effect until amended, rescinded, revoked or otherwise changed by action of  
14 the North Carolina Board of Mortuary Science as set out above, or until nullified or  
15 made inoperative or unenforceable because of statutory enactment or court decision.

16 Members of the Board shall receive, when attending such regular or special  
17 meetings such per diem, expense allowance and travel allowance as are allowed other  
18 commissions and boards of the State. The legal adviser to the Board shall be entitled  
19 to actual expenses when attending regular or special meetings of the Board held other  
20 than in Raleigh. All expenses of the Board shall be paid from funds coming to the  
21 Board pursuant to this Article or appropriated for this purpose."

22 Section 2. Article 4 of G.S. 143B-472.3 reads as rewritten:

23 "Article 4. The annual meeting of the association shall be held at ..... (here  
24 insert the place, date and hour); each member shall have one vote at said annual  
25 meeting and 15 members of the association shall constitute a quorum. There shall be  
26 elected at the annual meeting of said association a board of directors of seven  
27 members, each of whom shall serve for a period of from one to five years as the  
28 membership may determine and until his or her successor shall have been elected  
29 and qualified. Any member of the board of directors who shall fail to maintain his or  
30 her membership, as provided in the rules and bylaws of said association, shall cease  
31 to be a member of the board of directors and a director shall be appointed by the  
32 president of said association for the unexpired term of such disqualified member.  
33 There shall be at least an annual meeting of the board of directors, and such meeting  
34 shall be held immediately following the annual meeting of the membership of the  
35 association. The directors of the association may, by a majority vote, hold other  
36 meetings of which notice shall be given to each member by mailing such notice five  
37 days before the meeting to be held. At the annual meetings of the directors of the  
38 association, the board of directors shall elect a president, a vice-president, and a  
39 secretary-treasurer. The president and vice-president shall be elected from among the  
40 directors, but the secretary-treasurer may be selected from the director membership  
41 or from the membership of the association, it being provided that it is not necessary  
42 that the secretary-treasurer shall be a member of the board of directors. Among other  
43 duties that the secretary-treasurer may perform, he shall be chargeable with keeping  
44 an accurate and faithful roll of the membership of this association at all times and he

1 shall be chargeable with the duty of faithfully preserving and faithfully applying all  
2 moneys coming into his hands by virtue of his said office. The president, vice-  
3 president and secretary-treasurer shall constitute a board of control who shall direct  
4 the affairs of the association in accordance with these Articles and bylaws of the  
5 association, and subject to such modification as may be made or authorized by an act  
6 of the General Assembly. The secretary-treasurer shall keep a record of all  
7 assessments made, dues collected and benefits paid. The books of the association,  
8 together with all records and bank accounts shall be at all times open to the  
9 inspection of the Board of Mortuary Science or its duly constituted auditors or  
10 representatives. It shall be the duty of the secretary or secretary-treasurer of each  
11 association to keep the books of the association posted up-to-date so that the financial  
12 standing of the association may be readily ascertained by the Board of Mortuary  
13 Science or any auditor or representative employed by it. ~~Upon the failure of any~~  
14 ~~secretary or secretary-treasurer to comply with this provision, it shall be the duty of~~  
15 ~~the Board of Mortuary Science to take charge of the books of the association and do~~  
16 ~~whatever work is necessary to bring the books up-to-date. The actual costs of said~~  
17 ~~work may be charged the burial association and shall be paid from the thirty percent~~  
18 ~~(30%) allowed by law for the operation of the burial association.~~

19 Whenever in the opinion of the Board of Mortuary Science, it is necessary to audit  
20 the books of any burial association more than once in any calendar year, the Board of  
21 Mortuary Science shall have authority to assess such burial association the actual cost  
22 of any audit in excess of one per calendar year, provided that no more than one audit  
23 may be deemed necessary unless a discrepancy exists at the last regular audit. Such  
24 cost shall be paid from the thirty percent (30%) allowed by law for the operation of  
25 the burial association.

26 Every burial association shall file with the Board of Mortuary Science an annual  
27 report of its financial condition on a form furnished to it by the Board of Mortuary  
28 Science. Such report shall be certified by an accountant who is certified in this State  
29 under Chapter 93 of the General Statutes. The burial association shall be responsible  
30 for paying the cost of the certification. The report shall be filed on or before  
31 February 15 of each calendar year and shall cover the complete financial condition of  
32 the burial association for the immediate preceding calendar year. The Board of  
33 Mortuary Science shall levy and collect a penalty of twenty-five dollars (\$25.00) for  
34 each day after February 15 that the report called for herein is not filed. The Board  
35 may, in its discretion, grant any reasonable extension of the above filing date without  
36 the penalty provided in this section. Such penalty shall be paid from the thirty  
37 percent (30%) allowed by law for the operation of the burial association. Any  
38 secretary or secretary-treasurer who fails to file such financial report on or before  
39 February 15 of each calendar year or on or before the last day of any period of  
40 extension for the filing of such report granted by the Board to the burial association  
41 of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each  
42 day after February 15, or the last day of any period of extension for the filing of the  
43 report granted by the Board to the burial association of such secretary or secretary-



1 treasurer, that said report is not filed by the secretary or secretary-treasurer of a  
2 burial association, shall constitute a separate offense."

3 Section 3. Article 10 of G.S. 143B-472.3 reads as rewritten:

4 "Article 10. It is understood and stipulated that the benefits provided for shall be  
5 payable only to a funeral establishment which provides a funeral service for a  
6 deceased member and which, if located in North Carolina, is a funeral establishment  
7 registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or which, if located in any  
8 other state, territory or foreign country, is a funeral establishment recognized by and  
9 operating in conformity with the laws of such other state, territory or foreign country.  
10 Upon the death of any member, it shall be the duty of the person or persons making  
11 the funeral arrangements for such deceased member to notify the secretary of the  
12 member's burial association of the death of such member. The person or persons  
13 making the funeral arrangements for such deceased member shall have 30 days from  
14 the date of the death of such member in which to make demand upon the burial  
15 association for the funeral benefits to which such member is entitled.

16 The benefits provided for are to be paid by the burial association to the funeral  
17 director providing such funeral and burial service either in cash or in merchandise  
18 and service as elected by the person or persons making the funeral arrangements for  
19 such deceased member. If the burial association shall fail, on demand, to provide the  
20 benefits to which the deceased member was entitled to the funeral establishment  
21 which provided the funeral service for the deceased member, then the benefits shall  
22 be paid in cash to the representative of the deceased member qualified under law to  
23 receive such benefits."

24 Section 4. Part 13 of Article 10 of Chapter 143B is amended by adding  
25 the following new section:

26 "§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial  
27 associations.

28 (a) Any insurance company which desires to purchase the assets of or to merge  
29 with a burial association as provided in G.S. 143B-472.28 shall submit to the Board of  
30 Mortuary Science and to the secretary of the association a written proposal  
31 containing the terms and conditions of the proposed purchase or merger. A proposal  
32 may be conditioned upon an increase in the assessments of an association in the  
33 manner set out in subsection (g) of this section. In such a case, the issues of purchase  
34 or merger and an increase in assessments may be considered at the same meeting of  
35 the association.

36 (b) Upon receipt of a written proposal:

37 (1) The Board shall issue an order directing the association to hold a  
38 meeting of the membership within 30 days following receipt of the  
39 order for the purpose of voting on the proposal.

40 (2) Within 10 days of receiving the order from the Board, the  
41 association shall give at least 10 days' written notice of the meeting  
42 to each of its members. The notice shall:

43 a. State the date, time, and place of the meeting.

44 b. State the purpose of the meeting.

- 1                   c.    Contain or have attached the proposal submitted by the  
2                   insurance company.
- 3                   d.    Contain a statement limiting the time that each member will  
4                   be permitted to speak to the proposal, if the association  
5                   deems it advisable.
- 6           (c) A representative of the insurance company shall be permitted to attend the  
7 meeting held by the association for the purposes of explaining the proposal and  
8 answering any questions from the members. The officers of the association may  
9 present their views concerning the proposal. Any member of the association who  
10 wishes to speak to the proposal shall be permitted to do so subject to any time  
11 limitation stated in the notice of the meeting.
- 12           (d) The secretary of the association shall record the name of every member who is  
13 present at the meeting and shall determine whether there is a quorum. The presence  
14 of 15 paid-up members or fifteen percent (15%) of the paid-up membership,  
15 whichever is less, shall constitute a quorum. Acceptance or rejection of the proposal  
16 shall be by majority vote of the members present and voting. Any paid-up member  
17 who is at least 18 years of age shall be permitted to vote. A parent or guardian of  
18 any member who is under 18 years of age may vote on behalf of his or her child or  
19 ward, but only one vote may be cast on behalf of that member.
- 20           (e) The secretary of the association shall certify the result of the vote and the  
21 presence of a quorum to the Board within five days following the meeting and shall  
22 include with the certification a copy of the notice of the meeting that was sent to the  
23 members of the association.
- 24           (f) The Board shall immediately review the certification, the notice, and any other  
25 records that may be necessary to determine the adequacy of notice, the presence of a  
26 quorum, and the validity of the vote. Upon determining that the meeting and vote  
27 were regular and held following proper notice and that a majority of a quorum of the  
28 paid-up members voted in favor of the proposal, the Board shall issue an order  
29 approving the purchase or merger and directing that the purchase or merger proceed  
30 in accordance with the proposal.
- 31           (g) Any burial association whose current assessments are not, or are unlikely to be  
32 within the next three years, adequate to reach or maintain a reserve of at least  
33 twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements  
34 of a proposal from an insurance company to acquire the assets of or to merge with  
35 the association may increase its assessments by an amount necessary to reach and  
36 maintain the reserve or to meet the proposal. The increase shall be approved by a  
37 vote of the members of the association at a regular meeting of the association or at a  
38 special meeting called for the purpose of increasing assessments.
- 39                   (1) Any officer or director of the association may call a special  
40 meeting for the purpose of increasing assessments, and the  
41 secretary shall call a special meeting for such purpose upon the  
42 request of at least ten percent (10%) of the members or upon  
43 receipt of a proposal from an insurance company that is  
44 conditioned upon an increase in assessments.

- 1           (2) Written notice setting out the date, time, place, and the purpose of  
2 the meeting shall be hand delivered or sent by first-class mail,  
3 postage prepaid, to the last known address of each member of the  
4 association at least 10 days in advance of the meeting.
- 5           (3) No vote may be had on the question of an increase in assessments  
6 unless a quorum of the paid-up members of the association is  
7 present at the meeting. A quorum shall be conclusively presumed  
8 if 15 paid-up members or fifteen percent (15%) of the paid-up  
9 membership of the association, whichever is less, is present at the  
10 meeting.
- 11           (4) The proposal to increase the assessments shall be approved by an  
12 affirmative vote of a simple majority of the paid-up members  
13 present and voting.
- 14           (5) The secretary of the association within five days following the  
15 meeting shall certify the result of the vote and the presence of a  
16 quorum to the Board in the manner and for the purposes set out in  
17 subsections (e) and (f) of this section.
- 18           (h) Every association shall submit to the Board on or before June 1, 2000, and  
19 thereafter as may be required by the Board, but not more frequently than once each  
20 calendar year, a written report of financial soundness prepared by a qualified actuary.  
21 The report shall indicate the adequacy of reserves and other items to pay current and  
22 future claims of deceased members and shall reflect a consideration of the following:
- 23           (1) The current number of members of the association.  
24           (2) The age of the members.  
25           (3) The sex of the members.  
26           (4) The amount of the association's annual assessments.  
27           (5) The amount of the association's current reserves.  
28           (6) The projected amount of the association's reserves for each of the  
29 next three years.  
30           (7) The net gain in membership of the association during the  
31 preceding three years.  
32           (8) The projected net gain in membership of the association for each  
33 of the next three years.  
34           (9) The association's current liability for benefits to its members.  
35           (10) The association's projected net liability for benefits to its members  
36 for each of the next three years.
- 37           (i) Upon a written request from an association that has held a valid meeting and  
38 vote for voluntary dissolution in accordance with G.S. 143B-472.3, the Board shall  
39 issue an order of liquidation for that association. The Board shall issue an order of  
40 liquidation to every association that has not been acquired by or merged with an  
41 insurance company if the association is not financially sound on June 1, 2001, as  
42 shown by the actuary's report required in subsection (h) of this section. The Board's  
43 order may direct that all members in good standing be transferred to a financially  
44 sound association as well as all records, property, and unexpended balances of funds

1 of the association to be liquidated, if the financially sound association agrees in  
2 writing to accept the transfer. The order shall direct the association to complete the  
3 liquidation and to file a final report with the Board no later than December 31, 2001.  
4 If the transfer of members cannot be accomplished, the association, upon receipt of  
5 an order of liquidation, shall:

- 6 (1) Cease accepting new members.
- 7 (2) Collect all debts owed to the association and pay all debts owed by  
8 the association from monies on hand, including the reserve.
- 9 (3) Distribute any remaining monies on hand and in the reserve pro  
10 rata among those who were members of the association on the date  
11 the liquidation order was issued by the Board. Each member's  
12 distributive share shall be determined by dividing the amount of  
13 that member's benefit by the aggregate benefits of all members of  
14 the association and then multiplying the total amount of money  
15 available for distribution by the percentage so derived.  
16 Assessments owed by the members to the association at the time of  
17 distribution shall be taken into account and shall be offset against  
18 the members' distributive shares.
- 19 (4) Issue a certificate to members in an amount that equals the  
20 difference between the distributive share issued in subdivision (3)  
21 of this subsection and the full amount of the member's association  
22 benefit. Any certificate issued shall supersede and supplant any  
23 other certificate already issued by the association. The certificate  
24 shall be on a form prescribed by the Board and shall be prepared  
25 and distributed by the association at its expense.
- 26 (5) File a final report with the Board on or before December 31, 2001,  
27 which shall show all receipts and disbursements, including the  
28 amount distributed to each member, since the last annual report of  
29 the association was filed with the Board.

30 (j) A certificate issued under subsection (i) of this section may be used as a credit  
31 toward the cost of funeral services, facilities, and merchandise at any funeral  
32 establishment that agrees on forms prescribed by the Board to accept such  
33 certificates. A funeral establishment that agrees to accept certificates shall do so until  
34 the agreement with the Board expires. The Board shall maintain and distribute to  
35 the public a list of funeral establishments that will accept certificates.

36 (k) If after June 1, 2001, the Board determines, upon receipt of a written report  
37 submitted by an association under subsection (h) of this section, that an association is  
38 no longer financially sound, the Board shall issue an order of liquidation, and the  
39 association shall comply with such order in the manner prescribed in subsection (i) of  
40 this section.

41 (l) The Board shall immediately review the final report filed pursuant to  
42 subdivision (i)(5) of this section and shall notify the association whether the report  
43 has been accepted. All licenses issued to soliciting agents of the association pursuant  
44 to G.S. 143B-472.4 and the written authority to operate issued to the association

1 pursuant to G.S. 143B-472.6 are automatically canceled upon acceptance of the final  
2 report by the Board.

3 (m) No new association may be authorized, organized, or licensed on or after  
4 January 1, 2000, but associations existing on that date may merge or consolidate as  
5 provided in G.S. 143B-472.2 and G.S. 143B-472.28."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE \_\_\_\_\_

S. B. No. 212

Amendment No. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.)

Rand

Sen.

1 moves to amend the bill on page 5, line 14

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4 " of 15 members or ten percent (10%)  
5 of the of the membership,  
6 whichever is greater,";

7  
8 and on page 5, line 15 by deleting the  
9 phrase:

10 " whichever is less,";

11  
12 and on page 4, lines 8-9 by rewriting those  
13 lines to read:

14 " if 15 members or ~~10~~ ten percent (10%)  
15 of the membership, <sup>of the association</sup> whichever is greater,  
16 is present at the ".

SIGNED

Tom Rand

ADOPTED \_\_\_\_\_

FAILED \_\_\_\_\_

TABLED \_\_\_\_\_



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 212

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_

S212-ASK-001

Date \_\_\_\_\_, 1999

Comm. Sub. []  
Amends Title []

Senator Rand

- 1 moves to amend the bill on page 5, line 16, by deleting the word
- 2 "paid-up";
- 3
- 4 and on page 5, line 28, by deleting the word "paid-up";
- 5
- 6 and on page 6, line 6, by deleting the word "paid-up";
- 7
- 8 and on page 6, line 8, by rewriting the line to read:
- 9 "if 15 members or fifteen percent (15%) of the";
- 10
- 11 and on page 6, line 12, by rewriting the line to read:
- 12 "affirmative vote of a majority of the members";
- 13
- 14 and on page 6, lines 42-44, and on page 7, lines 1-2, by rewriting
- 15 the sentence that begins on page 6, line 42 to read:
- 16 "The Board's order may direct that the agreements for members'
- 17 benefits be transferred to a financially sound mutual burial
- 18 association, as well as all records, property, and unexpended
- 19 balances of funds of the association to be liquidated, if the
- 20 financially sound mutual burial association agrees in writing to
- 21 accept the transfer."

SIGNED Tom Rand  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

# ALLEN AND PINNIX, P.A.

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ALICE S. GLOVER

\*ALSO LICENSED IN DISTRICT OF COLUMBIA

March 30, 1999

The Honorable Anthony E. Rand  
Senator  
North Carolina General Assembly  
Raleigh, North Carolina

RE: Responses of Board of Mortuary Science to Questions Raised During Commerce  
Committee Deliberations on SB 212

Dear Senator Rand:

As we discussed, enclosed are the responses of the Board to the questions that came up during the Commerce Committee's deliberations on SB 212.

1. **Previous Legislation.** Senator Shaw inquired how this related to the previous legislation from 2 or 3 years ago. Apparently, he was inquiring about legislation that was introduced in the 1997 Session regarding pre-need and the purchase of insurance policies to pay for pre-need services.<sup>1</sup> This legislation does not involve pre-need services. See N.C.G.S. § 90-210.63. This bill proposes to amend N.C.G.S. § 143B-472.3, which creates mutual burial associations; these burial associations are voluntary associations whose members have paid for "one funeral benefit for each member."
2. **Out of State Burial Association Members.** Senator Soles inquired as to what happened when someone from North Carolina went to another state and when someone who was a member in another state came to North Carolina. North Carolina is the last state to have mutual burial associations; however, Mr. Ritter informs me that any funeral director in the nation would probably honor the credits that this bill would create.
3. **Remaining Associations.** Senator Cochrane asked how many associations with

---

<sup>1</sup> Pre-need funeral contracts involve payments to a trust fund or "prearrangement insurance policies" for the "...furnishing or performance of funeral or burial services..."



March 30, 1999 Letter to Senator Rand  
RE: Senate Commerce Committee Questions on SB 212  
Page 2

little funds are left and how much money is involved. I told her that I thought that it was less than 20 associations, but I would get her the exact number and how much money was being held by each association. She also expressed surprise that the bill would eliminate burial associations and asked what should someone do if they wanted to get into this business. As you recall, I responded that they could form an insurance company.

Since then, Andy Ritter, the Executive Director of the Board, has told me that there are a total of 112 associations in the state; their combined assets are \$6 million. The average association has 1,300 members and \$54,000 in assets. There are 10 associations with less than 200 members. However, many of these associations have more potential liabilities than they have current assets. Therefore, if all of the members were to die in a single year, then these underfunded associations would have difficulty meeting their financial responsibilities. This bill will allow those underfunded associations to either convert to an insurance association, or to issue a credit to the members for the amount to which they would be entitled.

For your further information, after the Committee meeting, Senator Reeves asked about an article in Life magazine within the last two months. It described the problems that a Durham family had with trying to bury a family member themselves. He appeared to be concerned and bothered that a family could not do that. We have obtained a copy of that article. In that article, a cemetery owner quoted as saying that the family could not bury someone without a funeral director; however, an employee of the Board, Corrine Culbreth, called the owner and explained to her that the decedent could be buried without a funeral director. The article quotes Ms. Culbreth as saying that, "She [the cemetery owner] should know better, she is a licensed funeral director." Enclosed is a copy of a letter that I sent Senator Reeves responding to his concern.

You also indicated to me that you had received a letter from Jon Carr, an attorney with the law firm of Jordan, Price, Wall, Gray, Jones & Carlton. Prior to the meeting, Jon told me that he represented the Funeral Directors Association and that they were reviewing the draft; he did not indicate opposition or support of the bill. However, he apparently also represents the accountants who are not CPA's. Apparently, it was in this capacity that he wrote to you. I would be glad to review his letter and to respond to any questions that he might have.

He may be concerned about the wording on page 3 of the draft bill, which requires the reports shall be "...certified by an accountant who is certified in this State under Chapter 93 of the General Statutes." This is the statute that governs the licensure of CPA's. The purpose and effect of this portion of the bill is to eliminate the requirement that the Board conduct the annual audit and will require the associations to conduct and pay for their own audit. Mr. Ritter feels that it is important that someone who is conducting these audits have some degree of liability if the audit is determined to be incorrect. When a CPA signs a statement, then his or her liability

March 30, 1999 Letter to Senator Rand  
RE: Senate Commerce Committee Questions on SB 212  
Page 3

attaches to that certification. See N.C.G.S. § 93-1(5).<sup>2</sup>

An accountant signing an audit would not have the same degree of liability. This is somewhat analogous to an attorney certifying a title rather than a paralegal; or, an architect or engineer sealing a document rather than a drafter. Ultimately, of course, this is a policy question for the General Assembly.

Finally, the Committee staff attorneys have indicated to me that there will need to be a Committee Substitute to resolve certain drafting issues. I will work with them on this and keep you posted.

I will be present at the Commerce Committee meeting on Tuesday March 30. Mr. Ritter, a Board member and other Board staff will also be present. They will be prepared to respond to these and other questions. They had not attended the last meeting because they were waiting to hear from our firm that they had been invited. I did not realize that. I was somewhat a victim of our firm's legal advice; we have told the boards that we represent that they can not lobby and must be invited to be present. See N.C.G.S. § 93B - 6. Therefore, you can appreciate their reluctance to appear until they had been formally notified. Please accept my apologies to you and the Committee.

Sincerely yours,



Jack Nichols  
ALLEN & PINNIX P.A.

Cc: Andy Ritter  
Mike Weisel  
Noel Allen

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<sup>2</sup> This statute defines "public practice of accountancy." That definition states, in part, that it applies to "...services which involve the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial, accounting and related statements intended for publication..."

VISITOR REGISTRATION SHEET

Senate Commerce  
Name of Committee

3-24-99  
Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
<del>GARRETT PERDUE</del>	ZDA, DA
Art J. Case	NCRMA
Larry Heckner	Household Financial
Jim Leth	JCAFI
Obysan Cooper	ESX CORP
Myrtle Jackson	First Citizens Bank
Oak Mike	Scenic NC, Inc.
John Leiston	P3C POA
Dick Carlton	SIA
Brenda Dougherty	Sprint
Bernard Allen	SOS
PERRI MORGAN	NFIB
BILL SCOBBIN	NC BAA ASSO-
Laura Hartsell	NC Bar Association
Floyd M. Lewis	General Statutes Commission
P. By Hall	" " "
Mark Pearson	Capital Group
Dean S. Wilkerson	Pr lot - Wilkerson Nat. Bar Assoc
Jon Carr	Jordan Price
Lucius PULLEN	ATTORNEY
JEFF VAN DYKE	Bell South

VISITOR REGISTRATION SHEET

*Units Commu Committee*  
Name of Committee

*3-29-99*  
Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
<i>Tim Kent</i>	<i>American Inst. of Architects</i>
<i>Amby Ellen</i>	<i>NCRMA</i>
<i>Fran Preston</i>	<i>NCRMA</i>
<i>D. Beorn</i>	<i>The Capital Group</i>
<i>Ken Hinison</i>	<i>American Council</i>
<i>Ann Fullbright</i>	<i>Huntton &amp; WMS</i>
<i>John Poliochio</i>	<i>AT&amp;T</i>
<i>Bendy</i>	<i>Bendy &amp; Assoc.</i>

SENATE COMMERCE COMMITTEE  
11:00 A.M. TUESDAY, APRIL 6, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, April 6, 1999. Twenty-four members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order and the following bills were considered by the Committee:

SB 417, AN ACT TO AUTHORIZE THE USE OF LETTERS OF CREDIT FROM A FEDERAL HOME LOAN BANK AS COLLATERAL FOR DEPOSITS OF LOCAL GOVERNMENT AND PUBLIC AUTHORITIES. Senator Carter, the bill sponsor, was recognized to explain the bill. He said the bill would expand the types of acceptable collateral for local government deposits to include letters of credit issued by Federal Home Loan Banks and it would be particularly helpful to small banks. Mr. Paul Stock, representing the North Carolina Bankers' Association, assisted in answering questions from Committee members. (See attached memorandum from Committee Counsel for a Bill Summary.)

Senator Carter moved that Senate Bill 417 be given a favorable report. Motion carried.

SB 254, AN ACT TO MODIFY AND UPDATE THE OUTDOOR ADVERTISING CONTROL ACT. A Proposed Committee Substitute was offered for the bill and Senator Hoyle moved the adoption of the Proposed Committee Substitute. Motion carried. Senator Gulley said the legislation increases various permitting fees regarding outdoor advertising as the fund is supposed to be self-supporting and is not at the present time. In addition, the bill places outdoor advertising appeals under the APA and creates a stop work order that the Department of Transportation may use to stop the construction of, and in some cases remove, illegal advertising. (See attached Summary from Committee Counsel).

Mr. Charles Diehl, Executive Director for the North Carolina Advertising Association, assisted in answering questions and said that owners of outdoor advertising are in favor of the bill.

Senator Hoyle moved that the Committee Substitute for Senate Bill 254 be given a favorable report and that it be re-referred to the Finance Committee. Motion carried.

SB 192, AN ACT TO PROVIDE FOR THE FILING WITH THE SECRETARY OF STATE OF ALL MEMORANDA OF UNDERSTANDING AND AGREEMENTS OF A NONCOMMERCIAL NATURE BETWEEN THE STATE OF NORTH CAROLINA AND FOREIGN GOVERNMENTS. Senator Rand moved the adoption of a Proposed Committee Substitute for SB 192. Motion carried. Senator Reeves said the Committee Substitute bill would require all State agencies entering into memoranda of understanding or agreements of a noncommercial nature with foreign governments to file a copy of these documents with the Secretary of State. (See attached Bill Summary prepared by Committee Counsel.) Secretary of State Elaine Marshall appeared before the Committee in support of the legislation.

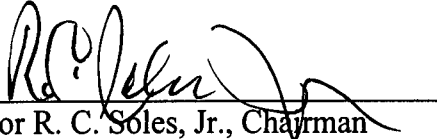
Senator Fox sent forward an amendment (copy attached) and moved its adoption. Motion carried. Senator Kerr offered a second amendment (copy attached) and moved its adoption. Motion carried.

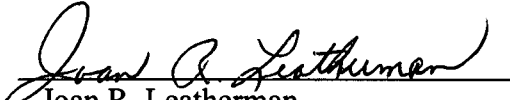
Senator Larry Shaw moved that the Committee Substitute for Senate bill 192, as amended, be given a favorable report and that a new Committee Substitute be prepared. Motion carried.

SB 212, AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS. Senator Rand offered a Proposed Committee Substitute for Senate Bill 212 and moved its adoption. Motion carried. Senator Rand said that there had been no agreement reached on the legislation. He asked Mr. Jim Swearington, member of the Board of Mortuary Science, to give some historical background on the bill.

Following Mr. Swearington's remarks, Senator Soles recognized Mr. J. B. Rhodes from Rhodes Funeral Home in Goldsboro for remarks. Mr. Rhodes spoke in opposition to the legislation.

Senator Soles said the Committee would meet next Tuesday and continue consideration of Senate Bill 212. Senate Bills 419 and 420 will be carried over to that meeting also. The meeting adjourned at 12 Noon.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
Tuesday, April 6, 1999  
ROOM 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 192, FILING OF FOREIGN AGREEMENTS (Senator Reeves)**

**SB 212, MORTUARY SCIENCE CHANGES (Senator Rand)**

**SB 254, OUTDOOR ADVERTISING CONTROL ACT (Senator Gulley)**

**SB 417, LETTERS OF CREDIT COLLATERAL (Senator Carter)**

**SB 419, CLARIFY MV DEALER TRANSFER RIGHTS (Senator Hoyle)**

**SB 420, CLARIFY MV DEALERS LICENSING LAW (Senator Hoyle)**

**ADJOURNMENT**

NORTH CAROLINA GENERAL ASSEMBLY  
SENATE

COMMERCE COMMITTEE REPORT  
R. C. Soles, Jr., Chair

Wednesday, April 07, 1999

R. C. SOLES, JR.,  
submits the following with recommendations as to passage:

**FAVORABLE**

S.B. 417            Letters of Credit Collateral  
                         Sequential Referral:    None  
                         Recommended Referral: None

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

S.B. 192            Filing of Foreign Agreements  
                         Draft Number:            PCS4630  
                         Sequential Referral:    None  
                         Recommended Referral: None  
                         Long Title Amended:    Yes

S.B. 254            Outdoor Advertising Control Act/AB.  
                         Draft Number:            PCS1647  
                         Sequential Referral:    None  
                         Recommended Referral: Finance  
                         Long Title Amended:    Yes

TOTAL REPORTED: 3

Committee Clerk Comment:



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 417

Short Title: Letters of Credit Collateral.

(Public)

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Sponsors: Senators Carter, Soles; Ballance, Clodfelter, Dalton, Dannelly, Garrou, Hagan, Lucas, Metcalf, Odom, Plyler, Purcell, Weinstein, and Wellons.

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Referred to: Commerce.

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March 18, 1999

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE USE OF LETTERS OF CREDIT FROM A  
2 FEDERAL HOME LOAN BANK AS COLLATERAL FOR DEPOSITS OF  
3 LOCAL GOVERNMENTS AND PUBLIC AUTHORITIES.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 159-31(b) reads as rewritten:

7 "(b) The amount of funds on deposit in an official depository or deposited at  
8 interest pursuant to G.S. 159-30(b) shall be secured by deposit insurance, surety  
9 bonds, letters of credit issued by a Federal Home Loan Bank, or investment securities  
10 of such nature, in a sufficient amount to protect the local government or public  
11 authority on account of deposit of funds made therein, and in such manner, as may  
12 be prescribed by rule or regulation of the Local Government Commission. When  
13 deposits are secured in accordance with this subsection, no public officer or employee  
14 may be held liable for any losses sustained by a local government or public authority  
15 because of the default or insolvency of the depository. No security is required for the  
16 protection of funds remitted to and received by a bank, savings and loan association,  
17 or trust company acting as fiscal agent for the payment of principal and interest on  
18 bonds or notes, when the funds are remitted no more than 60 days prior to the  
19 maturity date."

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



# SENATE BIL 41: Letters of Credit Collateral

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** April 6, 1999  
**Version:** First Edition

**Introduced by:** Sen. Carter  
**Summary by:** O. Walker Reagan,  
Committee Co-Counsel

**SUMMARY:** *Senate Bill 417 would permit the Local Government Commission to allow letters of credit issued by a Federal Home Loan Bank to serve as collateral for local government funds on deposit with banks and other financial institutions.*

**CURRENT LAW:** Current law permits local government funds to be deposited in banks, savings and loan associations, or trust companies in this State, or national banks in another state under certain circumstances, where the accounts are secured by deposit insurance, surety bonds or investment securities of such nature and in sufficient amount to protect the local government on account of the funds deposited. No local government official is liable for any loss of funds deposited into an account secured as provided for in this statute. The Local Government Commission has the authority to adopt rules to establish what types and amounts of collateral are proper under this statute.

**BILL ANALYSIS:** Senate Bill 417 would expand the types of acceptable collateral for local government deposits to include letters of credit issued by Federal Home Loan Banks.

**BACKGROUND:** Federal Home Loan Banks (FHLB's) are privately capitalized, cooperative government-sponsored enterprises created by Congress in 1932. See 12 USC 1421 et. seq. They are self-supporting, profit-making organizations that do not receive any taxpayer assistance. The Federal Home Loan Banks are the largest suppliers of home mortgage credit in the United States. The member-stockholders of a FHLB are commercial banks, savings institutions, credit unions, and insurance companies. The FHLB's raise funds by issuing debt instruments in the capital markets. The consolidated debt of the FHLB is triple A according to Moody's and Standard and Poor's. (Source: Federal Home Loan Banks System, 1998).

**EFFECTIVE DATE:** The bill becomes effective when it becomes law.

S417-SMRU-001

## Joan Leatherman (Sen. Soles)

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**From:** Paul H. Stock [pstock@ncbankers.org]  
**Sent:** Friday, April 02, 1999 1:25 PM  
**To:** Sen. R.C. Soles  
**Subject:** Senate Bill 417

Memorandum

**TO:** Members of the Senate Commerce Committee  
**FROM:** Paul H. Stock, Executive Vice President & Counsel  
North Carolina Bankers Association  
**DATE:** April 2, 1999  
**RE:** Senate Bill 417

Senator Charles Carter introduced Senate Bill 417, AN ACT TO AUTHORIZE THE USE OF LETTERS OF CREDIT FROM A FEDERAL HOME LOAN BANK AS COLLATERAL FOR DEPOSITS OF LOCAL GOVERNMENTS AND PUBLIC AUTHORITIES, which was referred to the Commerce Committee. We understand that the Committee may consider the bill next Tuesday. The North Carolina Bankers Association stands firmly in support of this proposal and we respectfully urge your support of the measure.

State law requires that deposits made by the state or local units of government be collateralized to the extent they are not covered by federal deposit insurance (generally, amounts over \$100,000). Under current law (G.S. § 59-31(b)), only investment securities and surety bonds may be used as collateral. The Office of the State Treasurer administers this program.

For most banks and savings institutions, using securities presents a substantial administrative burden. Changes in the market often force them to buy and sell the securities. When this happens, the securities sold from the collateral pool must be replaced with those bought. The Federal Home Loan Bank (FHLB) System was established by Congress to support financial institutions in their home-lending efforts. Originally only savings institutions participated in the FHLB System. In 1989, FHLB membership was opened to banks and credit unions as well.

Authorizing use of FHLB letters of credit as collateral for public deposits would (1) maintain the security of public funds; (2) provide an alternative method of providing collateral that is less burdensome administratively; and (3) encourage more lenders to compete for public funds.

The State Treasurer's Office has indicated that it has no problem with this proposal.

Thank you for your consideration of this bill. I would be happy to answer any questions you may have about it. You may reach me at 781-7979.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 254\*

Short Title: Outdoor Advertising Control Act/AB.

(Public)

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Sponsors: Senator Gulley.

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Referred to: Commerce.

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March 8, 1999

A BILL TO BE ENTITLED

1  
2 AN ACT TO MODIFY AND UPDATE THE OUTDOOR ADVERTISING  
3 CONTROL ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 136-133 reads as rewritten:

6 **"§ 136-133. Permits required.**

7 No person shall erect or maintain any outdoor advertising within 660 feet of the  
8 nearest edge of the right-of-way of the interstate or primary highway system, except  
9 those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond  
10 660 feet of the nearest edge of the right-of-way of the interstate or primary highway  
11 system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without  
12 first obtaining a permit from the Department of Transportation or its agents pursuant  
13 to the procedures set out by rules and regulations promulgated by the Department of  
14 Transportation. The permit shall be valid until revoked for nonconformance with this  
15 Article or rules and regulations promulgated by the Department of Transportation  
16 thereunder. Any person aggrieved by the decision of the Department of  
17 Transportation or its agents in refusing to grant or in revoking a permit may appeal  
18 the decision in accordance with the rules and regulations enacted by the Department  
19 of Transportation pursuant to this Article to the Secretary of Transportation who  
20 shall make the final decision on the agency appeal. The Department of  
21 Transportation shall have the authority to charge permit fees to defray the costs of  
22 administering the permit procedures under this Article. ~~The fees for directional signs~~  
23 ~~as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a twenty dollar~~  
24 ~~(\$20.00) initial fee and a fifteen dollar (\$15.00) annual renewal fee. The fees for~~

1 ~~outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed~~  
2 ~~a sixty dollar (\$60.00) initial fee and a thirty dollar (\$30.00) annual renewal fee.~~

3 The permit fees established in the rules issued by the Department of  
4 Transportation shall be reviewed by the Board of Transportation on a biennial basis  
5 and adjusted when necessary.

6 If outdoor advertising is under construction and the Department determines that a  
7 permit has not been issued for the outdoor advertising as required under this section,  
8 the Department of Transportation may require that all work on the outdoor  
9 advertising cease until the owner of the outdoor advertising shows that the outdoor  
10 advertising does not violate this section. The stop work order shall be prominently  
11 posted on the outdoor advertising structure, and no further notice is required. The  
12 failure of an owner of outdoor advertising to comply immediately with the stop work  
13 order shall subject the outdoor advertising to removal by the Department of  
14 Transportation or its agents. Outdoor advertising is under construction when it is in  
15 any phase of construction prior to the attachment and display of the advertising  
16 message in final position for viewing by the traveling public. The cost of removing  
17 outdoor advertising by the Department of Transportation or its agents pursuant to  
18 this section shall be assessed against the owner of the unpermitted outdoor  
19 advertising by the Department of Transportation."

20 Section 2. G.S. 136-134 reads as rewritten:

21 "**§ 136-134. Illegal advertising.**

22 Any outdoor advertising erected or maintained adjacent to the right-of-way of the  
23 interstate or primary highway system after the effective date of this Article as  
24 determined by G.S. 136-140, in violation of the provisions of this Article or rules and  
25 regulations promulgated by the Department of Transportation, or any outdoor  
26 advertising maintained without a permit regardless of the date of erection shall be  
27 illegal and shall constitute a nuisance. The Department of Transportation or its agents  
28 shall give 30 days' notice to the owner of the illegal outdoor advertising with the  
29 exception of the owner of unlawful portable outdoor advertising for which the  
30 Department of Transportation shall give five days' notice, if such owner is known or  
31 can by reasonable diligence be ascertained, to remove the outdoor advertising or to  
32 make it conform to the provisions of this Article or rules and regulations  
33 promulgated by the Department of Transportation hereunder. The Department of  
34 Transportation or its agents shall have the right to remove the illegal outdoor  
35 advertising at the expense of the said owner if the said owner fails to ~~act~~ remove the  
36 outdoor advertising or to make it conform to the provisions of this Article or rules  
37 issued by the Department of Transportation within 30 days after receipt of such  
38 notice or five days for owners of portable outdoor advertising. The Department of  
39 Transportation or its agents may enter upon private property for the purpose of  
40 removing the outdoor advertising prohibited by this Article or rules and regulations  
41 promulgated by the Department of Transportation hereunder without civil or  
42 criminal liability. The costs of removing the outdoor advertising, whether by the  
43 Department of Transportation or its agents, shall be assessed against the owner of the  
44 illegal outdoor advertising by the Department of Transportation. Any person

1 aggrieved by the decision declaring the outdoor advertising structure illegal shall be  
2 granted the right to appeal the decision in accordance with the terms of the rules and  
3 regulations enacted by the Department of Transportation pursuant to this Article to  
4 the Secretary of Transportation who shall make the final decision on the agency  
5 appeal."

6 Section 3. G.S. 150B-1(e) reads as rewritten:

7 "(e) Exemptions From Contested Case Provisions. -- The contested case  
8 provisions of this Chapter apply to all agencies and all proceedings not expressly  
9 exempted from the Chapter. The contested case provisions of this Chapter do not  
10 apply to the following:

- 11 (1) The Department of Health and Human Services and the  
12 Department of Environment and Natural Resources in complying  
13 with the procedural safeguards mandated by Section 680 of Part H  
14 of Public Law 99-457 as amended (Education of the Handicapped  
15 Act Amendments of 1986).
- 16 (2) Repealed by Session Laws 1993, c. 501, s. 29.
- 17 (3) The North Carolina Low-Level Radioactive Waste Management  
18 Authority in administering the provisions of G.S. 104G-9, 104G-10,  
19 and 104G-11.
- 20 (4) The North Carolina Hazardous Waste Management Commission in  
21 administering the provisions of G.S. 130B-11, 130B-13, and 130B-  
22 14.
- 23 (5) Hearings required pursuant to the Rehabilitation Act of 1973,  
24 (Public Law 93-122), as amended and federal regulations  
25 promulgated thereunder. G.S. 150B-51(a) is considered a contested  
26 case hearing provision that does not apply to these hearings.
- 27 (6) The Department of Revenue.
- 28 (7) The Department of Correction.
- 29 (8) The Department of Transportation, except as provided in ~~G.S.~~  
30 ~~136-29~~ G.S. 136-29, 136-133.1, and 136-134.1.
- 31 (9) The Occupational Safety and Health Review Board.
- 32 (10) The North Carolina Global TransPark Authority with respect to  
33 the acquisition, construction, operation, or use, including fees or  
34 charges, of any portion of a cargo airport complex.
- 35 (11) Hearings that are provided by the Department of Health and  
36 Human Services regarding the eligibility and provision of services  
37 for eligible assaultive and violent children, as defined in G.S.  
38 122C-3(13a), shall be conducted pursuant to the provisions  
39 outlined in G.S. 122C, Article 4, Part 7."

40 Section 4. Chapter 136 of the General Statutes is amended by adding a  
41 new section to read:

42 "§ 136-133.1. Administrative review of outdoor advertising decisions.

43 (a) An applicant for an outdoor advertising permit, an outdoor advertising permit  
44 holder, or an outdoor advertising owner who is dissatisfied with the final decision of

1 the Department of Transportation may file a petition for a contested case hearing  
2 under Article 3 of Chapter 150B of the General Statutes within 20 days after the  
3 decision is made by the Department of Transportation, except that the venue of the  
4 hearing shall not be determined pursuant to G.S. 150B-24, but shall be Wake County.

5 (b) The burden of proof shall be on the party petitioning for review."

6 Section 5. Chapter 136 of the General Statutes is amended by adding a  
7 new section to read:

8 "**§ 136-134.2. Notification requirements.**

9 When the Department of Transportation notifies a permit applicant, permit holder,  
10 or the owner of an outdoor advertising structure that the application is denied, the  
11 permit revoked, or the structure is in violation of this Article or rules issued pursuant  
12 to this Article, respectively, it shall do so in writing by certified mail, return receipt  
13 requested and shall include a copy of this Article and all rules issued pursuant to this  
14 Article.

15 If the Department of Transportation fails to include a copy of this Article and the  
16 rules, the time period during which the permit applicant, permit holder, or owner of  
17 the outdoor advertising structure has to request a review hearing shall be tolled, until  
18 the Department of Transportation provides the required materials."

19 Section 6. G.S. 136-134.1 reads as rewritten:

20 "**§ 136-134.1. Judicial review.**

21 ~~Any person who is aggrieved by a final decision of the Secretary of Transportation~~  
22 ~~after exhausting all administrative remedies made available to him by rules and~~  
23 ~~regulations enacted pursuant to this Article is entitled to judicial review of such~~  
24 ~~decision under this Article. In order to obtain judicial review of the Secretary of~~  
25 ~~Transportation's decision under this Article, the person seeking review must file a~~  
26 ~~petition in the Superior Court of Wake County within 30 days after written copy of~~  
27 ~~the decision of the Secretary of Transportation is served upon the person seeking~~  
28 ~~review. Failure to file such a petition within the time stated shall operate as a waiver~~  
29 ~~of the right of such person to review under this Chapter.~~

30 ~~The petition shall state explicitly what exceptions are taken to the decision of the~~  
31 ~~Secretary of Transportation and what relief petitioner seeks. Within 10 days after the~~  
32 ~~petition is filed with the court, the person seeking the review shall serve copies of the~~  
33 ~~petition by registered mail, return receipt requested, upon the Department of~~  
34 ~~Transportation. Within 30 days after receipt of the copy of the petition for review, or~~  
35 ~~within such additional time as the court may allow, the Department of Transportation~~  
36 ~~shall transmit to the reviewing court a certified copy of the written decision.~~

37 ~~At any time before or during the review proceeding, the aggrieved party may apply~~  
38 ~~to the reviewing court for an order staying the operation of the decision of the~~  
39 ~~Secretary of Transportation pending the outcome of the review. The court may grant~~  
40 ~~or deny the stay in its discretion upon such terms as it deems proper. The review of~~  
41 ~~the decision of the Secretary of Transportation under this Article shall be conducted~~  
42 ~~by the court without a jury and shall hear the matter de novo pursuant to the rules of~~  
43 ~~evidence as applied in the General Court of Justice. The court, after hearing the~~  
44 ~~matter may affirm, reverse or modify the decision if the decision is:~~

- 1           ~~(1) In violation of constitutional provisions; or~~  
2           ~~(2) Not made in accordance with this Article or rules or regulations~~  
3           ~~promulgated by the Department of Transportation; or~~  
4           ~~(3) Affected by other error of law.~~

5 ~~The party aggrieved shall have the burden of showing that the decision was violative~~  
6 ~~of one of the above.~~

7 ~~A party to the review proceedings, including the agency, may appeal to the~~  
8 ~~appellate division from the final judgment of the Superior Court under the rules of~~  
9 ~~procedure applicable in civil cases. The appealing party may apply to the Superior~~  
10 ~~Court for a stay for its final determination or a stay of the administrative decision,~~  
11 ~~whichever shall be appropriate, pending the outcome of the appeal to the appellate~~  
12 ~~division.~~

13 Article 4 of Chapter 150B of the General Statutes shall govern judicial review of  
14 final agency decisions regarding outdoor advertising permits."

15           Section 7. G.S. 136-135 reads as rewritten:

16 **"§ 136-135. Enforcement provisions.**

17 Any person, firm, corporation or association, placing, erecting or maintaining  
18 outdoor advertising along the interstate system or primary system in violation of this  
19 Article or rules and regulations promulgated by the Department of Transportation  
20 shall be guilty of a Class 1 misdemeanor. In addition thereto, the Department of  
21 Transportation may seek injunctive relief in the Superior Court of Wake County or  
22 of the county where the outdoor advertising is located and require the outdoor  
23 advertising to conform to the provisions of this Article or rules and regulations  
24 promulgated pursuant hereto, or require the removal of the said illegal outdoor  
25 advertising."

26           Section 8. Chapter 136 of the General Statutes is amended by adding a  
27 new section to read:

28 **"§ 136-18.7. Fees.**

29 The Board of Transportation may establish fees to defray the costs of administering  
30 the permit procedures for the Department of Transportation's selective vegetation  
31 removal policy established pursuant to G.S. 136-18(5), (7), and (9). These fees shall  
32 be no more than necessary to ensure that the policy is entirely self-funded."

33           Section 9. G.S. 136-127 reads as rewritten:

34 **"§ 136-127. Declaration of policy.**

35 The General Assembly hereby finds and declares that outdoor advertising is a  
36 legitimate commercial use of private property adjacent to roads and highways but that  
37 the erection and maintenance of outdoor advertising signs and devices in areas in the  
38 vicinity of the right-of-way of the interstate and primary ~~highways~~ highway systems  
39 within the State should be controlled and regulated in order to promote the safety,  
40 health, welfare and convenience and enjoyment of travel on and protection of the  
41 public investment in highways within the State, to prevent unreasonable distraction of  
42 operators of motor vehicles and to prevent interference with the effectiveness of  
43 traffic regulations and to promote safety on the highways, to attract tourists and  
44 promote the prosperity, economic well-being and general welfare of the State, and to



1 preserve and enhance the natural scenic beauty of the highways and areas in the  
2 vicinity of the State highways and to promote the reasonable, orderly and effective  
3 display of such signs, displays and devices. It is the intention of the General Assembly  
4 to provide and declare herein a public policy and statutory basis for the regulation  
5 and control of outdoor advertising."

6 Section 10. G.S. 136-128 reads as rewritten:

7 **"§ 136-128. Definitions.**

8 As used in this Article:

- 9 (1) "Erect" means to construct, build, raise, assemble, place, affix,  
10 attach, create, paint, draw, or in any other way bring into being or  
11 establish.
- 12 (1a) "Illegal sign" means one which was erected and/or maintained in  
13 violation of State law.
- 14 (1b) "Information center" means an area or site established and  
15 maintained at safety rest areas for the purpose of informing the  
16 public of places of interest within the State and providing such  
17 other information as the Department of Transportation may  
18 consider desirable.
- 19 (2) "Interstate system" means that portion of the National System of  
20 Interstate and Defense Highways located within the State, as  
21 officially designated, or as may hereafter be so designated, by the  
22 Department of Transportation, or other appropriate authorities and  
23 are also so designated by interstate numbers. As to highways under  
24 construction so designated as interstate highways pursuant to the  
25 above procedures, the highway shall be a part of the interstate  
26 system for the purposes of this Article on the date the location of  
27 the highway has been approved finally by the appropriate federal  
28 authorities.
- 29 (2a) "Nonconforming sign" shall mean a sign which was lawfully  
30 erected but which does not comply with the provisions of State law  
31 or State rules and regulations passed at a later date or which later  
32 fails to comply with State law or State rules or regulations due to  
33 changed conditions. Illegally erected or maintained signs are not  
34 nonconforming signs.
- 35 (3) "Outdoor advertising" means any outdoor sign, display, light,  
36 device, figure, painting, drawing, message, plaque, poster,  
37 billboard, or any other thing which is designed, intended or used  
38 to advertise or inform, any part of the advertising or information  
39 contents of which is visible from any place on the main-traveled  
40 way of the interstate or primary system, whether the same be  
41 permanent or portable installation.
- 42 (4) "~~Primary systems" means that portion of connected main highways,~~  
43 ~~as now officially designated, or as may hereafter be so designated~~  
44 ~~by the Department of Transportation as primary system, or other~~

1 ~~appropriate authorities and are also so designated by N.C. or U.S.~~  
2 ~~numbers.~~ means the federal-aid primary system in existence on  
3 June 1, 1991, and any highway which is not on that system but  
4 which is on the National Highway System. As to highways under  
5 construction so designated as primary highways pursuant to the  
6 above procedures, the highway shall be a part of the primary  
7 system for purposes of this Article on the date the location of the  
8 highway has been approved finally by the appropriate federal or  
9 State authorities.

10 (5) "Safety rest area" means an area or site established and maintained  
11 within or adjacent to the highway right-of-way by or under public  
12 supervision or control, for the convenience of the traveling public.

13 (6) "State law" means a State constitutional provision or statute, or an  
14 ordinance, rule or regulation enacted or adopted by a State agency  
15 or political subdivision of a State pursuant to a State Constitution  
16 or statute.

17 (7) "Unzoned area" shall mean an area where there is no zoning in  
18 effect.

19 (8) "Urban area" shall mean an area within the boundaries or limits of  
20 any incorporated municipality having a population of five thousand  
21 or more as determined by the latest available federal census.

22 (9) "Visible" means capable of being seen (whether or not legible)  
23 without visual aid by a person of normal visual acuity."

24 Section 11. G.S. 136-129 reads as rewritten:

25 **"§ 136-129. Limitations of outdoor advertising devices.**

26 No outdoor advertising shall be erected or maintained within 660 feet of the  
27 nearest edge of the right-of-way of the interstate or primary ~~highways~~ highway  
28 systems in this State so as to be visible from the main-traveled way thereof after the  
29 effective date of this Article as determined by G.S. 136-140, except the following:

30 (1) Directional and other official signs and notices, which signs and  
31 notices shall include those authorized and permitted by Chapter  
32 136 of the General Statutes, which include but are not limited to  
33 official signs and notices pertaining to natural wonders, scenic and  
34 historic attractions and signs erected and maintained by a public  
35 utility, electric or telephone membership corporation, or  
36 municipality for the purpose of giving warning of or information as  
37 to the location of an underground cable, pipeline or other  
38 installation.

39 (2) Outdoor advertising which advertises the sale or lease of property  
40 upon which it is located.

41 (2a) Outdoor advertising which advertises the sale of any fruit or  
42 vegetable crop by the grower at a roadside stand or by having the  
43 purchaser pick the crop on the property on which the crop is  
44 grown provided: (i) the sign is no more than two feet long on any

1 side; (ii) the sign is located on property owned or leased by the  
2 grower where the crop is grown; (iii) the grower is also the seller;  
3 and (iv) the sign is kept in place by the grower for no more than  
4 30 days.

5 (3) Outdoor advertising which advertises activities conducted on the  
6 property upon which it is located.

7 (4) Outdoor advertising, in conformity with the rules and regulations  
8 promulgated by the Department of Transportation, located in areas  
9 which are zoned industrial or commercial under authority of State  
10 law.

11 (5) Outdoor advertising, in conformity with the rules and regulations  
12 promulgated by the Department of Transportation, located in  
13 unzoned commercial or industrial areas."

14 Section 12. G.S. 136-129.1 reads as rewritten:

15 **"§ 136-129.1. Limitations of outdoor advertising devices beyond 660 feet.**

16 No outdoor advertising shall be erected or maintained beyond 660 feet of the  
17 nearest edge of the right-of-way of the interstate or primary ~~highways~~ highway  
18 systems in this State outside of the urban areas so as to be visible and intended to be  
19 read from the main-traveled way except the following:

20 (1) Directional and other official signs and notices, which signs and  
21 notices shall include those authorized and permitted by Chapter  
22 136 of the General Statutes, which include but are not limited to  
23 official signs and notices pertaining to natural wonders, scenic and  
24 historic attractions and signs erected and maintained by a public  
25 utility, electric or telephone membership corporation, or  
26 municipality for the purpose of giving warning of or information as  
27 to the location of an underground cable, pipeline or other  
28 installation.

29 (2) Outdoor advertising which advertises the sale or lease of property  
30 upon which it is located.

31 (3) Outdoor advertising which advertises activities conducted on the  
32 property upon which it is located."

33 Section 13. G.S. 136-136 reads as rewritten:

34 **"§ 136-136. Zoning changes.**

35 All zoning authorities shall give written notice to the Department of  
36 Transportation of the establishment or revision of any commercial and industrial  
37 zones within 660 feet of the right-of-way of interstate or primary ~~highways~~ highway  
38 systems. Notice shall be by registered mail sent to the offices of the Department of  
39 Transportation in Raleigh, North Carolina, within 15 days after the effective date of  
40 the zoning change or establishment."

41 Section 14. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 254\*

Proposed Committee Substitute: S254-PCSSK-001

This is a draft: line numbers may change after adoption.

Short Title: Outdoor Advertising Control Act/AB.

(Public)

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Sponsors:

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Referred to:

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March 8, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE VARIOUS OUTDOOR ADVERTISING PERMIT FEES,  
3 CHANGE THE ADMINISTRATIVE REVIEW AND JUDICIAL REVIEW OF OUTDOOR  
4 ADVERTISING DECISIONS, EXPAND CURRENT NOTIFICATION  
5 REQUIREMENTS, AND MODIFY AND UPDATE THE OUTDOOR ADVERTISING  
6 CONTROL ACT WITH RESPECT TO VENUE REQUIREMENTS, DEFINITIONS,  
7 AND PARTIES RESPONSIBLE FOR PAYMENT OF REMOVAL OF ILLEGAL  
8 OUTDOOR ADVERTISING.  
9 The General Assembly of North Carolina enacts:  
10 Section 1. G.S. 136-133 reads as rewritten:  
11 "§ 136-133. Permits required.  
12 No person shall erect or maintain any outdoor advertising  
13 within 660 feet of the nearest edge of the right-of-way of the  
14 interstate or primary highway system, except those allowed under  
15 G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond  
16 660 feet of the nearest edge of the right-of-way of the  
17 interstate or primary highway system, except those allowed under  
18 G.S. 136-129.1, subdivisions (2) and (3), without first obtaining  
19 a permit from the Department of Transportation or its agents  
20 pursuant to the procedures set out by rules and regulations  
21 promulgated by the Department of Transportation. The permit shall  
22 be valid until revoked for nonconformance with this Article or  
23 rules and regulations promulgated by the Department of

1 Transportation thereunder. Any person aggrieved by the decision  
2 of the Department of Transportation or its agents in refusing to  
3 grant or in revoking a permit may appeal the decision in  
4 accordance with the rules and regulations enacted by the  
5 Department of Transportation pursuant to this Article to the  
6 Secretary of Transportation who shall make the final decision on  
7 the agency appeal. The Department of Transportation shall have  
8 the authority to charge permit fees to defray the costs of  
9 administering the permit procedures under this Article. The fees  
10 for directional signs as set forth in G.S. 136-129(1) and G.S.  
11 136-129.1(1) shall not exceed a ~~twenty dollar (\$20.00)~~ forty  
12 dollar (\$40.00) initial fee and a ~~fifteen dollar (\$15.00)~~ thirty  
13 dollar (\$30.00) annual renewal fee. The fees for outdoor  
14 advertising structures, as set forth in G.S. 136-129(4) and (5)  
15 shall not exceed a ~~sixty dollar (\$60.00)~~ one hundred twenty  
16 dollar (\$120.00) initial fee and a ~~thirty dollar (\$30.00)~~ sixty  
17 dollar (\$60.00) annual renewal fee.

18 Section 2. G.S. 136-134 reads as rewritten:  
19 "§ 136-134. Illegal advertising.

20 Any outdoor advertising erected or maintained adjacent to the  
21 right-of-way of the interstate or primary highway system after  
22 the effective date of this Article as determined by G.S. 136-140,  
23 in violation of the provisions of this Article or rules ~~and~~  
24 ~~regulations promulgated~~ adopted by the Department of  
25 Transportation, or any outdoor advertising maintained without a  
26 permit regardless of the date of erection shall be illegal and  
27 shall constitute a nuisance. The Department of Transportation or  
28 its agents shall give 30 days' notice to the owner of the illegal  
29 outdoor advertising with the exception of the owner of unlawful  
30 portable outdoor advertising for which the Department of  
31 Transportation shall give five days' notice, if such owner is  
32 known or can by reasonable diligence be ascertained, to remove  
33 the outdoor advertising or to make it conform to the provisions  
34 of this Article or rules ~~and regulations promulgated~~ adopted by  
35 the Department of Transportation hereunder. The Department of  
36 Transportation or its agents shall have the right to remove the  
37 illegal outdoor advertising at the expense of the ~~said~~ owner if  
38 the ~~said~~ owner fails to act remove the outdoor advertising or to  
39 make it conform to the provisions of this Article or rules issued  
40 by the Department of Transportation within 30 days after receipt  
41 of such notice or five days for owners of portable outdoor  
42 advertising. The Department of Transportation or its agents may  
43 enter upon private property for the purpose of removing the  
44 outdoor advertising prohibited by this Article or rules ~~and~~

1 ~~regulations promulgated~~ adopted by the Department of  
2 Transportation hereunder without civil or criminal liability.  
3 The costs of removing the outdoor advertising, whether by the  
4 Department of Transportation or its agents, shall be assessed  
5 against the owner of the illegal outdoor advertising by the  
6 Department of Transportation. Any person aggrieved by the  
7 decision declaring the outdoor advertising structure illegal  
8 shall be granted the right to appeal the decision in accordance  
9 with the terms of the rules and regulations enacted by the  
10 Department of Transportation pursuant to this Article to the  
11 Secretary of Transportation who shall make the final decision on  
12 the agency appeal."

13 Section 3. G.S. 150B-1(e) reads as rewritten:

14 "(e) Exemptions From Contested Case Provisions. -- The  
15 contested case provisions of this Chapter apply to all agencies  
16 and all proceedings not expressly exempted from the Chapter. The  
17 contested case provisions of this Chapter do not apply to the  
18 following:

- 19 (1) The Department of Health and Human Services and the  
20 Department of Environment and Natural Resources in  
21 complying with the procedural safeguards mandated  
22 by Section 680 of Part H of Public Law 99-457 as  
23 amended (Education of the Handicapped Act  
24 Amendments of 1986).
- 25 (2) Repealed by Session Laws 1993, c. 501, s. 29.
- 26 (3) The North Carolina Low-Level Radioactive Waste  
27 Management Authority in administering the  
28 provisions of G.S. 104G-9, 104G-10, and 104G-11.
- 29 (4) The North Carolina Hazardous Waste Management  
30 Commission in administering the provisions of G.S.  
31 130B-11, 130B-13, and 130B-14.
- 32 (5) Hearings required pursuant to the Rehabilitation  
33 Act of 1973, (Public Law 93-122), as amended and  
34 federal regulations promulgated thereunder. G.S.  
35 150B-51(a) is considered a contested case hearing  
36 provision that does not apply to these hearings.
- 37 (6) The Department of Revenue.
- 38 (7) The Department of Correction.
- 39 (8) The Department of Transportation, except as  
40 provided in ~~G.S. 136-29~~ G.S. 136-29, 136-133.1,  
41 and 136-134.1.
- 42 (9) The Occupational Safety and Health Review Board.
- 43 (10) The North Carolina Global TransPark Authority with  
44 respect to the acquisition, construction,

1 operation, or use, including fees or charges, of  
2 any portion of a cargo airport complex.

3 (11) Hearings that are provided by the Department of  
4 Health and Human Services regarding the eligibility  
5 and provision of services for eligible assaultive  
6 and violent children, as defined in G.S. 122C-  
7 3(13a), shall be conducted pursuant to the  
8 provisions outlined in G.S. 122C, Article 4, Part  
9 7."

10 Section 4. Chapter 136 of the General Statutes is  
11 amended by adding a new section to read:

12 "§ 136-133.1. Administrative review of outdoor advertising  
13 decisions.

14 (a) An applicant for an outdoor advertising permit, an outdoor  
15 advertising permit holder, or an outdoor advertising owner, who  
16 is dissatisfied with the initial decision of the Department of  
17 Transportation, may file a petition for a contested case hearing  
18 under Article 3 of Chapter 150B of the General Statutes within 30  
19 days after the decision is made by the Department of  
20 Transportation.

21 (b) If outdoor advertising is under construction and the  
22 Department determines that a permit has not been issued for the  
23 outdoor advertising, the Department of Transportation may require  
24 that all work on the outdoor advertising cease until the owner of  
25 the outdoor advertising shows that the outdoor advertising does  
26 not violate G.S. 136-133. The stop work order shall be  
27 prominently posted on the outdoor advertising structure, and no  
28 further notice of the stop work order is required. The failure  
29 of an owner of outdoor advertising to comply immediately with the  
30 stop work order shall subject the outdoor advertising to removal  
31 by the Department of Transportation or its agents. Outdoor  
32 advertising is under construction when it is in any phase of  
33 construction prior to the attachment and display of the  
34 advertising message in final position for viewing by the  
35 traveling public. The cost of removing outdoor advertising by  
36 the Department of Transportation or its agents pursuant to this  
37 section shall be assessed against the owner of the unpermitted  
38 outdoor advertising by the Department of Transportation. No stop  
39 work order may be issued when the Department of Transportation  
40 process agent has been served with a court order allowing the  
41 sign to be constructed. The party subject to a stop work order  
42 may file a petition for a contested case hearing under Article 3  
43 of Chapter 150B of the General Statutes within 30 days after the  
44 stop work order is issued.

1 (c) As used in this section, the term 'initial decision' shall  
2 be defined by the Department in the rules issued pursuant to this  
3 Article."

4 Section 5. Chapter 136 of the General Statutes is  
5 amended by adding a new section to read:

6 "§ 136-134.2. Notification requirements.

7 When the Department of Transportation notifies a permit  
8 applicant, permit holder, or the owner of an outdoor advertising  
9 structure that the application is denied, the permit revoked, or  
10 the structure is in violation of this Article or rules issued  
11 pursuant to this Article, it shall do so in writing by certified  
12 mail, return receipt requested and shall include a copy of this  
13 Article and all rules issued pursuant to this Article.

14 If the Department of Transportation fails to include a copy of  
15 this Article and the rules, the time period during which the  
16 permit applicant, permit holder, or owner of the outdoor  
17 advertising structure has to request a review hearing shall be  
18 tolled until the Department of Transportation provides the  
19 required materials."

20 Section 6. G.S. 136-134.1 reads as rewritten:

21 "§ 136-134.1. Judicial review.

22 ~~Any person who is aggrieved by a final decision of the~~  
23 ~~Secretary of Transportation after exhausting all administrative~~  
24 ~~remedies made available to him by rules and regulations enacted~~  
25 ~~pursuant to this Article is entitled to judicial review of such~~  
26 ~~decision under this Article. In order to obtain judicial review~~  
27 ~~of the Secretary of Transportation's decision under this Article,~~  
28 ~~the person seeking review must file a petition in the Superior~~  
29 ~~Court of Wake County within 30 days after written copy of the~~  
30 ~~decision of the Secretary of Transportation is served upon the~~  
31 ~~person seeking review. Failure to file such a petition within the~~  
32 ~~time stated shall operate as a waiver of the right of such person~~  
33 ~~to review under this Chapter.~~

34 ~~The petition shall state explicitly what exceptions are taken~~  
35 ~~to the decision of the Secretary of Transportation and what~~  
36 ~~relief petitioner seeks. Within 10 days after the petition is~~  
37 ~~filed with the court, the person seeking the review shall serve~~  
38 ~~copies of the petition by registered mail, return receipt~~  
39 ~~requested, upon the Department of Transportation. Within 30 days~~  
40 ~~after receipt of the copy of the petition for review, or within~~  
41 ~~such additional time as the court may allow, the Department of~~  
42 ~~Transportation shall transmit to the reviewing court a certified~~  
43 ~~copy of the written decision.~~



~~1 At any time before or during the review proceeding, the  
2 aggrieved party may apply to the reviewing court for an order  
3 staying the operation of the decision of the Secretary of  
4 Transportation pending the outcome of the review. The court may  
5 grant or deny the stay in its discretion upon such terms as it  
6 deems proper. The review of the decision of the Secretary of  
7 Transportation under this Article shall be conducted by the court  
8 without a jury and shall hear the matter de novo pursuant to the  
9 rules of evidence as applied in the General Court of Justice. The  
10 court, after hearing the matter may affirm, reverse or modify the  
11 decision if the decision is:~~

- ~~12 (1) In violation of constitutional provisions; or~~
- ~~13 (2) Not made in accordance with this Article or rules  
14 or regulations promulgated by the Department of  
15 Transportation; or~~
- ~~16 (3) Affected by other error of law.~~

~~17 The party aggrieved shall have the burden of showing that the  
18 decision was violative of one of the above.~~

~~19 A party to the review proceedings, including the agency, may  
20 appeal to the appellate division from the final judgment of the  
21 Superior Court under the rules of procedure applicable in civil  
22 cases. The appealing party may apply to the Superior Court for a  
23 stay for its final determination or a stay of the administrative  
24 decision, whichever shall be appropriate, pending the outcome of  
25 the appeal to the appellate division.~~

~~26 Article 4 of Chapter 150B of the General Statutes shall govern  
27 judicial review of final agency decisions regarding outdoor  
28 advertising permits."~~

29 Section 7. G.S. 136-135 reads as rewritten:

30 "§ 136-135. Enforcement provisions.

31 Any person, firm, corporation or association, placing, erecting  
32 or maintaining outdoor advertising along the interstate system or  
33 primary system in violation of this Article or rules ~~and~~  
34 ~~regulations promulgated~~ adopted by the Department of  
35 Transportation shall be guilty of a Class 1 misdemeanor. In  
36 addition thereto, the Department of Transportation may seek  
37 injunctive relief in the Superior Court of Wake County or of the  
38 county where the outdoor advertising is located and require the  
39 outdoor advertising to conform to the provisions of this Article  
40 or rules ~~and regulations promulgated~~ adopted pursuant hereto, or  
41 require the removal of the said illegal outdoor advertising."

42 Section 8. Chapter 136 of the General Statutes is  
43 amended by adding a new section to read:

44 "§ 136-18.7. Fees.

1 The fee for a selective vegetation removal permit issued  
2 pursuant to G.S. 136-18(5), (7), and (9) is two hundred dollars  
3 (\$200.00)."

4 Section 9. G.S. 136-127 reads as rewritten:

5 "§ 136-127. Declaration of policy.

6 The General Assembly hereby finds and declares that outdoor  
7 advertising is a legitimate commercial use of private property  
8 adjacent to roads and highways but that the erection and  
9 maintenance of outdoor advertising signs and devices in areas in  
10 the vicinity of the right-of-way of the interstate and primary  
11 ~~highways~~ highway systems within the State should be controlled  
12 and regulated in order to promote the safety, health, welfare and  
13 convenience and enjoyment of travel on and protection of the  
14 public investment in highways within the State, to prevent  
15 unreasonable distraction of operators of motor vehicles and to  
16 prevent interference with the effectiveness of traffic  
17 regulations and to promote safety on the highways, to attract  
18 tourists and promote the prosperity, economic well-being and  
19 general welfare of the State, and to preserve and enhance the  
20 natural scenic beauty of the highways and areas in the vicinity  
21 of the State highways and to promote the reasonable, orderly and  
22 effective display of such signs, displays and devices. It is the  
23 intention of the General Assembly to provide and declare herein a  
24 public policy and statutory basis for the regulation and control  
25 of outdoor advertising."

26 Section 10. G.S. 136-128 reads as rewritten:

27 "§ 136-128. Definitions.

28 As used in this Article:

- 29 (1) "Erect" means to construct, build, raise, assemble,  
30 place, affix, attach, create, paint, draw, or in  
31 any other way bring into being or establish.
- 32 (1a) "Illegal sign" means one which was erected and/or  
33 maintained in violation of State law.
- 34 (1b) "Information center" means an area or site  
35 established and maintained at safety rest areas for  
36 the purpose of informing the public of places of  
37 interest within the State and providing such other  
38 information as the Department of Transportation may  
39 consider desirable.
- 40 (2) "Interstate system" means that portion of the  
41 National System of Interstate and Defense Highways  
42 located within the State, as officially designated,  
43 or as may hereafter be so designated, by the  
44 Department of Transportation, or other appropriate

1 authorities and are also so designated by  
2 interstate numbers. As to highways under  
3 construction so designated as interstate highways  
4 pursuant to the above procedures, the highway shall  
5 be a part of the interstate system for the purposes  
6 of this Article on the date the location of the  
7 highway has been approved finally by the  
8 appropriate federal authorities.

9 (2a) "Nonconforming sign" shall mean a sign which was  
10 lawfully erected but which does not comply with the  
11 provisions of State law or State rules and  
12 regulations passed at a later date or which later  
13 fails to comply with State law or State rules or  
14 regulations due to changed conditions. Illegally  
15 erected or maintained signs are not nonconforming  
16 signs.

17 (3) "Outdoor advertising" means any outdoor sign,  
18 display, light, device, figure, painting, drawing,  
19 message, plaque, poster, billboard, or any other  
20 thing which is designed, intended or used to  
21 advertise or inform, any part of the advertising or  
22 information contents of which is visible from any  
23 place on the main-traveled way of the interstate or  
24 primary system, whether the same be permanent or  
25 portable installation.

26 (4) ~~"Primary systems" means that portion of connected~~  
27 ~~main highways, as now officially designated, or as~~  
28 ~~may hereafter be so designated by the Department of~~  
29 ~~Transportation as primary system, or other~~  
30 ~~appropriate authorities and are also so designated~~  
31 ~~by N.C. or U.S. numbers. means the federal-aid~~  
32 ~~primary system in existence on June 1, 1991, and~~  
33 ~~any highway which is not on that system but which~~  
34 ~~is on the National Highway System. As to highways~~  
35 ~~under construction so designated as primary~~  
36 ~~highways pursuant to the above procedures, the~~  
37 ~~highway shall be a part of the primary system for~~  
38 ~~purposes of this Article on the date the location~~  
39 ~~of the highway has been approved finally by the~~  
40 ~~appropriate federal or State authorities.~~

41 (5) "Safety rest area" means an area or site  
42 established and maintained within or adjacent to  
43 the highway right-of-way by or under public

- 1 supervision or control, for the convenience of the  
2 traveling public.
- 3 (6) "State law" means a State constitutional provision  
4 or statute, or an ordinance, rule or regulation  
5 enacted or adopted by a State agency or political  
6 subdivision of a State pursuant to a State  
7 Constitution or statute.
- 8 (7) "Unzoned area" shall mean an area where there is no  
9 zoning in effect.
- 10 (8) "Urban area" shall mean an area within the  
11 boundaries or limits of any incorporated  
12 municipality having a population of five thousand  
13 or more as determined by the latest available  
14 federal census.
- 15 (9) "Visible" means capable of being seen (whether or  
16 not legible) without visual aid by a person of  
17 normal visual acuity."

18 Section 11. G.S. 136-129 reads as rewritten:

19 "§ 136-129. Limitations of outdoor advertising devices.

20 No outdoor advertising shall be erected or maintained within  
21 660 feet of the nearest edge of the right-of-way of the  
22 interstate or primary ~~highways~~ highway systems in this State so  
23 as to be visible from the main-traveled way thereof after the  
24 effective date of this Article as determined by G.S. 136-140,  
25 except the following:

- 26 (1) Directional and other official signs and notices,  
27 which signs and notices shall include those  
28 authorized and permitted by Chapter 136 of the  
29 General Statutes, which include but are not limited  
30 to official signs and notices pertaining to natural  
31 wonders, scenic and historic attractions and signs  
32 erected and maintained by a public utility,  
33 electric or telephone membership corporation, or  
34 municipality for the purpose of giving warning of  
35 or information as to the location of an underground  
36 cable, pipeline or other installation.
- 37 (2) Outdoor advertising which advertises the sale or  
38 lease of property upon which it is located.
- 39 (2a) Outdoor advertising which advertises the sale of  
40 any fruit or vegetable crop by the grower at a  
41 roadside stand or by having the purchaser pick the  
42 crop on the property on which the crop is grown  
43 provided: (i) the sign is no more than two feet  
44 long on any side; (ii) the sign is located on

- 1 property owned or leased by the grower where the  
2 crop is grown; (iii) the grower is also the seller;  
3 and (iv) the sign is kept in place by the grower  
4 for no more than 30 days.
- 5 (3) Outdoor advertising which advertises activities  
6 conducted on the property upon which it is located.
- 7 (4) Outdoor advertising, in conformity with the rules  
8 and regulations promulgated by the Department of  
9 Transportation, located in areas which are zoned  
10 industrial or commercial under authority of State  
11 law.
- 12 (5) Outdoor advertising, in conformity with the rules  
13 and regulations promulgated by the Department of  
14 Transportation, located in unzoned commercial or  
15 industrial areas."

16 Section 12. G.S. 136-129.1 reads as rewritten:  
17 "§ 136-129.1. Limitations of outdoor advertising devices beyond  
18 660 feet.

19 No outdoor advertising shall be erected or maintained beyond  
20 660 feet of the nearest edge of the right-of-way of the  
21 interstate or primary ~~highways~~ highway systems in this State  
22 outside of the urban areas so as to be visible and intended to be  
23 read from the main-traveled way except the following:

- 24 (1) Directional and other official signs and notices,  
25 which signs and notices shall include those  
26 authorized and permitted by Chapter 136 of the  
27 General Statutes, which include but are not limited  
28 to official signs and notices pertaining to natural  
29 wonders, scenic and historic attractions and signs  
30 erected and maintained by a public utility,  
31 electric or telephone membership corporation, or  
32 municipality for the purpose of giving warning of  
33 or information as to the location of an underground  
34 cable, pipeline or other installation.
- 35 (2) Outdoor advertising which advertises the sale or  
36 lease of property upon which it is located.
- 37 (3) Outdoor advertising which advertises activities  
38 conducted on the property upon which it is  
39 located."

40 Section 13. G.S. 136-136 reads as rewritten:  
41 "§ 136-136. Zoning changes.

42 All zoning authorities shall give written notice to the  
43 Department of Transportation of the establishment or revision of  
44 any commercial and industrial zones within 660 feet of the

1 right-of-way of interstate or primary ~~highways~~ highway systems.  
2 Notice shall be by registered mail sent to the offices of the  
3 Department of Transportation in Raleigh, North Carolina, within  
4 15 days after the effective date of the zoning change or  
5 establishment."

6           Section 14. Sections 1 and 8 become effective July 1,  
7 1999. The remaining sections become effective when this act  
8 becomes law.

# SENATE BILL 254: Outdoor Advertising Control Act/AB

**Committee:** Commerce Committee  
**Date:** April 6, 1999  
**Version:** (Committee Substitute)  
S254-PCSSK-001

**Introduced by:** Senator Gulley  
**Summary by:** Esther Manheimer  
Committee Counsel

**SUMMARY:** Senate Bill 254 increases various permitting fees regarding outdoor advertising. In addition, the bill places outdoor advertising appeals under the APA and creates a stop work order that the Department of Transportation may use to stop the construction of, and in some cases remove, illegal advertising.

## BILL ANALYSIS:

**Section 1.** Amends G.S. 136-133 to **increase the permit fee** the Department of Transportation (the Department) may charge for directional signs and outdoor advertising structures. The bill allows the permit fee for directional signs to increase from a \$20 initial fee to a \$40 initial fee and from a \$15 annual renewal fee to a \$30 annual renewal fee. The bill also allows the permit fee for advertising structures to increase from a \$60 initial fee to a \$120 initial fee and from a \$30 annual renewal fee to a \$60 annual renewal fee.

**Section 2.** Amends G.S. 136-134 to clarify that the Department regulates outdoor advertising "adjacent to the right-of-way of the interstate or primary highway system." Further amendments to this section clarify that illegal outdoor advertising must be removed or made to conform to Department rules by the owner within 30 days of the notice of illegality. The owner must pay the cost of removal if the Department or its agent performs the removal.

**Section 3.** Amends G.S. 150B-1(e) to apply contested case provisions of the Administrative Procedure Act (APA) to the administrative review of outdoor advertising decisions and stop work orders; and to apply the APA's judicial review procedures to parties of an outdoor advertising contested case.

**Section 4.** Amends Chapter 136 by adding a new section, G.S. 136-133.1. **Administrative Review of Outdoor Advertising.** G.S. 136-133.1 is summarized as follows:

- **Contested Case Hearings** - (1) an applicant for an outdoor advertising permit, (2) an outdoor advertising permit holder, or (3) an outdoor advertising owner, who is dissatisfied with the "initial decision" of the Department, may file a petition for a contested case hearing under the APA within 30 days after the decision is made by the Department.
  - "Initial decision" shall be defined by the Department.
- **Stop Work Orders** - stop work orders may be issued when the Department determines that outdoor advertising is "under construction" without a permit. When the order is issued by the Department all work on the outdoor advertising must cease until the owner shows that a permit has been issued for the construction of the outdoor advertising. If construction of the outdoor advertising does not cease, the Department may remove the structure at the owner's expense. No stop work orders may be issued when the Department has been

# SENATE BILL 254

Page 2

served with a court order allowing the sign to be constructed. Parties subject to the stop work order may file a petition for a contested case hearing under the APA within 30 days after the stop work order is issued.

**Section 5.** Amends Chapter 136 by adding a new section, G.S. 136-134.2. **Notification Requirements.** G.S. 136-134.2 requires that when the Department notifies a permit applicant, permit holder, or the owner of an outdoor advertising structure that the application is denied, permit revoked, or the structure is in violation of this Article, it must do so in writing by certified mail, return receipt requested and must include a copy of this Article and all rules issued under this Article. If the Department fails to include a copy of this Article and the rules then the time period during which a petitioner has to request a review hearing shall be tolled until the Department provides the required materials.

**Section 6.** Amends G.S. 136-134.1 to delete the current judicial review procedure and adds the APA's judicial review procedure. Under the APA, when all administrative remedies are exhausted, the person seeking review may file a petition in Superior Court for judicial review.

**Section 7.** Amends G.S. 136-135. Under current law, the Department may seek an injunction, in the Wake County Superior Court, to require outdoor advertising to conform to the Department's rules or require the removal of illegal outdoor advertising. Section 7 of the bill allows the Department to seek that injunction in the county where the outdoor advertising is located.

**Section 8.** Amends Chapter 136 by adding a new section, G.S. 136-18.7. **Fees.** Under the Department's current rules no fee is required for a selective vegetation removal permit. This bill allows the Department to charge a fee of \$200.00 for a selective vegetation removal permit.

**Sections 9, 11, 12 and 13.** Amends G.S. 136-127, G.S. 136-129, G.S. 136-129.1, and G.S. 136-136 to delete the word "highways," and add the phrase "highway systems." The reason for this change is to conform North Carolina law to federal law.

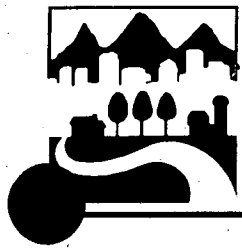
**Section 10.** Amends G.S. 136-128 to delete part of the current definition of "primary systems", and adds language to the definition that conforms to federal statutory language.

**Section 14. Effective Date.** Sections 1 and 8 become effective July 1, 1999. The remaining sections become effective when this act becomes law.

**This bill must be re-referred to Finance.**



4-5-99



# Scenic North Carolina

April 5, 1999

Dear Chairman R.C. Soles and Members of the Senate Commerce Committee:

Scenic North Carolina, Inc., is a nonprofit organization that works to protect and enhance our state's scenic resources and community appearance.

I am writing to ask you to support **Senate Bill 254, *Outdoor Advertising Control Act***, an agency bill introduced by Senator Wib Gulley and scheduled for discussion by the Commerce Committee on April 5.

SB 254 will allow the Department of Transportation to adjust outdoor advertising permit fees to reflect the actual costs of administering this program. A recent audit of the program found that between July 1, 1991 and June 30, 1998, the income from fees was \$262,000 less than the Department's expenses. This shortfall reduced the amount of funds available for highway maintenance.

SB 254 will allow the Department to stop construction of a sign that has not been issued a permit. Currently, NCDOT personnel must wait until a sign has been completely erected before it can be declared illegal and ordered removed, a process which can take three years or more and tie up valuable personnel time. One example of the ineffectiveness of the current law is described in the enclosed news article.

SB 254 will also make important changes to the outdoor advertising program's administrative review and enforcement processes. One important change will move contested case hearings to the Office of Administrative Hearings.

Thank you for your careful consideration of SB 254. If you have any questions or comments, please do not hesitate to call.

Sincerely,

Dale McKeel  
Executive Director

# Illegal billboard just won't go away

■ Official says I-85 sign is example of ineffective law

By Terry Martin  
JOURNAL RALEIGH BUREAU

## BELMONT

Each day, 62,400 motorists traveling along Interstate 85 in Gaston County are witness to an illegal act.

It stands just west of Exit 26, a large dual-faced billboard maintained by Gateway Outdoor Advertising of Charlotte, which now bears this message: "Available, 704-392-1499."

Court documents show that the sign, towering almost 100 feet above a neighborhood of brick homes south of the interstate, was erected illegally on Jan. 31, 1991 — one day after a state official directed workers to stop.

Thomas J. Harrelson, then the state transportation secretary, ordered Gateway to remove the sign more than three years ago, on Aug. 9, 1991, because it was erected without a state permit and is in a residential area.

AND, AFTER MORE than two years of appeals and delays by Gateway, Judge Henry V. Barnette Jr. of Wake Superior Court issued a similar order on March 16 of this year that gave the company 30 days to dismantle the sign.

Yet the sign remains in place, and a Gateway representative said Tuesday that its current rental rate is \$1,200 a month.

State transportation officials and environmental groups say that illegal billboards are difficult to remove because of a toothless law that gives regulators little enforcement power and billboard companies years of wiggle room.

Betty S. Waller, a attorney in Raleigh who represents Gateway and the N.C. Outdoor Advertising Association, said that the Gateway case is not so unusual. "We've had several cases that have gone on three or four years," Waller said. "This one doesn't stand out."

See BILLBOARD, Page B6

## BILLBOARD

Continued From Page B1

But Caroline Dedmon, a state highway engineer in Shelby, said that the case is a prime example of a frustratingly ineffective law.

"I spoke to them (billboard crews) myself and told them they couldn't put the sign there and they did it anyway," Dedmond said.

Statewide, officials estimate that 20 or more illegal signs pop up yearly, and tend to linger.

"There's a new one found about the time that we get one taken down," said Jim Morrison, the billboard-control coordinator for the N.C. Department of Transportation.

Dedmon, who has been a transportation worker for 10 years, said, "It doesn't happen very often, but it's an eyesore that doesn't go away and it tends to drag on for years."

And all the while, the owner of the billboard is raking tens of thousands of dollars, said J. McKeel, the director of Scenic North Carolina, a non-profit beautification group.

"There are no fines or penalties for a company that takes actions such as those taken by

Gateway," said McKeel, who is a member of a state task force on outdoor advertising.

The group, appointed by Transportation Secretary Sam Hunt, expects to make recommendations for changes to state policymakers early next year.

"State law and regulations should penalize billboard companies that take such blatant actions in disregarding state law and regulations," McKeel said. "Instead, this company is rewarded with more than three years of income."

Morrison said that a penalty of \$50 a day assessed against the parties responsible for illegal billboards would be a good start. "When you start hitting them in the pocketbook, they tend not to be in a hurry for a second offense," he said.

Brad Heard of Gateway Outdoor Advertising said this week that the company is considering its options.

"We're in the process of developing a new location to move that structure," he said. "But we're still investigating information to support leaving it there."

"The city of Belmont issued us a permit. I guess there's a difference of opinion over whether the sign is illegal."

Court documents reflect that no valid permit was issued for the sign.

Craig S. Lewis, a Belmont zoning officer, said in an affidavit that the town's zoning code requires billboards to be placed in areas zoned for commercial or industrial development.

"The zoning permit issued by the city of Belmont to Gateway Advertising Signs on Nov. 30, 1990 was issued in error," Lewis said in a notarized court statement.

Nonetheless, the burden is apparently on the Department of Transportation to pay a contractor to take down the sign and then try to recover the estimated \$5,000 to \$7,500 by billing Gateway.

Dedmon said that the department announced bids for the work and was ready to open the envelopes last week.

"But we didn't get any bids," she said. "We're checking with the attorney general's office to find out what to do now."

"We can't do it because we need a crane, and the estimates show that the work is probably going to crack the concrete drive and tear up the yard of the neighbor who lives under the sign. I don't know what we're going to do."

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 192

Short Title: Filing of Foreign Agreements.

(Public)

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Sponsors: Senator Reeves.

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Referred to: Commerce.

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March 1, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE FILING WITH THE SECRETARY OF STATE  
3 OF ALL MEMORANDA OF UNDERSTANDING AND AGREEMENTS OF A  
4 NONCOMMERCIAL NATURE BETWEEN THE STATE OF NORTH  
5 CAROLINA AND FOREIGN GOVERNMENTS.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 66 of the General Statutes is amended by adding a  
8 new Article to read:

9 "ARTICLE 35.

10 "Agreements Between North Carolina and Foreign Governments.

11 "§ 66-275. Agreements between North Carolina and foreign governments to be filed.

12 (a) A copy of all executed memoranda of understanding and agreements of a  
13 noncommercial nature wherein any agency of the State of North Carolina is a party,  
14 and a foreign government is another party, shall be filed with the Department of the  
15 Secretary of State of North Carolina. For purposes of this section, 'foreign  
16 government' is defined as a foreign country's government that is recognized and  
17 accredited by the United States Department of State, and includes such country's  
18 governmental subdivisions.

19 (b) Notwithstanding the foregoing, the validity or enforceability of any  
20 memoranda or agreement subject to the preceding subsection shall not be affected by  
21 the failure to comply with subsection (a) of this section. Documents so filed with the  
22 Department of the Secretary of State shall be indexed and then available for public  
23 inspection pursuant to the Public Records Act of North Carolina.

1 (c) The Department of the Secretary of State may offer direct and indirect  
2 assistance in matters relating to international relations and protocol to other  
3 governmental agencies and units of the State of North Carolina. Such assistance may  
4 be provided upon request of the intended recipient and only when the Secretary of  
5 State deems such resources to be available.

6 (d) The Department of the Secretary of State may accept gifts, donations,  
7 bequests, or other forms of voluntary contributions and to also apply for grants from  
8 public and private sources, and to expend such funds as are received for the purpose  
9 of promoting international relations and hosting foreign dignitaries and leaders in  
10 North Carolina. All funds so received shall be fully subject to audit by the Office of  
11 the State Auditor and shall be expended in conformity with the Executive Budget  
12 Act."

13 Section 2. This act applies with respect to memoranda and agreements  
14 executed on or after July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

S192-CSRU-003

PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL 192

THIS IS A DRAFT 5-APR-99 21:02:12

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Filing of Foreign Agreements.

(Public)

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Sponsors:

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Referred to:

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March 1, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE FILING WITH THE SECRETARY OF STATE OF  
3 ALL MEMORANDA OF UNDERSTANDING AND AGREEMENTS OF A  
4 NONCOMMERCIAL NATURE BETWEEN THE STATE OF NORTH CAROLINA AND  
5 FOREIGN GOVERNMENTS, TO AUTHORIZE THE SECRETARY OF STATE TO  
6 PROVIDE INTERNATIONAL RELATIONS ASSISTANCE AND TO PUBLISH  
7 PUBLICATIONS ELECTRONICALLY, AND TO PROVIDE FOR GUBERNATORIAL  
8 OVERSIGHT OF AGREEMENTS INVOLVING THE STATE AND FOREIGN  
9 GOVERNMENTS.  
10 The General Assembly of North Carolina enacts:  
11 Section 1. Chapter 66 of the General Statutes is  
12 amended by adding a new Article to read:  
13 "ARTICLE 35.  
14 "Agreements Between North Carolina and Foreign Governments.  
15 "§ 66-275. Agreements between North Carolina and foreign  
16 governments to be filed.  
17 (a) A copy of all executed memoranda of understanding and  
18 agreements of a noncommercial nature otherwise subject to  
19 disclosure under the public record laws of this State, entered  
20 into by the State of North Carolina, or any agency of the State,

1 and a foreign government shall be filed by the State agency with  
2 the Secretary of State.

3 (b) Notwithstanding subsection (a) of this section, the  
4 validity or enforceability of any memoranda or agreement subject  
5 to this section shall not be affected by the failure to comply  
6 with subsection (a) of this section. Documents required to be  
7 filed with the Secretary of State under this section shall be  
8 indexed and made available to the public in accordance with  
9 Chapter 132 of the General Statutes.

10 (c) For purposes of this section, 'foreign government' means a  
11 foreign country's government that is recognized and accredited by  
12 the United States Department of State, and includes governmental  
13 subdivisions of that country. For purposes of this section,  
14 'agency of the State' does not include public educational  
15 institutions with respect to their educational, research, or  
16 extension activities."

17 Section 2. G.S. 147-54.1 reads as rewritten:

18 "§147-54.1. Division of Publications; duties.

19 The Secretary of State is authorized to set up a division to be  
20 designated as the Division of Publications and to appoint a  
21 director thereof who shall be known as the Director of  
22 Publications. This Division shall publish the North Carolina  
23 Manual, Directory, Index of Local Legislation and such other  
24 publications as may be useful to the members and committees of  
25 the General Assembly and other officials of the State and of the  
26 various counties and cities. Unless otherwise required by law,  
27 the Secretary may publish electronically information permitted or  
28 required by this section. The Secretary may sell these  
29 publications at such prices as ~~he~~ the Secretary deems reasonable;  
30 the proceeds of sale shall be paid into the State treasury.

31 The Division shall also perform all such other duties as may be  
32 assigned by the Secretary of State."

33 Section 3. Article 4 of Chapter 147 is amended by  
34 adding a new section to read:

35 "§ 147-54.5. International relations assistance.

36 (a) The Secretary of State may offer direct and indirect  
37 assistance in matters relating to international relations and  
38 protocol to other governmental agencies and units of the State of  
39 North Carolina. The assistance may be provided upon request of  
40 the intended recipient when resources are available for these  
41 purposes.

42 (b) The Secretary of State may accept gifts, donations,  
43 bequests, or other forms of voluntary contributions, apply for  
44 grants from public and private sources, and may expend funds

1 received under this subsection for the purpose of promoting  
2 international relations and hosting foreign dignitaries and  
3 leaders in North Carolina. All funds received pursuant to this  
4 subsection shall be subject to audit by the Office of the State  
5 Auditor and shall be expended in conformity with the Executive  
6 Budget Act."

7 Section 4. G.S. 147-12 reads as rewritten:

8 "§ 147-12. Powers and duties of Governor.

9 In addition to the powers and duties prescribed by the  
10 Constitution, the Governor has the powers and duties prescribed  
11 in this and the following sections:

12 (1) ~~He is to~~ To supervise the official conduct of all  
13 executive and ministerial officers; and when ~~he~~  
14 ~~shall deem~~ the Governor deems it advisable ~~he shall~~  
15 to visit all State institutions for the purpose of  
16 inquiring into the management and needs of the  
17 same.

18 (2) ~~He is to~~ To see that all offices are filled, and  
19 the duties thereof performed, or in default thereof  
20 apply such remedy as the law allows, and if the  
21 remedy is imperfect, acquaint the General Assembly  
22 therewith.

23 (3) ~~He is to~~ To make the appointments and fill the  
24 vacancies not otherwise provided for in all  
25 departments.

26 In every case where the Governor is authorized by  
27 statute to make an appointment to fill a State  
28 office, ~~he~~ the Governor may also appoint to fill  
29 any vacancy occurring in that office, and the  
30 person ~~he~~ the Governor appoints shall serve for the  
31 unexpired term of the office and until ~~his~~ the  
32 person's successor is appointed and qualified.

33 In every case where the Governor is authorized by  
34 statute to appoint to fill a vacancy in an office  
35 in the executive branch of State government, the  
36 Governor may appoint an acting officer to serve

37 a. During the physical or mental incapacity of  
38 the regular holder of the office to discharge  
39 the duties of ~~his~~ the office,

40 b. During the continued absence of the regular  
41 holder of the office, or

42 c. During a vacancy in an office and pending the  
43 selection and qualification, in the manner

1           prescribed by statute, of a person to serve  
2           for the unexpired term.

3           An acting officer appointed in accordance with  
4           this subsection may perform any act and exercise  
5           any power which a regularly appointed holder of  
6           such office could lawfully perform and exercise.  
7           All powers granted to an acting officer under this  
8           subsection shall expire immediately

- 9           a.    Upon the termination of the incapacity of the  
10           officer in whose stead ~~he~~ the person acts,  
11           b.    Upon the return of the officer in whose stead  
12           ~~he~~ the person acts, or  
13           c.    Upon the selection and qualification, in the  
14           manner prescribed by statute, of a person to  
15           serve for the unexpired term.

16           The Governor may determine (after such inquiry as  
17           ~~he~~ the Governor deems appropriate) that any of the  
18           officers referred to in this paragraph is  
19           physically or mentally incapable of performing the  
20           duties of ~~his~~ the office. The Governor may also  
21           determine that such incapacity has terminated.

22           The compensation of an acting officer appointed  
23           pursuant to the provisions of this subdivision  
24           shall be fixed by the Governor. Prior to taking any  
25           action under this paragraph, the Governor may  
26           consult with the Advisory Budget Commission.

27           (3a) ~~The Governor~~ To may make appointments to fill  
28           vacancies in offices subject to appointment by the  
29           General Assembly as provided in G.S. 120-122.

30           (3b) Whenever a statute calls for the Governor to  
31           appoint one person from each congressional district  
32           to a board or commission, and at the time of  
33           enactment of that statute, the gubernatorial  
34           appointments do not cover all of the congressional  
35           districts, then the Governor, in filling vacancies  
36           on that board or commission as they occur, shall  
37           make appointments to satisfy that requirement, but  
38           shall not be required to remove any person from  
39           office to satisfy the requirement.

40           (3c) Notwithstanding any other provision of law,  
41           whenever a statute calls for the Governor to  
42           appoint a person to an office subject to  
43           confirmation by the General Assembly, the Governor  
44           shall notify the President of the Senate and the



- 1 Speaker of the House of Representatives by May 15  
2 of the year in which the appointment is to be made  
3 of the name of the person ~~he~~ the Governor is  
4 submitting to the General Assembly for  
5 confirmation.
- 6 (3d) Notwithstanding any other provision of law,  
7 whenever a statute calls for the Governor to  
8 appoint a person to an office subject to  
9 confirmation by the Senate, the Governor shall  
10 notify the President of the Senate by May 15 of the  
11 year in which the appointment is to be made of the  
12 name of the person ~~he~~ the Governor is submitting to  
13 the General Assembly for confirmation.
- 14 (4) ~~He is~~ To be the sole official organ between the  
15 government of this State and other states, or the  
16 government of the United States.
- 17 (5) ~~He has~~ To have the custody of the great seal of the  
18 State.
- 19 (6) If ~~he~~ the Governor be apprised by the affidavits of  
20 two responsible citizens of the State that there is  
21 imminent danger that the statute of this State  
22 forbidding prizefighting is about to be violated,  
23 ~~he~~ the Governor shall use, as far as necessary, the  
24 civil and military power of the State to prevent  
25 it, and to have the offenders arrested and bound to  
26 keep the peace.
- 27 (7) (~~Repealed effective July 1, 1999~~) He shall annually  
28 appoint eight members to the board of directors of  
29 the North Carolina Railroad, who shall serve for  
30 one year until the next annual meeting of  
31 stockholders held for the purpose of electing or  
32 naming directors.
- 33 (8) In carrying out ~~his~~ ex officio duties, ~~he is~~  
34 ~~authorized~~ to designate ~~his~~ the Governor's personal  
35 representative to attend meetings and to act in ~~his~~  
36 the Governor's behalf as ~~he~~ the Governor directs.
- 37 (9) ~~He is authorized to~~ To appoint such personal staff  
38 as ~~he~~ the Governor deems necessary to carry out  
39 effectively the responsibilities of ~~his~~ the  
40 Governor's office.
- 41 (10) ~~He is hereby empowered to~~ To contract in behalf of  
42 the State with the government of the United States  
43 to the extent allowed by the laws of North Carolina  
44 for the purpose of securing the benefits available

1 to this State under the Federal Highway Safety Act  
2 of 1966. To that end, ~~he~~ the Governor shall  
3 coordinate the activities of any and all  
4 departments and agencies of this State and its  
5 subdivisions relating thereto.

6 (11) Upon being furnished information from law-  
7 enforcement officers that public roads or highways  
8 or other public vehicular areas, as defined in G.S.  
9 20-4.01, are being blocked by privately owned and  
10 operated vehicles or by any other means, thereby  
11 impeding the free flow of goods and merchandise in  
12 North Carolina, ~~he,~~ if such information warrants,  
13 ~~is authorized~~ to declare that a state of emergency  
14 exists in the affected area, and ~~is further~~  
15 ~~authorized~~ to order that the Highway Patrol and/or  
16 national guard remove the offending vehicles or  
17 other causes of the blockade from the emergency  
18 area.

19 (12) To name and locate State government buildings,  
20 monuments, memorials, and improvements, as provided  
21 by G.S. 143B-373(1).

22 (13) To oversee and approve all memoranda of  
23 understanding and agreements between the State and  
24 foreign governments, as defined in G.S. 66-275(c),  
25 and international organizations. Any memoranda of  
26 understanding or agreements under this subsection  
27 to be signed on behalf of the State must first be  
28 approved by the Governor after review by the  
29 Attorney General, and after execution filed with  
30 the Secretary of State in accordance with G.S. 66-  
31 275."

32 Section 5. Within available appropriated funds, the  
33 Secretary of State shall provide information related to the  
34 existence of memoranda of understanding and agreements between  
35 state agencies and foreign governments obtained pursuant to this  
36 Act to the Joint Committee on Governmental Operations by March  
37 31, 2000.

38 Section 6. This act becomes effective July 1, 1999 and  
39 applies to memoranda and agreements executed on or after that  
40 date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE \_\_\_\_\_

S. B. No. 192 PCS 003

Amendment No. 1

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.) Foxx  
(Sen.) \_\_\_\_\_

1 moves to amend the bill on page 2, line 42

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORD "STATE" AND BY

4 SUBSTITUTING "STATE, ON BEHALF OF THE STATE,"

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

SIGNED Virginia Fox

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE \_\_\_\_\_

S. B. No. 192 - PCS003

Amendment No. 2

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.) KERR

(Sen.)

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

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING BETWEEN THE WORDS "FUNDS" AND

4 "RECEIVED" THE WORDS "AND GIFTS"; AND

5 \_\_\_\_\_

6 ON PAGE 3, LINE 5

7 BY INSERTING BETWEEN THE WORDS "AND" AND

8 "SHALL", THE WORDS "ALL FUNDS".

9 \_\_\_\_\_

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SIGNED [Signature]

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



# SENATE BILL 192: FILING OF FOREIGN AGREEMENTS

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** March 16, 1999  
**Version:** PCS for 1st Edition  
(S192-CSRU-003)

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

**SUMMARY:** *The Proposed Committee Substitute for Senate Bill 192 would require all State agencies entering into memoranda of understanding or agreements of a noncommercial nature with foreign governments to file a copy of these documents with the Secretary of State. The bill would also authorize the Secretary of State to offer international relations assistance to other governmental agencies and units and to publish required publications electronically. The bill would authorize the Secretary to accept contributions and grants to be spent on promoting international relations and hosting foreign dignitaries and leaders in North Carolina. Additionally the bill requires that all memoranda and understanding required to be filed under this bill be approved in advance by the Governor.*

**CURRENT LAW:** Under current law, memoranda of understanding and agreements entered by the State with foreign governments are kept by the agency executing the document on behalf of the State, and copies are not indexed or kept in any central location within State government.

**BILL ANALYSIS:** Section 1 of the proposed committee substitute for Senate Bill 192 would create a new Article in Chapter 66 to require that a copy of all executed memoranda of understanding and agreements of a noncommercial nature that are considered public documents under the public records law, entered into between the State, or an State agency, and a foreign government, be filed by the State agency with the Secretary of State. This section makes it clear that the failure to properly file a copy of the document with the Secretary of State does not affect the legal validity of the document. The Secretary is to index the filing and copies of the document will be available to the public as a public record. This section also defines what is a foreign government for purposes of this law. It also specifies that public education institutions are not state agencies for purposes of this section as it relates to their educational, research, or extension activities.

Section 2 amends the Secretary of State's publications requirements to permit the Secretary to publish electronically any information required to be published.

Section 3 adds a new section to the authority and responsibilities of the Secretary of State to authorize the Secretary to offer assistance in matters of international relations and protocol to other governmental agencies and units of the State when requested and when resources are available to provide this assistance. This section also allows the Secretary to accept contributions and grants and to spend these funds for the purpose of promoting international relations and for hosting foreign dignitaries and

# SENATE BILL 192

Page 2

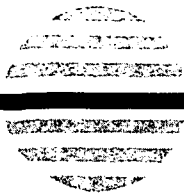
leaders while in North Carolina. These funds and their expenditure will be subject to audit and the Executive Budget Act.

Section 4 amends the Governor's powers and duties to require that the Governor preapprove, after review by the Attorney General, all memoranda of understanding between the State and foreign governments that are required to be filed by this bill.

Section 4 directs the Secretary of State to report to GovOps by March 31, 2000 on information related to the existence of this types of agreements.

**EFFECTIVE DATE:** The bill would become effective July 1, 1999 and would apply to memoranda and agreements executed on or after that date.

S192-SMRU-001



# International Visitors Council

Research Triangle, N.C. (Raleigh • Durham • Chapel Hill)

26 February, 1999

## *ARRIVALS LIST*

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### *March 4-5*

#### **Minister President and Economic Minister of Thuringia, Germany and Delegation State Government, Trade and Economic Development**

*Sheraton, Raleigh*

IVC is assisting the North Carolina Department of Commerce as it hosts the Minister President and Economic Minister of Thuringia, Germany, and their delegations. The group will meet with members of the executive branch of state government, representatives in trade and economic development at the state and local levels, and local resources in business and industry, focusing on the biotechnology industry.

### *March 4-9*

#### **American Municipal Government A Freedom Support Grant Project for Russia**

*Brownstone, Raleigh*

A group of Russian mayors and deputy mayors will study economic development and the structure of municipal government. The group will meet local government officials and economic development representatives. Participants will examine the city budget process, tax collection, and the financial relationship between city, county, state and federal governments.

*Home Hospitality requested*

### *March 10-14*

#### **Women in Leadership A Single Country Project for China**

*Brownstone, Raleigh*

A group of prominent Chinese women leaders in a variety of professional fields will visit the United States to further the dialogue between Chinese and American women leaders in government, politics, education and business. The focus of the program in the Triangle area will be women's legal rights and issues.

*Home Hospitality placed*

*March 11-14*

**Financial Journalism  
Individuals Traveling Together from India**  
*Brownstone, Raleigh*

Three financial journalists from India will broaden their knowledge of American political and economic issues, and gain a greater understanding of the role of financial journalists in explaining the overall economic agenda. The group will meet with representatives from the Department of Commerce, the Research Triangle Foundation, and the Dewitt Wallace Center for Communications and Journalism.

*Home Hospitality requested.*

*March 13-17*

**Foreign Service Nationals  
A USIA Multinational Training Project**  
*Brownstone, Raleigh*

Each year foreign service nationals (FSNs) at USIA (known overseas as USIS) overseas posts are invited to the United States for training. Eight participants from eight different countries will be involved in exchanges program training, including the International Visitor Program and the Fulbright Program. The participants will learn about the wealth of Triangle resources in state and local government, the American educational system, economics and trade, and diversity.

*Home Hospitality placed.*

*March 13-17*

**Legal Reform and Economic Development  
Individuals Traveling Together from Vietnam**  
*Brownstone, Raleigh*

Four individuals, two from Hanoi and two from Ho Chi Minh City, will explore the legal underpinnings of economic growth and development. The group will meet with legal scholars, economic development organizations, and representatives from state government responsible for regulation and oversight of the banking and finance industries.

*Home Hospitality placed*



*March 17-20*

**American Legal System  
A Freedom Support Grant for Ukraine  
*Brownstone, Raleigh***

A group of seven judges will examine criminal procedure in the United States legal system. The participants are legal experts who are drafting the Criminal Procedures of Ukraine, which will supplant the Soviet-era code currently in use in their country. In Research Triangle, they will have appointments with lawyers and judges within the county and State court system, and will also visit a state prison to have a first-hand look at policies, procedures and programs.

*Home Hospitality requested*

*March 17-20*

**Teaching and Faculty Development  
Oman  
*Hotel tbd***

Two educators from the Sultan Qaboos University's Center for Human Resources and Staff Development in Muscat, Oman will visit leading American universities, community colleges, and vocational training institutes in the field of teaching and faculty development.

*Home Hospitality requested*

*March 24-27*

**The Role of Government in Economic Development  
A Single Country Project for Montenegro (Yugoslav Federation of Serbia & Montenegro)  
*Hotel tbd***

Seven diplomats from Montenegro will examine the role of state and local government in attracting new business and industry, and in promoting trade with other countries. The visitors are interested in economic development programs and initiatives, and partnerships between government, business and academia for growth and development.

*Home Hospitality requested*

*April 4-7*

**Dr. Per Bill  
Eisenhower Fellow from Sweden  
*Brownstone, Raleigh***

Dr. Bill is a Member of Parliament who serves on the Standing Committee of Education. He has special responsibility for higher education, including research and information technology. In Research Triangle he will examine the business climate, focusing on best management practices in biotechnology, and factors influencing growth and development in information technology.

*Home Hospitality requested*

**WORLD TRADE CENTER NORTH CAROLINA**  
 Two Hannover Square, Suite 1200, 434 Fayetteville Street Mall  
 Raleigh, North Carolina 27601 USA  
 Tel. 919.743.0177 Fax. 919.743.0188 Web: [www.wtcnc.org](http://www.wtcnc.org)

### UPCOMING EVENTS

- March 11 *Investment Opportunities in Liaoning, China, 9:30 am - 2:00 pm (Includes lunch)*  
 Sheraton Capital Center, 421 S Salisbury Street, Raleigh. Vice Governor of Liaoning Province, North Carolina's sister state, leads delegation to meet biotech, computer, electronics, finance and infrastructure firms. Come learn more about export and partnership opportunities in China. Sponsored by North Carolina Department of Commerce - International Trade Division and WTCNC. Free.
- March 19 His Excellency Kobina Comson, Ambassador from Ghana, will present "Ghana: Gateway to Sub-Saharan Africa" from 9:00 to 10:30 am at the NC Biotechnology Center, 15 Alexander Drive, RTP. Call for registration information. WTCNC will host a press conference at the Raleigh office, Suite 1200, Two Hannover, at 2:15 p.m.
- March 24 *Executive Luncheon on India with Honorable T.P. Sreenivasan, Deputy Chief of Mission, Embassy of India, from 11:30 am to 1:30 pm at the Embassy Suites Hotel, 201 Harrison Oaks Boulevard, Cary, N.C. Cost is \$25 for WTCNC members/\$30 non-members. Please reserve by March 22.*
- April 7 *"Doing Business In Japan" Conference, 7:30 am - 12:00, Maurice J. Koury Auditorium, The McColl Building, Kenan-Flagler Business School, University of North Carolina at Chapel Hill. Designed to provide a nuts-and-bolts approach to taking full advantage of current business opportunities in the Japanese market. \$40 per person. Sponsored by N.C. Japan Center, Global Center, Council for Entrepreneurial Development, N.C. Dept. of Commerce, N.C. Dept. of Agriculture, WTCNC*
- April 15 *Executive Luncheon on Vietnam. Invited U.S. Ambassador Brian Peterson. Carolina Inn, Chapel Hill, N.C. Co-sponsored with Kenan Institute of Private Enterprise. Call for information.*
- April 29 *Electronic Commerce in International Trade: A Conference and Dialogue on Increasing Global Sales Through Electronic Commerce. 8 am - 1:30 pm at the Kenan Institute of Private Enterprise, Chapel Hill, N.C. The conference will feature presenters skilled in international internet marketing techniques, trade compliance, EDI, trade finance, and international market research. Sponsored by WTCNC and the U.S. Department of Commerce Export Assistance Center/Greensboro. \$65 members/\$85 for non-members, includes all conference materials, refreshments, and lunch. Call to register.*

Call (919) 743-0177 or fax (919) 743-0188 for registration and information.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 212

Short Title: Mortuary Science Changes.

(Public)

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Sponsors: Senator Rand.

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Referred to: Commerce.

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March 2, 1999

A BILL TO BE ENTITLED

1  
2 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH  
3 CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL  
4 ASSOCIATIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143B-472.2 reads as rewritten:

7 "**§ 143B-472.2. Duties of Board; meetings.**

8 It shall be the duty of the North Carolina Board of Mortuary Science to supervise,  
9 pursuant to this Article, all burial associations authorized by this Article to operate in  
10 North Carolina, to determine that such associations are operated in conformity with  
11 this Article and the rules adopted pursuant to this Article; to ~~assist the Board of~~  
12 ~~Mortuary Science with prosecution of~~ prosecute violations of this Article or rules  
13 adopted pursuant thereto; and to protect the interest of members of mutual burial  
14 associations.

15 The North Carolina Board of Mortuary Science, after a public hearing, may  
16 promulgate reasonable rules and regulations for the enforcement of this Article and  
17 in order to carry out the intent thereof. The Board is authorized and directed to  
18 adopt specific rules to provide for the orderly transfer of a member's benefits in cash  
19 or merchandise and services from the funeral director sponsoring the member's  
20 association to the funeral establishment which furnishes a funeral service, or  
21 merchandise, or both, for the burial of the member, provided that any funeral  
22 establishment to which the member's benefits are transferred in accordance with such  
23 rules shall, if located in North Carolina, be a funeral establishment registered and  
24 permitted under the provisions of G.S. 90-210.25 or shall, if located in any other

1 state, territory or foreign country, be a funeral establishment recognized by and  
2 operating in conformity with the laws of such other state, territory or foreign country.  
3 One or more burial associations operating in North Carolina may merge into another  
4 burial association operating in North Carolina and two or more burial associations  
5 operating in North Carolina may consolidate into a new burial association provided  
6 that any such plan of merger or plan of consolidation shall be adopted and carried  
7 out in accordance with rules adopted by the Board pursuant to this Article.

8 All rules heretofore adopted by the North Carolina Mutual Burial Association  
9 Commission or the North Carolina Board of Mortuary Science in accordance with  
10 prior law and which have not been amended, rescinded, revoked or otherwise  
11 changed, or which have not been nullified or made inoperative or unenforceable  
12 because of any statute enacted after the adoption of any such rule, shall remain in full  
13 force and effect until amended, rescinded, revoked or otherwise changed by action of  
14 the North Carolina Board of Mortuary Science as set out above, or until nullified or  
15 made inoperative or unenforceable because of statutory enactment or court decision.

16 Members of the Board shall receive, when attending such regular or special  
17 meetings such per diem, expense allowance and travel allowance as are allowed other  
18 commissions and boards of the State. The legal adviser to the Board shall be entitled  
19 to actual expenses when attending regular or special meetings of the Board held other  
20 than in Raleigh. All expenses of the Board shall be paid from funds coming to the  
21 Board pursuant to this Article or appropriated for this purpose."

22 Section 2. Article 4 of G.S. 143B-472.3 reads as rewritten:

23 "Article 4. The annual meeting of the association shall be held at ..... (here  
24 insert the place, date and hour); each member shall have one vote at said annual  
25 meeting and 15 members of the association shall constitute a quorum. There shall be  
26 elected at the annual meeting of said association a board of directors of seven  
27 members, each of whom shall serve for a period of from one to five years as the  
28 membership may determine and until his or her successor shall have been elected  
29 and qualified. Any member of the board of directors who shall fail to maintain his or  
30 her membership, as provided in the rules and bylaws of said association, shall cease  
31 to be a member of the board of directors and a director shall be appointed by the  
32 president of said association for the unexpired term of such disqualified member.  
33 There shall be at least an annual meeting of the board of directors, and such meeting  
34 shall be held immediately following the annual meeting of the membership of the  
35 association. The directors of the association may, by a majority vote, hold other  
36 meetings of which notice shall be given to each member by mailing such notice five  
37 days before the meeting to be held. At the annual meetings of the directors of the  
38 association, the board of directors shall elect a president, a vice-president, and a  
39 secretary-treasurer. The president and vice-president shall be elected from among the  
40 directors, but the secretary-treasurer may be selected from the director membership  
41 or from the membership of the association, it being provided that it is not necessary  
42 that the secretary-treasurer shall be a member of the board of directors. Among other  
43 duties that the secretary-treasurer may perform, he shall be chargeable with keeping  
44 an accurate and faithful roll of the membership of this association at all times and he

1 shall be chargeable with the duty of faithfully preserving and faithfully applying all  
2 moneys coming into his hands by virtue of his said office. The president, vice-  
3 president and secretary-treasurer shall constitute a board of control who shall direct  
4 the affairs of the association in accordance with these Articles and bylaws of the  
5 association, and subject to such modification as may be made or authorized by an act  
6 of the General Assembly. The secretary-treasurer shall keep a record of all  
7 assessments made, dues collected and benefits paid. The books of the association,  
8 together with all records and bank accounts shall be at all times open to the  
9 inspection of the Board of Mortuary Science or its duly constituted auditors or  
10 representatives. It shall be the duty of the secretary or secretary-treasurer of each  
11 association to keep the books of the association posted up-to-date so that the financial  
12 standing of the association may be readily ascertained by the Board of Mortuary  
13 Science or any auditor or representative employed by it. ~~Upon the failure of any~~  
14 ~~secretary or secretary-treasurer to comply with this provision, it shall be the duty of~~  
15 ~~the Board of Mortuary Science to take charge of the books of the association and do~~  
16 ~~whatever work is necessary to bring the books up to date. The actual costs of said~~  
17 ~~work may be charged the burial association and shall be paid from the thirty percent~~  
18 ~~(30%) allowed by law for the operation of the burial association.~~

19 Whenever in the opinion of the Board of Mortuary Science, it is necessary to audit  
20 the books of any burial association more than once in any calendar year, the Board of  
21 Mortuary Science shall have authority to assess such burial association the actual cost  
22 of any audit in excess of one per calendar year, provided that no more than one audit  
23 may be deemed necessary unless a discrepancy exists at the last regular audit. Such  
24 cost shall be paid from the thirty percent (30%) allowed by law for the operation of  
25 the burial association.

26 Every burial association shall file with the Board of Mortuary Science an annual  
27 report of its financial condition on a form furnished to it by the Board of Mortuary  
28 Science. Such report shall be certified by an accountant who is certified in this State  
29 under Chapter 93 of the General Statutes. The burial association shall be responsible  
30 for paying the cost of the certification. The report shall be filed on or before  
31 February 15 of each calendar year and shall cover the complete financial condition of  
32 the burial association for the immediate preceding calendar year. The Board of  
33 Mortuary Science shall levy and collect a penalty of twenty-five dollars (\$25.00) for  
34 each day after February 15 that the report called for herein is not filed. The Board  
35 may, in its discretion, grant any reasonable extension of the above filing date without  
36 the penalty provided in this section. Such penalty shall be paid from the thirty  
37 percent (30%) allowed by law for the operation of the burial association. Any  
38 secretary or secretary-treasurer who fails to file such financial report on or before  
39 February 15 of each calendar year or on or before the last day of any period of  
40 extension for the filing of such report granted by the Board to the burial association  
41 of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each  
42 day after February 15, or the last day of any period of extension for the filing of the  
43 report granted by the Board to the burial association of such secretary or secretary-

1 treasurer, that said report is not filed by the secretary or secretary-treasurer of a  
2 burial association, shall constitute a separate offense."

3 Section 3. Article 10 of G.S. 143B-472.3 reads as rewritten:

4 "Article 10. It is understood and stipulated that the benefits provided for shall be  
5 payable only to a funeral establishment which provides a funeral service for a  
6 deceased member and which, if located in North Carolina, is a funeral establishment  
7 registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or which, if located in any  
8 other state, territory or foreign country, is a funeral establishment recognized by and  
9 operating in conformity with the laws of such other state, territory or foreign country.  
10 Upon the death of any member, it shall be the duty of the person or persons making  
11 the funeral arrangements for such deceased member to notify the secretary of the  
12 member's burial association of the death of such member. The person or persons  
13 making the funeral arrangements for such deceased member shall have 30 days from  
14 the date of the death of such member in which to make demand upon the burial  
15 association for the funeral benefits to which such member is entitled.

16 The benefits provided for are to be paid by the burial association to the funeral  
17 director providing such funeral and burial service either in cash or in merchandise  
18 and service as elected by the person or persons making the funeral arrangements for  
19 such deceased member. If the burial association shall fail, on demand, to provide the  
20 benefits to which the deceased member was entitled to the funeral establishment  
21 which provided the funeral service for the deceased member, then the benefits shall  
22 be paid in cash to the representative of the deceased member qualified under law to  
23 receive such benefits."

24 Section 4. Part 13 of Article 10 of Chapter 143B is amended by adding  
25 the following new section:

26 "§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial  
27 associations.

28 (a) Any insurance company which desires to purchase the assets of or to merge  
29 with a burial association as provided in G.S. 143B-472.28 shall submit to the Board of  
30 Mortuary Science and to the secretary of the association a written proposal  
31 containing the terms and conditions of the proposed purchase or merger. A proposal  
32 may be conditioned upon an increase in the assessments of an association in the  
33 manner set out in subsection (g) of this section. In such a case, the issues of purchase  
34 or merger and an increase in assessments may be considered at the same meeting of  
35 the association.

36 (b) Upon receipt of a written proposal:

37 (1) The Board shall issue an order directing the association to hold a  
38 meeting of the membership within 30 days following receipt of the  
39 order for the purpose of voting on the proposal.

40 (2) Within 10 days of receiving the order from the Board, the  
41 association shall give at least 10 days' written notice of the meeting  
42 to each of its members. The notice shall:

43 a. State the date, time, and place of the meeting.

44 b. State the purpose of the meeting.

1                   c.    Contain or have attached the proposal submitted by the  
2                            insurance company.

3                   d.    Contain a statement limiting the time that each member will  
4                            be permitted to speak to the proposal, if the association  
5                            deems it advisable.

6           (c) A representative of the insurance company shall be permitted to attend the  
7 meeting held by the association for the purposes of explaining the proposal and  
8 answering any questions from the members. The officers of the association may  
9 present their views concerning the proposal. Any member of the association who  
10 wishes to speak to the proposal shall be permitted to do so subject to any time  
11 limitation stated in the notice of the meeting.

12           (d) The secretary of the association shall record the name of every member who is  
13 present at the meeting and shall determine whether there is a quorum. The presence  
14 of 15 paid-up members or fifteen percent (15%) of the paid-up membership,  
15 whichever is less, shall constitute a quorum. Acceptance or rejection of the proposal  
16 shall be by majority vote of the members present and voting. Any paid-up member  
17 who is at least 18 years of age shall be permitted to vote. A parent or guardian of  
18 any member who is under 18 years of age may vote on behalf of his or her child or  
19 ward, but only one vote may be cast on behalf of that member.

20           (e) The secretary of the association shall certify the result of the vote and the  
21 presence of a quorum to the Board within five days following the meeting and shall  
22 include with the certification a copy of the notice of the meeting that was sent to the  
23 members of the association.

24           (f) The Board shall immediately review the certification, the notice, and any other  
25 records that may be necessary to determine the adequacy of notice, the presence of a  
26 quorum, and the validity of the vote. Upon determining that the meeting and vote  
27 were regular and held following proper notice and that a majority of a quorum of the  
28 paid-up members voted in favor of the proposal, the Board shall issue an order  
29 approving the purchase or merger and directing that the purchase or merger proceed  
30 in accordance with the proposal.

31           (g) Any burial association whose current assessments are not, or are unlikely to be  
32 within the next three years, adequate to reach or maintain a reserve of at least  
33 twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements  
34 of a proposal from an insurance company to acquire the assets of or to merge with  
35 the association may increase its assessments by an amount necessary to reach and  
36 maintain the reserve or to meet the proposal. The increase shall be approved by a  
37 vote of the members of the association at a regular meeting of the association or at a  
38 special meeting called for the purpose of increasing assessments.

39                   (1) Any officer or director of the association may call a special  
40 meeting for the purpose of increasing assessments, and the  
41 secretary shall call a special meeting for such purpose upon the  
42 request of at least ten percent (10%) of the members or upon  
43 receipt of a proposal from an insurance company that is  
44 conditioned upon an increase in assessments.

1           (2) Written notice setting out the date, time, place, and the purpose of  
2 the meeting shall be hand delivered or sent by first-class mail,  
3 postage prepaid, to the last known address of each member of the  
4 association at least 10 days in advance of the meeting.

5           (3) No vote may be had on the question of an increase in assessments  
6 unless a quorum of the paid-up members of the association is  
7 present at the meeting. A quorum shall be conclusively presumed  
8 if 15 paid-up members or fifteen percent (15%) of the paid-up  
9 membership of the association, whichever is less, is present at the  
10 meeting.

11           (4) The proposal to increase the assessments shall be approved by an  
12 affirmative vote of a simple majority of the paid-up members  
13 present and voting.

14           (5) The secretary of the association within five days following the  
15 meeting shall certify the result of the vote and the presence of a  
16 quorum to the Board in the manner and for the purposes set out in  
17 subsections (e) and (f) of this section.

18           (h) Every association shall submit to the Board on or before June 1, 2000, and  
19 thereafter as may be required by the Board, but not more frequently than once each  
20 calendar year, a written report of financial soundness prepared by a qualified actuary.  
21 The report shall indicate the adequacy of reserves and other items to pay current and  
22 future claims of deceased members and shall reflect a consideration of the following:

23           (1) The current number of members of the association.

24           (2) The age of the members.

25           (3) The sex of the members.

26           (4) The amount of the association's annual assessments.

27           (5) The amount of the association's current reserves.

28           (6) The projected amount of the association's reserves for each of the  
29 next three years.

30           (7) The net gain in membership of the association during the  
31 preceding three years.

32           (8) The projected net gain in membership of the association for each  
33 of the next three years.

34           (9) The association's current liability for benefits to its members.

35           (10) The association's projected net liability for benefits to its members  
36 for each of the next three years.

37           (i) Upon a written request from an association that has held a valid meeting and  
38 vote for voluntary dissolution in accordance with G.S. 143B-472.3, the Board shall  
39 issue an order of liquidation for that association. The Board shall issue an order of  
40 liquidation to every association that has not been acquired by or merged with an  
41 insurance company if the association is not financially sound on June 1, 2001, as  
42 shown by the actuary's report required in subsection (h) of this section. The Board's  
43 order may direct that all members in good standing be transferred to a financially  
44 sound association as well as all records, property, and unexpended balances of funds



1 of the association to be liquidated, if the financially sound association agrees in  
2 writing to accept the transfer. The order shall direct the association to complete the  
3 liquidation and to file a final report with the Board no later than December 31, 2001.  
4 If the transfer of members cannot be accomplished, the association, upon receipt of  
5 an order of liquidation, shall:

- 6 (1) Cease accepting new members.
- 7 (2) Collect all debts owed to the association and pay all debts owed by  
8 the association from monies on hand, including the reserve.
- 9 (3) Distribute any remaining monies on hand and in the reserve pro  
10 rata among those who were members of the association on the date  
11 the liquidation order was issued by the Board. Each member's  
12 distributive share shall be determined by dividing the amount of  
13 that member's benefit by the aggregate benefits of all members of  
14 the association and then multiplying the total amount of money  
15 available for distribution by the percentage so derived.  
16 Assessments owed by the members to the association at the time of  
17 distribution shall be taken into account and shall be offset against  
18 the members' distributive shares.
- 19 (4) Issue a certificate to members in an amount that equals the  
20 difference between the distributive share issued in subdivision (3)  
21 of this subsection and the full amount of the member's association  
22 benefit. Any certificate issued shall supersede and supplant any  
23 other certificate already issued by the association. The certificate  
24 shall be on a form prescribed by the Board and shall be prepared  
25 and distributed by the association at its expense.
- 26 (5) File a final report with the Board on or before December 31, 2001,  
27 which shall show all receipts and disbursements, including the  
28 amount distributed to each member, since the last annual report of  
29 the association was filed with the Board.

30 (j) A certificate issued under subsection (i) of this section may be used as a credit  
31 toward the cost of funeral services, facilities, and merchandise at any funeral  
32 establishment that agrees on forms prescribed by the Board to accept such  
33 certificates. A funeral establishment that agrees to accept certificates shall do so until  
34 the agreement with the Board expires. The Board shall maintain and distribute to  
35 the public a list of funeral establishments that will accept certificates.

36 (k) If after June 1, 2001, the Board determines, upon receipt of a written report  
37 submitted by an association under subsection (h) of this section, that an association is  
38 no longer financially sound, the Board shall issue an order of liquidation, and the  
39 association shall comply with such order in the manner prescribed in subsection (i) of  
40 this section.

41 (l) The Board shall immediately review the final report filed pursuant to  
42 subdivision (i)(5) of this section and shall notify the association whether the report  
43 has been accepted. All licenses issued to soliciting agents of the association pursuant  
44 to G.S. 143B-472.4 and the written authority to operate issued to the association

1 pursuant to G.S. 143B-472.6 are automatically canceled upon acceptance of the final  
2 report by the Board.

3 (m) No new association may be authorized, organized, or licensed on or after  
4 January 1, 2000, but associations existing on that date may merge or consolidate as  
5 provided in G.S. 143B-472.2 and G.S. 143B-472.28."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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D

S212-CSSK-001  
PROPOSED COMMITTEE SUBSTITUTE  
SENATE BILL 212

THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Mortuary Science Changes.

(Public)

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Sponsors:

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Referred to:

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March 2, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA  
3 BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 143B-472.2 reads as rewritten:  
6 "§ 143B-472.2. Duties of Board; meetings.  
7 It shall be the duty of the North Carolina Board of Mortuary  
8 Science to supervise, pursuant to this Article, all burial  
9 associations authorized by this Article to operate in North  
10 Carolina, to determine that such associations are operated in  
11 conformity with this Article and the rules adopted pursuant to  
12 this Article; to ~~assist the Board of Mortuary Science with~~  
13 ~~prosecution of~~ prosecute violations of this Article or rules  
14 adopted pursuant thereto; and to protect the interest of members  
15 of mutual burial associations.  
16 The North Carolina Board of Mortuary Science, after a public  
17 hearing, may promulgate reasonable rules and regulations for the  
18 enforcement of this Article and in order to carry out the intent  
19 thereof. The Board is authorized and directed to adopt specific  
20 rules to provide for the orderly transfer of a member's benefits  
21 in cash or merchandise and services from the funeral director

1 sponsoring the member's association to the funeral establishment  
2 which furnishes a funeral service, or merchandise, or both, for  
3 the burial of the member, provided that any funeral establishment  
4 to which the member's benefits are transferred in accordance with  
5 such rules shall, if located in North Carolina, be a funeral  
6 establishment registered and permitted under the provisions of  
7 G.S. 90-210.25 or shall, if located in any other state, territory  
8 or foreign country, be a funeral establishment recognized by and  
9 operating in conformity with the laws of such other state,  
10 territory or foreign country. One or more burial associations  
11 operating in North Carolina may merge into another burial  
12 association operating in North Carolina and two or more burial  
13 associations operating in North Carolina may consolidate into a  
14 new burial association provided that any such plan of merger or  
15 plan of consolidation shall be adopted and carried out in  
16 accordance with rules adopted by the Board pursuant to this  
17 Article.

18 All rules heretofore adopted by the North Carolina Mutual  
19 Burial Association Commission or the North Carolina Board of  
20 Mortuary Science in accordance with prior law and which have not  
21 been amended, rescinded, revoked or otherwise changed, or which  
22 have not been nullified or made inoperative or unenforceable  
23 because of any statute enacted after the adoption of any such  
24 rule, shall remain in full force and effect until amended,  
25 rescinded, revoked or otherwise changed by action of the North  
26 Carolina Board of Mortuary Science as set out above, or until  
27 nullified or made inoperative or unenforceable because of  
28 statutory enactment or court decision.

29 Members of the Board shall receive, when attending such regular  
30 or special meetings such per diem, expense allowance and travel  
31 allowance as are allowed other commissions and boards of the  
32 State. The legal adviser to the Board shall be entitled to actual  
33 expenses when attending regular or special meetings of the Board  
34 held other than in Raleigh. All expenses of the Board shall be  
35 paid from funds coming to the Board pursuant to this Article or  
36 appropriated for this purpose."

37 Section 2. Article 4 of G.S. 143B-472.3 reads as  
38 rewritten:

39 "Article 4. The annual meeting of the association shall be held  
40 at ..... (here insert the place, date and hour); each  
41 member shall have one vote at said annual meeting and 15 members  
42 of the association shall constitute a quorum. There shall be  
43 elected at the annual meeting of said association a board of  
44 directors of seven members, each of whom shall serve for a period

1 of from one to five years as the membership may determine and  
2 until his or her successor shall have been elected and qualified.  
3 Any member of the board of directors who shall fail to maintain  
4 his or her membership, as provided in the rules and bylaws of  
5 said association, shall cease to be a member of the board of  
6 directors and a director shall be appointed by the president of  
7 said association for the unexpired term of such disqualified  
8 member. There shall be at least an annual meeting of the board of  
9 directors, and such meeting shall be held immediately following  
10 the annual meeting of the membership of the association. The  
11 directors of the association may, by a majority vote, hold other  
12 meetings of which notice shall be given to each member by mailing  
13 such notice five days before the meeting to be held. At the  
14 annual meetings of the directors of the association, the board of  
15 directors shall elect a president, a vice-president, and a  
16 secretary-treasurer. The president and vice-president shall be  
17 elected from among the directors, but the secretary-treasurer may  
18 be selected from the director membership or from the membership  
19 of the association, it being provided that it is not necessary  
20 that the secretary-treasurer shall be a member of the board of  
21 directors. Among other duties that the secretary-treasurer may  
22 perform, he shall be chargeable with keeping an accurate and  
23 faithful roll of the membership of this association at all times  
24 and he shall be chargeable with the duty of faithfully preserving  
25 and faithfully applying all moneys coming into his hands by  
26 virtue of his said office. The president, vice-president and  
27 secretary-treasurer shall constitute a board of control who shall  
28 direct the affairs of the association in accordance with these  
29 Articles and bylaws of the association, and subject to such  
30 modification as may be made or authorized by an act of the  
31 General Assembly. The secretary-treasurer shall keep a record of  
32 all assessments made, dues collected and benefits paid. The books  
33 of the association, together with all records and bank accounts  
34 shall be at all times open to the inspection of the Board of  
35 Mortuary Science or its duly constituted auditors or  
36 representatives. It shall be the duty of the secretary or  
37 secretary-treasurer of each association to keep the books of the  
38 association posted up-to-date so that the financial standing of  
39 the association may be readily ascertained by the Board of  
40 Mortuary Science or any auditor or representative employed by it.  
41 ~~Upon the failure of any secretary or secretary-treasurer to~~  
42 ~~comply with this provision, it shall be the duty of the Board of~~  
43 ~~Mortuary Science to take charge of the books of the association~~  
44 ~~and do whatever work is necessary to bring the books up-to-date.~~

~~1 The actual costs of said work may be charged the burial  
2 association and shall be paid from the thirty percent (30%)  
3 allowed by law for the operation of the burial association.~~

4 Whenever in the opinion of the Board of Mortuary Science, it is  
5 necessary to audit the books of any burial association more than  
6 once in any calendar year, the Board of Mortuary Science shall  
7 have authority to assess such burial association the actual cost  
8 of any audit in excess of one per calendar year, provided that no  
9 more than one audit may be deemed necessary unless a discrepancy  
10 exists at the last regular audit. Such cost shall be paid from  
11 the thirty percent (30%) allowed by law for the operation of the  
12 burial association.

13 Every burial association shall file with the Board of Mortuary  
14 Science an annual report of its financial condition on a form  
15 furnished to it by the Board of Mortuary Science. Such report  
16 shall be certified by an accountant who is certified in this  
17 State under Chapter 93 of the General Statutes. The burial  
18 association shall be responsible for paying the cost of the  
19 certification. The report shall be filed on or before February  
20 15 of each calendar year and shall cover the complete financial  
21 condition of the burial association for the immediate preceding  
22 calendar year. The Board of Mortuary Science shall levy and  
23 collect a penalty of twenty-five dollars (\$25.00) for each day  
24 after February 15 that the report called for herein is not filed.  
25 The Board may, in its discretion, grant any reasonable extension  
26 of the above filing date without the penalty provided in this  
27 section. Such penalty shall be paid from the thirty percent (30%)  
28 allowed by law for the operation of the burial association. Any  
29 secretary or secretary-treasurer who fails to file such financial  
30 report on or before February 15 of each calendar year or on or  
31 before the last day of any period of extension for the filing of  
32 such report granted by the Board to the burial association of  
33 such secretary or secretary-treasurer shall be guilty of a Class  
34 3 misdemeanor. Each day after February 15, or the last day of any  
35 period of extension for the filing of the report granted by the  
36 Board to the burial association of such secretary or secretary-  
37 treasurer, that said report is not filed by the secretary or  
38 secretary-treasurer of a burial association, shall constitute a  
39 separate offense."

40 Section 3. Article 10 of G.S. 143B-472.3 reads as  
41 rewritten:

42 "Article 10. It is understood and stipulated that the benefits  
43 provided for shall be payable only to a funeral establishment  
44 which provides a funeral service for a deceased member and which,

1 if located in North Carolina, is a funeral establishment  
2 registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or  
3 which, if located in any other state, territory or foreign  
4 country, is a funeral establishment recognized by and operating  
5 in conformity with the laws of such other state, territory or  
6 foreign country. Upon the death of any member, it shall be the  
7 duty of the person or persons making the funeral arrangements for  
8 such deceased member to notify the secretary of the member's  
9 burial association of the death of such member. The person or  
10 persons making the funeral arrangements for such deceased member  
11 shall have 30 days from the date of the death of such member in  
12 which to make demand upon the burial association for the funeral  
13 benefits to which such member is entitled.

14 The benefits provided for are to be paid by the burial  
15 association to the funeral director providing such funeral and  
16 burial service either in cash or in merchandise and service as  
17 elected by the person or persons making the funeral arrangements  
18 for such deceased member. If the burial association shall fail,  
19 on demand, to provide the benefits to which the deceased member  
20 was entitled to the funeral establishment which provided the  
21 funeral service for the deceased member, then the benefits shall  
22 be paid in cash to the representative of the deceased member  
23 qualified under law to receive such benefits."

24 Section 4. Part 13 of Article 10 of Chapter 143B is  
25 amended by adding the following new section:

26 "§ 143B-472.29. Acquisition, merger, dissolution, and  
27 liquidation of mutual burial associations.

28 (a) Any insurance company which desires to purchase the assets  
29 of or to merge with a burial association as provided in G.S.  
30 143B-472.28 shall submit to the Board of Mortuary Science and to  
31 the secretary of the association a written proposal containing  
32 the terms and conditions of the proposed purchase or merger. A  
33 proposal may be conditioned upon an increase in the assessments  
34 of an association in the manner set out in subsection (g) of this  
35 section. In such a case, the issues of purchase or merger and an  
36 increase in assessments may be considered at the same meeting of  
37 the association.

38 (b) Upon receipt of a written proposal:

39 (1) The Board shall issue an order directing the  
40 association to hold a meeting of the membership  
41 within 30 days following receipt of the order for  
42 the purpose of voting on the proposal.

43 (2) Within 10 days of receiving the order from the  
44 Board, the association shall give at least 10 days'

- 1 written notice of the meeting to each of its  
2 members. The notice shall:
- 3 a. State the date, time, and place of the  
4 meeting.
- 5 b. State the purpose of the meeting.
- 6 c. Contain or have attached the proposal  
7 submitted by the insurance company.
- 8 d. Contain a statement limiting the time that  
9 each member will be permitted to speak to the  
10 proposal, if the association deems it  
11 advisable.
- 12 (c) A representative of the insurance company shall be  
13 permitted to attend the meeting held by the association for the  
14 purposes of explaining the proposal and answering any questions  
15 from the members. The officers of the association may present  
16 their views concerning the proposal. Any member of the  
17 association who wishes to speak to the proposal shall be  
18 permitted to do so subject to any time limitation stated in the  
19 notice of the meeting.
- 20 (d) The secretary of the association shall record the name of  
21 every member who is present at the meeting and shall determine  
22 whether there is a quorum. The presence of 15 members or ten  
23 percent (10%) of the membership, whichever is greater, shall  
24 constitute a quorum. Acceptance or rejection of the proposal  
25 shall be by majority vote of the members present and voting. Any  
26 member who is at least 18 years of age shall be permitted to  
27 vote. A parent or guardian of any member who is under 18 years  
28 of age may vote on behalf of his or her child or ward, but only  
29 one vote may be cast on behalf of that member.
- 30 (e) The secretary of the association shall certify the result  
31 of the vote and the presence of a quorum to the Board within five  
32 days following the meeting and shall include with the  
33 certification a copy of the notice of the meeting that was sent  
34 to the members of the association.
- 35 (f) The Board shall immediately review the certification, the  
36 notice, and any other records that may be necessary to determine  
37 the adequacy of notice, the presence of a quorum, and the  
38 validity of the vote. Upon determining that the meeting and vote  
39 were regular and held following proper notice and that a majority  
40 of a quorum of the members voted in favor of the proposal, the  
41 Board shall issue an order approving the purchase or merger and  
42 directing that the purchase or merger proceed in accordance with  
43 the proposal.



1 (g) Any burial association whose current assessments are not,  
2 or are unlikely to be within the next three years, adequate to  
3 reach or maintain a reserve of at least twenty-one dollars  
4 (\$21.00) per member or are inadequate to meet the requirements of  
5 a proposal from an insurance company to acquire the assets of or  
6 to merge with the association may increase its assessments by an  
7 amount necessary to reach and maintain the reserve or to meet the  
8 proposal. The increase shall be approved by a vote of the members  
9 of the association at a regular meeting of the association or at  
10 a special meeting called for the purpose of increasing  
11 assessments.

12 (1) Any officer or director of the association may call  
13 a special meeting for the purpose of increasing  
14 assessments, and the secretary shall call a special  
15 meeting for such purpose upon the request of at  
16 least ten percent (10%) of the members or upon  
17 receipt of a proposal from an insurance company  
18 that is conditioned upon an increase in  
19 assessments.

20 (2) Written notice setting out the date, time, place,  
21 and the purpose of the meeting shall be hand  
22 delivered or sent by first-class mail, postage  
23 prepaid, to the last known address of each member  
24 of the association at least 10 days in advance of  
25 the meeting.

26 (3) No vote may be had on the question of an increase  
27 in assessments unless a quorum of the members of  
28 the association is present at the meeting. A  
29 quorum shall be conclusively presumed if 15 members  
30 or ten percent (10%) of the membership of the  
31 association, whichever is greater, is present at  
32 the meeting.

33 (4) The proposal to increase the assessments shall be  
34 approved by an affirmative vote of a majority of  
35 the members present and voting.

36 (5) The secretary of the association within five days  
37 following the meeting shall certify the result of  
38 the vote and the presence of a quorum to the Board  
39 in the manner and for the purposes set out in  
40 subsections (e) and (f) of this section.

41 (h) Every association shall submit to the Board on or before  
42 June 1, 2000, and thereafter as may be required by the Board, but  
43 not more frequently than once each calendar year, a written  
44 report of financial soundness prepared by a qualified actuary.

1 The report shall indicate the adequacy of reserves and other  
2 items to pay current and future claims of deceased members and  
3 shall reflect a consideration of the following:

- 4       (1) The current number of members of the association.
- 5       (2) The age of the members.
- 6       (3) The sex of the members.
- 7       (4) The amount of the association's annual assessments.
- 8       (5) The amount of the association's current reserves.
- 9       (6) The projected amount of the association's reserves  
10       for each of the next three years.
- 11       (7) The net gain in membership of the association  
12       during the preceding three years.
- 13       (8) The projected net gain in membership of the  
14       association for each of the next three years.
- 15       (9) The association's current liability for benefits to  
16       its members.
- 17       (10) The association's projected net liability for  
18       benefits to its members for each of the next three  
19       years.

20       (i) Upon a written request from an association that has held a  
21 valid meeting and vote for voluntary dissolution in accordance  
22 with G.S. 143B-472.3, the Board shall issue an order of  
23 liquidation for that association. The Board shall issue an order  
24 of liquidation to every association that has not been acquired by  
25 or merged with an insurance company if the association is not  
26 financially sound on June 1, 2001, as shown by the actuary's  
27 report required in subsection (h) of this section. The Board's  
28 order may direct that the agreements for members' benefits be  
29 transferred to a financially sound mutual burial association, as  
30 well as all records, property, and unexpended balances of funds  
31 of the association to be liquidated, if the financially sound  
32 mutual burial association agrees in writing to accept the  
33 transfer. The order shall direct the association to complete the  
34 liquidation and to file a final report with the Board no later  
35 than December 31, 2001. If the transfer of members cannot be  
36 accomplished, the association, upon receipt of an order of  
37 liquidation, shall:

- 38       (1) Cease accepting new members.
- 39       (2) Collect all debts owed to the association and pay  
40       all debts owed by the association from monies on  
41       hand, including the reserve.
- 42       (3) Distribute any remaining monies on hand and in the  
43       reserve pro rata among those who were members of  
44       the association on the date the liquidation order

- 1 was issued by the Board. Each member's distributive  
2 share shall be determined by dividing the amount of  
3 that member's benefit by the aggregate benefits of  
4 all members of the association and then multiplying  
5 the total amount of money available for  
6 distribution by the percentage so derived.  
7 Assessments owed by the members to the association  
8 at the time of distribution shall be taken into  
9 account and shall be offset against the members'  
10 distributive shares.
- 11 (4) Issue a certificate to members in an amount that  
12 equals the difference between the distributive  
13 share issued in subdivision (3) of this subsection  
14 and the full amount of the member's association  
15 benefit. Any certificate issued shall supersede  
16 and supplant any other certificate already issued  
17 by the association. The certificate shall be on a  
18 form prescribed by the Board and shall be prepared  
19 and distributed by the association at its expense.
- 20 (5) File a final report with the Board on or before  
21 December 31, 2001, which shall show all receipts  
22 and disbursements, including the amount distributed  
23 to each member, since the last annual report of the  
24 association was filed with the Board.
- 25 (j) A certificate issued under subsection (i) of this section  
26 may be used as a credit toward the cost of funeral services,  
27 facilities, and merchandise at any funeral establishment that  
28 agrees on forms prescribed by the Board to accept such  
29 certificates. A funeral establishment that agrees to accept  
30 certificates shall do so until the agreement with the Board  
31 expires. The Board shall maintain and distribute to the public a  
32 list of funeral establishments that will accept certificates.
- 33 (k) If after June 1, 2001, the Board determines, upon receipt  
34 of a written report submitted by an association under subsection  
35 (h) of this section, that an association is no longer financially  
36 sound, the Board shall issue an order of liquidation, and the  
37 association shall comply with such order in the manner prescribed  
38 in subsection (i) of this section.
- 39 (l) The Board shall immediately review the final report filed  
40 pursuant to subdivision (i)(5) of this section and shall notify  
41 the association whether the report has been accepted. All  
42 licenses issued to soliciting agents of the association pursuant  
43 to G.S. 143B-472.4 and the written authority to operate issued to

1 the association pursuant to G.S. 143B-472.6 are automatically  
2 canceled upon acceptance of the final report by the Board.

3 (m) No new association may be authorized, organized, or  
4 licensed on or after January 1, 2000, but associations existing  
5 on that date may merge or consolidate as provided in G.S. 143B-  
6 472.2 and G.S. 143B-472.28."

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

**To : Senator R. C. Soles, Jr.**

**From : Pilot Wilkerson Mutual Burial Association  
Dean Wilkerson, Secretary-Treasurer  
Tel 252-752-2101 - Fax 252-758-7974**

Total number of Pages 4 (including this cover sheet)

I attempted to send out emails to all members of the Commerce Committee, but I'm afraid something went wrong with the process and none of the email reached its destination. If it did, I apologize for the duplication.

Again I would like to request an opportunity to briefly make a position statement on Senate Bill 212 at the 11 am meeting on April 6. It was my belief that the Board of Mortuary Science was going to request a continuance of at least a week in order to prepare some amendments to this bill, but I learned today that it was still on as scheduled.

It has been difficult to inform other burial association operators about this legislation because of the Easter holiday and the short notice of this meeting. I have been successful in getting the word out to some degree and find that there is indeed opposition to this legislation as was clearly demonstrated at the September, 1997, public hearing.

Thank you for your consideration.

To: All members of the Commerce Committee

From: Dean Wilkerson, Secretary-Treasurer, Pilot-Wilkerson Mutual Funeral Association  
252-752-2101, 252-758-7974 (Fax)

Thank you for the opportunity of allowing me to speak at the committee meeting held Tuesday, March 30, concerning Senate Bill 212, Mortuary Science Changes.

The Burial Association Commission was established by an act of the General Assembly some 70 years ago. The concept of the mutual burial association was to collect a WHOLE LIFE PREMIUM from a member and then pay out a death benefit AT HIS OR HER DEATH. The initial death benefit was set at \$100 and at some point the General Assembly increased the maximum death payout to \$200. It is my understanding that the insurance lobby kept the death benefit at this low level since in effect the burial associations were in competition with insurance companies. The rates or premiums were set by the commission. Our average annual premium collected is around \$2.80 per person. The only way to accumulate \$200 for the death benefit payout is to EARN INTEREST ON THE RESERVES.

According to the information that I have, the number of burial associations peaked in 1970 when there were 393 burial associations. The membership peaked in 1951 when there were some 1,661,753 members. Now there are 112 associations with around 155,000 members. THE FACT IS THAT THE BURIAL ASSOCIATIONS ARE COLLECTIVELY IN THE BEST FINANCIAL SHAPE THAT THEY HAVE EVER BEEN IN. The problem is that some associations are in poor financial shape, but TO MY KNOWLEDGE, THERE HAS NEVER BEEN THE OCCURRENCE OF A MEMBER NOT RECEIVING A BENEFIT UPON HIS OR HER DEATH. This has been accomplished because the funeral home associated with the burial association has subsidized the costs of the burial association by giving the member credit for the \$200 on the funeral, but not paying the funeral home from the burial association.

This proposed legislation comes about after two public hearings in which the burial association operators were invited to attend. At the last meeting, according to the notes taken by the North Carolina Funeral Directors Association, the Ad Hoc Committee accepted the bank proposal and THE MOTION WAS MADE AND SECONDED TO PROCEED WITH THE LEGISLATION TO DRAFT THE BANK PROPOSAL, BUT NOW THERE IS NO MENTION OF THE BANK PROPOSAL. (The bank proposal was from First Citizen's Bank and would allow any bank to bid on becoming the trustee of all reserve funds. This would eliminate the requirement of paying out the reserve now to the members and allow interest to accumulate thereby reducing the costs of providing the certificates.) Burial association operators were not informed that the legislation was changed to delete the bank proposal nor were they informed of the legislation at all until March 18. The legislation was introduced March 2.

I THINK THE LEGISLATION SHOULD BE AMENDED TO ALLOW ALL BURIAL ASSOCIATION OPERATORS THE CHANCE TO CONTINUE TO EARN INTEREST ON THE RESERVES WHICH ALSO ELIMINATES THE NEED TO WRITE CHECKS TO THE MEMBERSHIP. The members are not going to feel good when they receive a check for less than the \$200 benefit even if they receive a certificate for the difference. The certificate may not be honored at all funeral homes and those members living out of state will surely lose out. (THE OUT OF STATE PEOPLE ARE NOT BEING PROTECTED.) Even a financially sound association will have only \$55 to \$80 reserve per member at this time. THE ECONOMICS OF THE BURIAL ASSOCIATION DEPENDS ON THE PREMIUMS, BUT MORE IMPORTANTLY THE INTEREST. NOT ALLOWING AN ASSOCIATION TO EARN INTEREST COMPOUNDS THE PROBLEMS OF THE BURIAL ASSOCIATIONS BY GREATLY INCREASING THE FUNDING SHORTFALLS OF THE RESERVES. By paying out current reserves and not earning interest you MAXIMIZE the problem. This was why the Bank Plan was the route chosen at the Feb 17, 1998 meeting.

There are provisions for allowing a burial association to operate, but there are many uncertainties about this and IT IS MY FEELING THAT THIS BILL WOULD ALLOW THE BOARD OF MORTUARY SCIENCE (BMS)

TO SHUT DOWN EVEN A FINANCIALLY SOLID OPERATION. THE PROBLEM IS THAT THE BOARD WILL REQUIRE YOU TO:

Pay an accountant to audit the annual report.

Pay the BMS if they decide the burial association needs to be audited by them.

Pay an actuary to complete a report. This report can be required to be filed once a year.

Continue to pay the BMS an annual assessment even though they no longer complete an audit.\*

\*Last year the BMS charged \$.50 per member which is the same rate the Burial Association Commission. The idea of transferring the responsibilities to the State Board was to reduce expenses by housing the operations under one roof. If there were cost savings they were not passed on to the burial associations as intended.

THE BOARD OF MORTUARY SCIENCE MADE NO ATTEMPT TO FIND OUT THE COST OF THESE REPORTS THAT THEY WOULD REQUIRE FROM THE ASSOCIATIONS. This reflects their attitude and reveals their real agenda which is to do away with the nuisance of the burial associations, a regulatory responsibility that they did not want to take on in the first place. To my knowledge that have not made an attempt to see if funeral homes will in fact honor the certificates. They only assume that funeral homes will.

I feel that with some work this bill can be salvaged to allow for a variety of circumstances:

An association should be able to dissolve and write checks and certificates to the members if that is their choice.

An association should be able to discontinue billing operations, but continue to earn interest on the reserves. (Not write out the checks.)

An association should be able to continue to operate in accordance with the existing rules and regulations, except that an accountant would provide the report to the Board of Mortuary Science. An actuary report would only be required if the reserve per member is less than \$21.00 per member or if the reserve per member declines in any consecutive two year period.

The Board of Mortuary Science should have to account for all of the costs that are being passed on to the associations.

It is my understanding that the discussion of this bill is to be postponed at least a week, however it is my understanding that it still remains on the calendar for April 6. The executive director of the Board of Mortuary Science told me that the intention was to have it postponed so that parts of the bill could be re-written.

I would welcome the opportunity to discuss this matter with you at your convenience.

Sincerely,

Dean Wilkerson

Senate Bill 212 - Mortuary Science Changes

I urge you to defeat this bill.

The Board of Mortuary Science chose to not inform the burial association operators about this bill and how it was greatly different from the proposed legislation that came out at public hearings. The Board of Mortuary Science passed a motion at the meeting on February 17, 1998 in Raleigh to proceed with drafting totally different legislation.

The Board of Mortuary Science is imposing new requirements which may include annual payments to Certified Public Accountants and Professional Actuaries. The Board of Mortuary Science has no idea what these fees will be.

The Board of Mortuary Science is assuming that funeral homes will be willing to accept these certificates. There will be some funeral homes that do not accept these certificates (Most out of state funeral homes may not) so there will be some members that will lose their benefits. Under the current legislation, to my knowledge, there has never been a member that lost their benefit.

An average certificate will cost the funeral home around \$155.00. The average funeral (according to the National Funeral Directors Association (NFDA) in 1997) was \$5543.25. In 1996 NFDA reported net profit before taxes at 11.3%. Plugging in these figures, average net profit before taxes on a funeral totals \$626.39. The certificate will reduce profits by \$155.00 or 24.7%. Will funeral homes just absorb this 25% reduction in net profits or will they raise prices to cover this new cost of doing business?

Cremation is rapidly increasing in North Carolina. Prices for cremation may range from \$900.00 to \$2000.00. Using the same 11.3% as a net profit percentage net profits will range from \$101.70 to \$226.00. Funeral homes accepting a \$155.00 certificate will face a net profit range of minus \$53.33 to positive \$71.00. This further demonstrates that many funeral homes may not accept these certificates and may cause members to suffer losses of benefit under this new legislation.

Thank you for your consideration.

Pilot-Wilkerson Mutual Funeral Association  
Greenville, N. C.  
Dean Wilkerson, Secretary-Treasurer  
Tel 252-752-2101 Fax 252-758-7974



# Fax

**Name:** Senator R.C. Soles, Jr., Chairman  
Members of the Senate Finance Committee

**Fax:** 919-715-7586

**Phone:** 919-733-5963

**From:** B. Stuart Terry  
DRUM FUNERAL HOME, INC.

**Date:** April 6, 1999

**Subject:** SENATE BILL #212 Mortuary Science Changes

**Pages:** 2

# DRUM Funeral Home, Inc.



509 First Avenue, South  
P.O. Box 395  
Conover, North Carolina 28613  
(828) 464-3031

B. Stuart Terry, President

To: Members of the Senate Commerce Committee

From: B. Stuart Terry  
Secretary-Treasurer of Van Drum Mutual Burial Association  
Conover, NC  
828-464-3031 FAX: 828-465-5193

Re: SENATE BILL # 212 Mortuary Science Changes

Date: April 5, 1999

\*\*\*\*\*

Dear Senator Soles and Members of the Commerce Committee:

Thank you for the opportunity to voice my opposition to Senate Bill 212 introduced by Senator Rand for the Board of Mortuary Science.

The Burial Association Commission was established by an act of the General Assembly some 70 years ago. The concept of the association was to collect a premium from a member and then pay out a benefit at his or her death. The rates or premiums were set by the commission. Our average annual premium is approximately \$2.80 per person. The only way to accumulate \$200 for the death benefit is to earn interest on the reserves.

Mutual burial associations have provided benefits for its members for approximately 70 years without having a single occurrence of a member not receiving his or her benefit upon their death. This has been accomplished because the funeral home associated with the burial association has subsidized the costs by giving the member credit for the benefit on the funeral without actually reducing the associations' reserves.

The Board of Mortuary Science held public hearings to receive input from burial association operators and the public. The Board's Ad Hoc Committee recommended a course of action which was acceptable to a majority of operators, but then the Board voted to proceed with this legislation against its own committee's recommendation. In fact, the Board did not even inform the operators of this legislation until March 18<sup>th</sup>, over two weeks after it was introduced.

## Page Two

This bill is supposed to "protect the interests of members of mutual burial associations". I am afraid the result, as written, will be to abolish mutual burial associations as they are currently known. The Board requires associations to increase their expenses for unnecessary reports and studies and possibly pay the Board fees for services not provided.

These include:

- Pay accountant to audit the annual report.
- Pay the Board if they decide the burial association needs an additional audit.
- Pay an actuary to complete a report, possibly each year.
- Continue to pay the Board an annual assessment even though they no longer complete an audit.

The Board of Mortuary Science has made no attempt to verify what costs of these reports that they would require from the associations. Nor have they studied what the end result would be for the public. They have not, to my knowledge, discussed the impact on funeral homes across the state or the consequences of a death of an out-of-state member.

It is my understanding that the discussion of this bill is possibly on the calendar for April 6<sup>th</sup>. I welcome the opportunity to discuss this matter with you at your convenience.

Sincerely,

B. Stuart Terry

To: All members of the Commerce Committee

Sen. R. C. Soles, Jr., chairman

From: Dean Wilkerson, Secretary-Treasurer, Pilot-Wilkerson Mutual Funeral Association  
252-752-2101, 252-758-7974 (Fax)

Dear Senator Soles,

Thank you for the opportunity of allowing me to speak at the committee meeting held Tuesday, March 30, concerning Senate Bill 212, Mortuary Science Changes.

The Burial Association Commission was established by an act of the General Assembly some 70 years ago. The concept of the mutual burial association was to collect a whole life premium from a member and then pay out a death benefit at his or her death. The initial death benefit was set at \$100 and at some point the General Assembly increased the maximum death payout to \$200. It is my understanding that the insurance lobby kept the death benefit at this low level since in effect the burial associations were in competition with insurance companies. The rates or premiums were set by the commission. Our average annual premium collected is around \$2.80 per person. The only way to accumulate \$200 for the death benefit payout is to earn interest on the reserves.

According to the information that I have, the number of burial associations peaked in 1970 when there were 393 burial associations. The membership peaked in 1951 when there were some 1,661,753 members. Now there are 112 associations with around 200,000 members. The fact is that the burial associations are collectively in the best financial shape that they have ever been in. The problem is that some associations are in very poor financial shape. The question is why are some in such poor shape? One answer to this question is that these associations have been run improperly. I understand that some operators used their associations to benefit their funeral homes as they charged incorrect lower rates and wrote terminally ill people. I have heard stories of people being joined in a funeral home ambulance on the way to the hospital. Even in the face of all these burial associations in poor financial shape, to my knowledge, there has never been the occurrence of a member not receiving a benefit upon his or her death. This has been accomplished because the funeral home associated with the burial association has subsidized the costs of the burial association by giving the member credit for the \$200 on the funeral, but not paying the funeral home from the burial association. In effect, the funeral home is now paying the costs of mismanaging the association.

This proposed legislation comes about after two public hearings in which the burial association operators were invited to attend. At the last meeting, according to the notes taken by the North Carolina Funeral Directors Association, the Ad Hoc Committee accepted the bank proposal and the motion was made and seconded to proceed with the legislation to draft the bank proposal, but now there is no mention of the bank proposal. (The bank proposal was from First Citizen's Bank and would allow any bank to bid on becoming the trustee of all reserve funds. This would eliminate the requirement of paying out the reserve now to the members and allow interest to accumulate thereby reducing the costs of providing the certificates.) Burial association operators were not informed that the legislation was changed to delete the bank proposal nor were they informed of the legislation at all until March 18. The legislation was introduced March 2.

I think the legislation should be amended to allow all burial association operators the chance to continue to earn interest on the reserves which also eliminates the need to write checks to the membership. The members are not going to feel good when they receive a check for less than the \$200 benefit even if they receive a certificate for the difference. The certificate may not be honored at all funeral homes and those members living out of state will surely lose out. (The out of state people are not being protected.) Even a financially sound association will have only \$55 to \$80 reserve per member at this time. The economics of the burial association depends on the premiums, but more importantly the interest. Not allowing an association to earn interest compounds the problems of the BA's by greatly increasing the funding shortfalls of the reserves. By paying out current reserves and not earning interest you MAXIMIZE the problem. This was why the Bank Plan was the route chosen at the Feb 17, 1998 meeting.

There are provisions for allowing a burial association to operate, but there are many uncertainties about this and it is my feeling that this bill would allow the Board of Mortuary Science (BMS) to shut down even a financially solid operation. The problem is that the board will require you to:

Pay an accountant to audit the annual report.

Pay the BMS if they decide the burial association needs to be audited by them.

Pay an actuary to complete a report. This report can be required to be filed once a year.

Continue to pay the BMS an annual assessment even though they no longer complete an audit.\*

\*Last year the BMS charged \$.50 per member which is the same rate the Burial Association Commission. The idea of transferring the responsibilities to the State Board was to reduce expenses by housing the operations under one roof. If there were cost savings they were not passed on to the burial associations as intended.

The Board of Mortuary Science made no attempt to find out the cost of these reports that they would require from the associations. This reflects their attitude and reveals their real agenda which is to do away with the nuisance of the burial associations, a regulatory responsibility that they did not want to take on in the first place. To my knowledge that have not made an attempt to see if funeral homes will in fact honor the certificates. They only assume that funeral homes will.

I feel that with some work this bill can be salvaged to allow for a variety of circumstances:

An association should be able to dissolve and write checks and certificates to the members if that is their choice.

An association should be able to discontinue billing operations, but continue to earn interest on the reserves. (Not write out the checks.)

An association should be able to continue to operate in accordance with the existing rules and regulations, except that an accountant would provide the report to the Board of Mortuary Science. An actuary report would only be required if the reserve per member is less than \$21.00 per member or if the reserve per member declines in any consecutive two year period.

The Board of Mortuary Science should have to account for all of the costs that are being passed on to the associations.

It is my understanding that the discussion of this bill is to be postponed at least a week, however it is my understanding that it still remains on the calendar for April 6. The Board of Mortuary Science told me that they would have it postponed so they parts of the bill could be re-written.

I would welcome the opportunity to discuss this matter with you at your convenience.

Sincerely,

Dean Wilkerson

cc: Sen Tony Rand

## Joan Leatherman (Sen. Soles)

---

**From:** Dean Wilkerson [wilkersonsw@yahoo.com]  
**Sent:** Friday, April 02, 1999 4:11 PM  
**To:** Sen. R.C. Soles  
**Subject:** Senate Bill 212

Senate Bill 212 - Mortuary Science Changes

I urge you to defeat this bill.

The Board of Mortuary Science chose to NOT inform the burial association operators about this bill and how it was greatly different from the proposed legislation that came out at public hearings. THE BOARD OF MORTUARY SCIENCE PASSED A MOTION AT THE MEETING ON FEBRUARY 17, 1998 IN RALEIGH TO PROCEED WITH DRAFTING TOTALLY DIFFERENT LEGISLATION. The Board of Mortuary Science led me to believe that the discussion on this bill would be delayed at least a week from April 6.

The Board of Mortuary Science is imposing new requirements which may include annual payments to Certified Public Accountants and Professional Actuaries. THE BOARD OF MORTUARY SCIENCE HAS NO IDEA WHAT THESE FEES WILL BE.

The Board of Mortuary Science is ASSUMING that funeral homes will be willing to accept these certificates. There will be some funeral homes that do not accept these certificates (Most out of state funeral homes may not) so THERE WILL BE SOME MEMBERS THAT WILL LOSE THEIR BENEFITS. UNDER THE CURRENT LEGISLATION, TO MY KNOWLEDGE, THERE HAS NEVER BEEN A MEMBER THAT LOST THEIR BENEFIT.

An average certificate will cost the funeral home around \$155.00. The average funeral (according to the National Funeral Directors Association (NFDA) in 1997) was \$5543.25. In 1996 NFDA reported net profit before taxes at 11.3%. Plugging in these figures, average net profit before taxes on a funeral totals \$626.39. The certificate will reduce profits by \$155.00 or 24.7%. WILL FUNERAL HOMES JUST ABSORB THIS 25% REDUCTION IN NET PROFITS OR WILL THEY RAISE PRICES TO COVER THIS NEW COST OF DOING BUSINESS?

Cremation is rapidly increasing in North Carolina. Prices for cremation may range from \$900.00 to \$2000.00. Using the same 11.3% as a net profit percentage net profits will range from \$101.70 to \$226.00. Funeral homes accepting a \$155.00 certificate will face a net profit range of minus \$53.33 to positive \$71.00. THIS FURTHER DEMONSTRATES THAT MANY FUNERAL HOMES MAY NOT ACCEPT THESE CERTIFICATES AND MAY CAUSE MEMBERS TO SUFFER LOSSES OF BENEFIT UNDER THIS NEW LEGISLATION.

Thank you for your consideration.

Pilot-Wilkerson Mutual Funeral Association  
Greenville, N. C.  
Dean Wilkerson, Secretary-Treasurer  
Tel 252-752-2101 Fax 252-758-7974

---

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**Groce** FUNERAL HOME

LAKE JULIAN  
72 LONG SHOALS ROAD  
ARDEN, NC 28704-9784

828/ 687-3530



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FAX No. (828) 687-9851

DATE: 4-3-99

MESSAGE TO: SEN. R. C. SOLES JR  
Senate Commerce  
COMMITTEE CHAIRMAN

REGARDING: Senate Bill #212

TOTAL PAGES INCLUDING COVER SHEET: 3

MESSAGE FROM: W. H. GROCE, JR

If you did not receive all pages, please call (828) 687-3530 or toll free (888) 874-3535



**To: All members of Senate Commerce Committee**  
**Re: Senate Bill #212**  
**“Mortuary Science Changes”**

**From: Willis H. Groce, Jr.**  
**Secretary-Treasurer of Groce Mutual Funeral Association**  
**Asheville, NC**  
**(828) 687-3530 (828) 687 9851 (FAX)**

**Dear Senator Soles and Members,**

**Thank you for the opportunity to voice my opposition to Senate Bill #212 introduced by Sen. Rand for the Board of Mortuary Science.**

**The Burial Association Commission was established by an act of the General Assembly some 70 years ago. The concept of the association was to collect a premium from a member and then pay out a benefit at his or her death. The rates or premiums were set by the commission. Our average annual premium is approximately \$2.80 per person. The only way to accumulate \$200 for the death benefit is to earn interest on the reserves.**

**Mutual burial associations have provided benefits for its members for approximately 70 years without having a single occurrence of a member not receiving his or her benefit upon their death. This has been accomplished because the funeral home associated with the burial association has subsidized the costs by giving the member credit for the benefit on the funeral without actually reducing the associations reserves.**

**The Board of Mortuary Science held public hearings to receive input from burial association operators and the public. The Board's Ad Hoc Committee recommended a course of action which was acceptable to a majority of operators but then the Board voted to proceed with this legislation, against it's own committee's recommendation. In fact, the Board**

---

**West Asheville**  
1401 Patton Avenue  
Asheville, NC 28806-1793  
828/ 252-3535

**Lake Julian**  
72 Long Shoals Road  
Arden, NC 28704-9784  
828/ 687-3530





did not even inform the operators of this legislation until March 18th, over two weeks after it was introduced.

This bill is supposed to "protect the interests of members of mutual burial associations". I am afraid the result, as written, will be to abolish mutual burial associations as currently known. The Board requires the associations to increase their expenses for unnecessary reports and studies and possibly pay the Board fees for services not provided. These include:

Pay an accountant to audit annual report.

Pay the Board if they decide the burial association needs an additional audit.

Pay an actuary to complete a report, possibly each year.

Continue to pay the Board an annual assessment even though they no longer complete an audit.

The Board of Mortuary Science has made no attempt to verify what costs of these reports that they would require from the associations. Nor have they studied what the end result would be for the public. They have not, to my knowledge, discussed the impact on funeral homes across the state or the consequences of a death of a out-of-state member.

It is my understanding that the discussion of this bill is possibly on the calendar for April 6th. I welcome the opportunity to discuss this matter with you at your convenience

Sincerely,

Willis H. Groce, Jr.

---

**West Asheville**  
1401 Patton Avenue  
Asheville, NC 28806-1793  
828/ 252-3535

**Lake Julian**  
72 Long Shoals Road  
Arden, NC 28704-9784  
828/ 687-3530

## Joan Leatherman (Sen. Soles)

---

**From:** LARRY MORRISON [lmorrison@InfoAve.Net]  
**Sent:** Sunday, April 04, 1999 10:15 PM  
**To:** Sen. R.C. Soles  
**Subject:** Senate Bill 212 - Mortuary Science Changes

Dear Senator:

As Secretary/Treasurer of Kirkman Mutual Funeral Association, I strongly oppose any changes to the current legislation regulating Burial Associations in North Carolina. My opposition is strongly based on the fact that the Burial Association Directors were not informed of, nor did they have the opportunity for input on the legislation. The bill is greatly different from the proposed legislation which was heard at public hearings. Based on these facts, I urge you to defeat this bill.

Kirkman Mutual Funeral Association  
24 East Third Street  
Lexington, NC 27292

Secretary/Treasurer  
Larry D. Morrison

## Joan Leatherman (Sen. Soles)

---

**From:** Dale Groce [dalegroce@mindspring.com]  
**Sent:** Monday, April 05, 1999 12:37 PM  
**To:** Sen. R.C. Soles  
**Cc:** Sen. Charles Carter  
**Subject:** Senate Bill 212

Senator Soles & Senator Carter:  
We urge you to help defeat S212, Mortuary Sevrice changes.

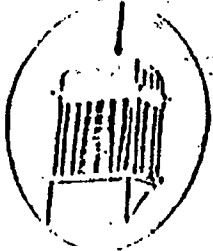
We operate a Mutual Funeral Association, and passage of this bill would increase our cost of operating, but, more importantly, would harm some members by making them ineligible to receive "certificates" which would be available only from some NC funeral homes. Thus, any member who lives & dies out of NC would lose all benefits that they have paid for.

The Board of Mortuary Science has not listened to Association operators before they sponsored this bill. Please do not let it pass,

Dale Groce & Bill Groce  
Groce Funeral Homes  
Asheville

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<DIV><FONT color=#000000 size=2>Senator Soles & Senator Carter:</FONT></DIV>
<DIV><FONT color=#000000 size=2>We urge you to help defeat S212, Mortuary
Sevrice changes.</FONT></DIV>
<DIV><FONT color=#000000 size=2></FONT>&nbsp;</DIV>
<DIV><FONT color=#000000 size=2>We operate a Mutual Funeral Association, and
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importantly, would harm some members by making them ineligible to receive
"certificates" which would be available only from some NC funeral
homes.&nbsp;  Thus, any member who lives & dies out of NC would lose all
benefits that they have paid for.</FONT></DIV>
<DIV><FONT color=#000000 size=2></FONT>&nbsp;</DIV>
<DIV><FONT color=#000000 size=2>The Board of Mortuary Science has not listened
to Association operators before they sponsored this bill.&nbsp;  Please do not
let it pass,</FONT></DIV>
<DIV><FONT color=#000000 size=2></FONT>&nbsp;</DIV>
<DIV><FONT color=#000000 size=2>Dale Groce & Bill Groce</FONT></DIV>
<DIV><FONT color=#000000 size=2>Groce Funeral Homes</FONT></DIV>
<DIV><FONT color=#000000 size=2>Asheville</FONT></DIV></BODY></HTML>
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Padgett & King Mortuary  
P. O. Box 146  
Forest City, North Carolina 28043  
Telephone 828-245-4951

FAX TRANSMISSION

COVER SHEET

DATE- April 5, 1999

TO - The Hon. R.C. Soles, Jr.  
NC Senate

FAX NUMBER - \_\_\_\_\_

FROM- Shane Earley - Padgett + King Burial Assn.

TOTAL NUMBER OF PAGES INCLUDING COVER PAGE- 4

REGARDING- Senate Bill 212 -

FAX NUMBER- 828-245-4951  
PLEASE TELEPHONE BEFORE SENDING FAX

*Padgett & King Mortuary*

227 East Main Street  
Post Office Box 146  
Forest City, North Carolina 28043  
(828) 245-4951

April 5, 1999

The Honorable R.C. Soles, Jr.  
North Carolina Senate  
Raleigh, North Carolina 27601

Dear Mr. Chairman,

I am writing you this personal letter concerning Senate Bill 212, North Carolina Burial Associations. As I understand this morning, this bill will come before the Senate for consideration on Tuesday. There are several problems that will arise from this legislation and I feel that we need more time to give consideration to this matter.

The North Carolina Board of Mortuary Science chose not to inform burial association operators about this bill and how it was greatly different from the proposed legislation that came out at public hearings. The Board of Mortuary Science passed a motion at the meeting on February 17, 1998 to proceed with drafting totally different legislation.

The North Carolina Board of Mortuary Science is imposing new requirements which may include annual payments to Certified Public Accountants and Professional Actuaries. To be sure, with this proposed legislation before you now, there will no doubt be members who will lose benefits. Many of our burial association members joined in the late 1930s and to my knowledge, we have never failed to pay any legitimate claim. It is for this reason that I can not understand why the Board of Mortuary Science has so drastically altered the first proposed legislation.

I urge you to defeat Senate Bill 212 regarding changes in the burial association laws. We need a chance to allow burial association operators to address these issues and provide the policyholder with a better alternative. Please know that the changes before you now will have a far reaching effect on many elderly members in this state. There are better solutions to this complex problem and North Carolina will be better served by the defeat of Senate Bill 212, Changes to Mortuary Science Laws. Thank you for taking the time to read this letter and for any assistance you can offer. This will be of great help to the people of North Carolina.

Sincerely,

*J. Shane Earley*  
J. Shane Earley, Secretary  
Padgett & King Mutual Burial Assn.

*Thank you for any Consideration!*

These are a few facts concerning Burial Associations that may not have been called to your attention.

1. The Padgett & King Mutual Burial Association, Inc. is a North Carolina corporation and does not belong to our mortuary. It is an ASSOCIATION of members and they have the voting rights of any association. I doubt that many burial association members in the state of North Carolina are aware of any changes in their associations. They have a right to be informed of any changes of this nature and to have a voice.
2. The funeral homes of this state, which continue to operate associations have for many years supported the financial and administrative duties of these associations out of a moral obligation. These funeral homes will continue to do so in the public interest.
3. I am not aware of any problems that have arisen with burial associations or their members regarding payment of legitimate death claims. Many funeral homes simply absorb the loss from claims that can not be paid from associations with limited resources.
4. Many funeral homes have and continue to file financial reports with the Board of Mortuary Science each year to insure public protection.

Please allow more time to address this important issue by the defeat of Senate Bill 212 regarding Mortuary Science/Burial Associations.

Apr-06-99 08:56A Davidson Funera1

1 910 249 2793

P.01

**FAX COVER PAGE**

TO: R. C. Soles, Jr.

TOTAL PAGES 2

**JACK D. BRIGGS  
DAVIDSON FUNERAL HOME  
24 E. THIRD ST.  
LEXINGTON, NC 27292**



DAVIDSON FUNERAL HOME  
24 E. Third Street  
Lexington, N. C. 27292  
Phone 336-248-2311 Fax 336-249-2793

April 6, 1999

The Honorable R. C. Soles, Jr.  
North Carolina State Senate  
Raleigh, N. C.

Re: Senate Bill 212-Mortuary Science Changes

Dear Senator Soles:

I am opposed to Senate Bill 212 in its current form and ask that your committee table action in this matter until Mutual Burial Association operators have had an opportunity to have more input into any proposed changes.

Sincerely Yours,



Jack D. Briggs, President  
Davidson Funeral Home

VISITOR REGISTRATION SHEET

Commerce

4-6-99

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

HARVEY LEAVITT	Leavitt Funeral Home - Wadesboro, NC
DENN WILKERSON	Pilot Wilkerson Burial Avn - Greenville, NC
Amy Edwards	Dept Sec of State
Karen Golden	Citizen
<del>DAVID PERDUE</del>	ZDA, PA
David Simmons	ZDA, PA
<del>W. W. Brown</del>	Capital Group
● JEVE WOODSON	NEFIS
D. Parker	Bone & Associates
Grumlow	Jal, AL
Ally Macduffe	First City Bank
Jim Latham	NCA #1
Ally M. Gregory	Popper & Spruill
Bob Cuccini	Ford Motor Company
David Powell	Robin & Powell
Zeb Allen	ZDA PA
Jon Carr	<del>SANDRA R. PRICE ENTERPRISES - CHARLOTTE</del> Jordan Price Law firm
Alice Farland	Electricities
● Lisa Percy	NC Dental Society
Marvin Musselwhite	Popper & Spruill
Cem Cover	BPM AL

VISITOR REGISTRATION SHEET

COMMERC  
Name of Committee

4-6-99  
Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

Bernard Allen	SOS
Rodney Maddox	Sec of St.
Harold Webb	lobbyist -
Rich J. Vinigora	lobbyist
Tommy A. ...	
ROBERT GILVER	NCA DA
Sam Johnson	atly
Larry Bewley	Bewley and Assoc.
John Bowditch	Zele Alley P.A.
LUCIUS PULLEN	ATTORNEY
Nat Mund	CCNC
Dave Knight	NC Sierra Club, NC Wildlife Fed
Dale M. ...	Scenic NC
Ruth Sappie	NCDOT
Charlie Diehl	NC outdoor Advertising Association
Brenda Grady	NCDOT
Grim M. Wearor (Gaines M. Wearor)	NCDOT - Legal Section
J. ...	" "
Wayne Rogers	NCDOT Internal Audit Section
J. ...	AFST
PAUL L. DUNN	PILOT - PAUL MUTUAL FUNERAL ASSOC. WASHINGTON

VISITOR REGISTRATION SHEET

*Committee*  
Name of Committee

4-6-99  
Date

VISITORS: Please sign below and return to Committee Clerk.

NAME FIRM OR STATE AGENCY AND ADDRESS

<i>J. Jones</i>	<i>NC Beer &amp; Wine</i>
<i>Virginia Harris</i>	<i>Board of Mortuary Science</i>
<i>James Swearing</i>	<i>St. Board of Mortuary Science</i>
<i>Andrew Ritter</i>	<i>St. Board of Mortuary Science</i>
<i>John Whalley</i>	<i>Assn of International Auto Mfgs</i>
<i>Henry Jones</i>	<i>Attorney Raleigh</i>
<i>W. McBride</i>	<i>WSTA</i>
<i>John M. ...</i>	<i>Boyd Call &amp; Stange</i>
<i>Francis J. ...</i>	<i>Gen. Motors Corp</i>
<i>Dave Collins</i>	<i>Saturn Retail Enterprises, Inc.</i>
<i>Tom M. Killian</i>	<i>Moore &amp; Van Allen</i>
<i>Jimmy Speed</i>	<i>Bone-associates</i>
<i>Paul ...</i>	<i>Allen + Pinnix</i>
<i>Paul Stock</i>	<i>NC Bankers Assn</i>

SENATE COMMERCE COMMITTEE  
11:00 A.M. – TUESDAY, APRIL 13, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, April 13, 1999. Twenty-four members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order and the following bills were considered by the Committee:

SB 658, AN ACT TO REMOVE THE SUNSET ON THE LAW PROVIDING THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, ALLOWING THE BOARD OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND MAKING TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE. Senator Dalton, bill sponsor, said the bill deletes the sunset provision in S.L. 1977-346. The legislation would expire on the date of adjournment sine die of the 1999 General Assembly and SL 1977-346 allows secondary suppliers of electricity to supply electricity in newly annexed municipal territory with the agreement of the city. Senator Dalton offered an amendment to the bill and moved its adoption. (Copy attached.) Motion carried and the amendment was adopted.

Senator Dalton moved that Senate Bill 658 be given a favorable report, as amended, and that it be made into a Committee Substitute Bill. Motion carried.

SB 212, AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS. Senator Rand moved the adoption of a new Committee Substitute. Motion carried. He said this new Substitute had been prepared in an effort to resolve the problems in the original bill. Mr. Jack Nichols who represents the Board of Mortuary Science discussed some of the changes that had been made. (See copy of memorandum from Committee Counsel for Summary of the Mortuary Science Changes.) Also attached is a report on "Financial Information Pertaining to Mutual Burial Associations."

Senator Kerr offered an amendment to the bill and moved its adoption. (See attached copy of amendment.) Motion carried.

Senator Soles said that a vote would not be taken on SB 212 at this meeting and he urged everyone to study the Committee Substitute and talk with people affected by the legislation over the weekend. The bill will be carried over until Tuesday, April 20<sup>th</sup>.

SB 660, AN ACT TO AMEND THE LAW GOVERNING LIMITED LIABILITY COMPANIES TO CLARIFY CERTAIN DEFINITIONS OF TERMS, TO PROVIDE MORE FLEXIBILITY WITH REGARD TO ORGANIZERS, TO CLARIFY THAT THE FILING OF THE ARTICLES OR ORGANIZATION IS CONCLUSIVE EVIDENCE OF THE FORMATION OF A COMPANY TO REVISE THE CIRCUMSTANCES AND RESTRICTIONS REGARDING FORMATION OF A COMPANY, TO PROVIDE FOR THE INDEXING OF REAL ESTATE RECORDS TO REFLECT MERGERS AND CONVERSIONS OF BUSINESS ENTITIES, TO ALLOW ALTERNATIVE MANAGEMENT STRUCTURES, TO PROVIDE FOR WITHDRAWAL FROM A COMPANY ONLY AS PERMITTED BY THE ARTICLES OF ORGANIZATION OR WRITTEN OPERATING AGREEMENT, TO REVISE THE PERMITTED GROUNDS FOR DISSOLUTION, AND TO CLARIFY THAT A COMPANY MAY ENGAGE IN A BUSINESS UNDER AN ASSUMED NAME. Senator Clodfelter, bill sponsor, explained the provisions of the legislation. He said the bill makes certain clarifying and operational changes to the Limited Liability Company Act in order to permit limited liability companies to have much of the same operational and management flexibility allowed other business organizations. (See memorandum from Committee Counsel for Summary.)

Mr. Wills Hall III, Attorney with Moore and Van Allen, assisted in the explanation of this legislation.

Senator Kerr offered an amendment and Senator Ballantine moved its adoption. (Copy attached.) Motion carried. Senator Rand offered a second amendment and moved its adoption. (Copy attached.) Motion carried.

Senator Hoyle moved that SB 660, as amended, be given a favorable report and that it be made into a Committee Substitute. Motion carried.

SB 606, AN ACT TO ESTABLISH TOURISM RESORTS AND TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO THESE ENTITIES AND TO PROHIBIT DISCRIMINATION BY ABC PERMITTEES. Senator Ballance offered a Committee Substitute for SB 606 and Senator Rand moved its adoption. Motion carried. Senator Ballance said the bill adds a definition for “tourism resort” to Chapter 18B. (See Summary prepared by Committee Counsel.)

Senator Ballance offered an amendment to the bill and moved its adoption. (Copy attached.) Motion carried. Senator Ballance offered a second amendment to the bill and moved its adoption (Copy attached.) Motion carried.

Ms. Ann Fulton, General Counsel to the ABC Commission, assisted in answering questions from the Committee.

Rev. Johnny R. Henderson, Executive Director of the Christian Action League of North Carolina, Inc., spoke in opposition to the bill. Also speaking in opposition to the bill was Mr. John L. Rustin, Director of Government Relations, North Carolina Family Policy Council. Mr. Jerry Williams representing the N. C. Restaurant Association spoke for the bill.

Senator Larry Shaw moved that the Committee Substitute for Senate Bill 606, as amended, be given a favorable report and that it be rewritten into a new Committee Substitute. Motion carried.

SB 607, AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO SPORTS CLUBS. Senator Ballance, the bill sponsor, said SB 607 would allow the ABC Commission to issue the following kinds of permits without the approval of an election: on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverage permits, for sports clubs. (See memorandum from Committee Counsel for Summary.)

Mr. John Rustin with the North Carolina Family Policy Council spoke in opposition to the bill, and Mr. Jerry Williams with the N. C. Restaurant Association spoke for the bill.

Senator Ballance moved that Senate Bill 607 be given a favorable report. Motion carried.

SB 420, AN ACT TO CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW. Senator Hoyle offered a Committee Substitute for SB 420 and moved its adoption. Motion carried. Senator Hoyle said he would not go into the details of the bill but it makes numerous changes to the laws governing motor vehicle dealer franchises. (See attached Summary prepared for Committee Counsel.) A number of people were present who wanted to speak on the bill, and Senator Soles said that full explanation and action on the bill would be delayed until the next meeting and that the Committee would simply hear from the proponents and opponents of the bill at this session of the Committee.

The following persons spoke for the bill:

Mr. Bob Glaser, Executive Vice President  
N. C. Automobile Dealers Association

Mr. Samuel Johnson, Attorney.

Speaking against the bill were the following:

Mr. Zeb Alley, representing Automobile Manufacturers

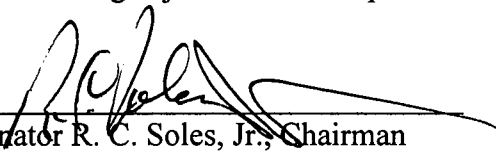
Mr. Don Hudler, CEO and Chairman of Saturn Retail Enterprises

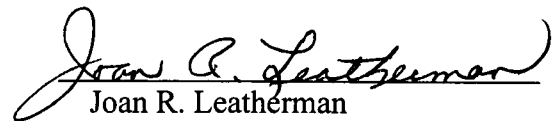
Dr. Richard Staeland, Fuqua School of Business

Ms. Jill McDonald, Alliance of Manufacturers.

Following Ms. McDonald's remarks, Chairman Soles said the Committee would continue its discussion of SB 420 at next Tuesday's meeting on April 20<sup>th</sup>.

The meeting adjourned at 1:00 p.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
R. C. Soles, Jr., Chair**

Wednesday, April 14, 1999

R. C. SOLES, JR.,  
submits the following with recommendations as to passage:

**FAVORABLE**

S.B. 607 Sports Club ABC Permits  
Sequential Referral: None  
Recommended Referral: None

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

S.B. 606 Tourism Resort ABC Permits  
Draft Number: PCS2726  
Sequential Referral: None  
Recommended Referral: None  
Long Title Amended: No

S.B. 658 Remove Sunset/Mun. Electric Amend.  
Draft Number: PCS4655  
Sequential Referral: None  
Recommended Referral: None  
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment:

**SENATE COMMERCE COMMITTEE  
AGENDA  
Tuesday, April 13, 1999  
ROOM 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 212, MORTUARY SCIENCE CHANGES (Senator Rand)**

**SB 419, CLARIFY MV DEALER TRANSFER RIGHTS (Hoyle)**

**SB 420, CLARIFY MV DEALERS LICENSING LAW (Hoyle)**

**SB 606, TOURISM RESORT ABC PERMITS (Ballance)**

**SB 607, SPORTS CLUB ABC PERMITS (Ballance)**

**SB 658, REMOVE SUNSET/MUN.ELECTRIC AMEND. (Dalton)**

**SB 660, REVISED LIMITED LIABILITY CO. ACT (Clodfelter)**

**ADJOURNMENT**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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1

SENATE BILL 658

Short Title: Remove Sunset/Mun. Electric Amend.

(Public)

---

Sponsors: Senators Dalton; Cochrane, Hartsell, Metcalf, Purcell, and Wellons.

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Referred to: Commerce.

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March 30, 1999

1

A BILL TO BE ENTITLED

2

AN ACT TO REMOVE THE SUNSET ON THE LAW PROVIDING THAT

3

CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY

4

FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH

5

WRITTEN CONSENT FROM THE CITY, ALLOWING THE BOARD OF AN

6

ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON

7

DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE

8

THE CORPORATION, AND MAKING TECHNICAL CHANGES TO THE

9

LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

10 The General Assembly of North Carolina enacts:

11

Section 1. Section 6 of S.L. 1997-346 reads as rewritten:

12

"Section 6. This act is effective when it becomes law and applies only to

13

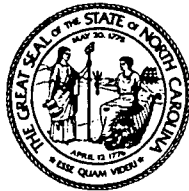
annexations or incorporations that occur on or after the effective date. ~~This act~~

14

~~expires on the date of the adjournment sine die of the 1999 General Assembly."~~

15

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



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 658

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of 1

S658-ARL-001

Date \_\_\_\_\_, 1999

Comm. Sub. [  
Amends Title [YES]

Senator Dalton

1 moves to amend the bill on page 1, lines 6 through 8,  
2 by rewriting those lines to read:  
3 "ELECTRIC OR TELEPHONE MEMBERSHIP CORPORATION TO VOTE BY PROXY ON  
4 DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE AN ELECTRIC  
5 MEMBERSHIP CORPORATION, AND MAKING TECHNICAL CHANGES TO THE".  
6

SIGNED   
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



BILL ANALYSIS

# SENATE BILL 658: Remove Sunset on Statutory Provisions Relating to Providing Electric Service Within City Limits and Relating to the Governing of Electric Membership Corporations

**Committee:** Senate Bill 658  
**Date:** April 12, 1999  
**Version:** 1

**Introduced by:** Senator Dalton  
**Summary by:** Steven Rose  
Committee Counsel

Senate Bill 658 amends Section 6 of S.L. 1997-346 by deleting the sunset provision. As presently written, S.L. 1997-346 would expire on the date of adjournment sine die of the 1999 General Assembly.

S.L. 1997-346 became law July 31, 1997 and was effective on that date. However, it will expire on the date of adjournment sine die of the 1999 General Assembly. S.L. 1997-346 allows secondary suppliers of electricity (suppliers other than the city or the entity holding a franchise from the city) to supply electricity in newly annexed municipal territory with the agreement of the city. The act also made changes to Chapter 117 of the General Statutes, which applies to electric membership corporations and telephone membership corporations. It allows for voting by proxy where the issue involves sale or encumbrance of co-op property, or the dissolution of an electric cooperative. Prior to the 1997 amendments, only votes cast in person could be counted.

The act is effective when it becomes law.

S658-SMRL-001

take place at an election held on a date set by the Jackson County Board of Elections, but no later than July 1, 1998. Initial terms shall expire at the time provided by general law as if the election had taken place at the general election on the Tuesday after the first Monday in November 1997.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law on the date it was ratified.

S.B. 848

CHAPTER 346

AN ACT TO PROVIDE THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, TO ALLOW THE BOARD OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND TO MAKE TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

*The General Assembly of North Carolina enacts:*

Section 1. G.S. 160A-331 reads as rewritten:

"§ 160A-331. *Definitions.*

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

(1) 'Assigned area' means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.

(1a) 'Assigned supplier' means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.

(1b) The 'determination date' is

- a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;
- b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;
- c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

(2) 'Line' means any conductor located inside the city for distributing or transmitting electricity, other than

- a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

- b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.
- (3) 'Premises' means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one 'premises,' except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one 'premises' if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.
- (4) 'Primary supplier' means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.
- (5) 'Secondary supplier' means a person, firm, or corporation that furnishes electricity at retail to one or more consumers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

**Section 2.** G.S. 160A-332(a) reads as rewritten:

"(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

- (1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

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structure, or facility to which  
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located on one tract or contiguous  
by one electric consumer for  
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shall not, together with any other  
constitute one 'premises' if the  
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facility.

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as rewritten:

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A-331(1)) shall have rights and be

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h any of its facilities are attached,

- (2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.
- (3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.
- (4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), ~~and (3)~~ (3), and (6a) of this section, except with the written consent of the secondary supplier.
- (5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.
- (7) Except as provided in subdivisions (1), (2), (3), (5), and (6) (6), and (6a) of this section, a secondary supplier shall not furnish



electric service within the corporate limits of any city unless first obtains the written consent of the city and the primary supplier."

Section 3. G.S. 117-10.2 reads as rewritten:

"§ 117-10.2. *Restriction on municipal service.*

No Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under G.S. 160-511, 160-512, and 160-513; provided, that an G.S. 160A-331, 160A-332, and 160A-333. An electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

Section 4. G.S. 117-20 reads as rewritten:

"§ 117-20. *Encumbrance, sale, etc., of property.*

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, ~~without proxies, and~~
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

Section 5. G.S. 117-24 reads as rewritten:

"§ 117-24. *Dissolution.*

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed 'Certificate of Dissolution of .....' (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as

herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total membership, without proxies, membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years."

**Section 6.** This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on the date of the adjournment sine die of the 1999 General Assembly.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law upon approval of the Governor at 4:05 a.m. on the 31st day of July, 1997.

S.B. 463

CHAPTER 347

~~AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW.~~

~~The General Assembly of North Carolina enacts:  
FUNDS SHALL NOT REVERT~~

~~**Section 1.** Section 5 of S.L. 1997-256 reads as rewritten:  
"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to August 1, 1997, August 15, 1997, these funds shall revert to the appropriate fund on that date."~~

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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1

SENATE BILL 212

Short Title: Mortuary Science Changes.

(Public)

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Sponsors: Senator Rand.

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Referred to: Commerce.

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March 2, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH  
3 CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL  
4 ASSOCIATIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143B-472.2 reads as rewritten:

7 "§ 143B-472.2. Duties of Board; meetings.

8 It shall be the duty of the North Carolina Board of Mortuary Science to supervise,  
9 pursuant to this Article, all burial associations authorized by this Article to operate in  
10 North Carolina, to determine that such associations are operated in conformity with  
11 this Article and the rules adopted pursuant to this Article; to ~~assist the Board of~~  
12 ~~Mortuary Science with prosecution of~~ prosecute violations of this Article or rules  
13 adopted pursuant thereto; and to protect the interest of members of mutual burial  
14 associations.

15 The North Carolina Board of Mortuary Science, after a public hearing, may  
16 promulgate reasonable rules and regulations for the enforcement of this Article and  
17 in order to carry out the intent thereof. The Board is authorized and directed to  
18 adopt specific rules to provide for the orderly transfer of a member's benefits in cash  
19 or merchandise and services from the funeral director sponsoring the member's  
20 association to the funeral establishment which furnishes a funeral service, or  
21 merchandise, or both, for the burial of the member, provided that any funeral  
22 establishment to which the member's benefits are transferred in accordance with such  
23 rules shall, if located in North Carolina, be a funeral establishment registered and  
24 permitted under the provisions of G.S. 90-210.25 or shall, if located in any other

1 state, territory or foreign country, be a funeral establishment recognized by and  
2 operating in conformity with the laws of such other state, territory or foreign country.  
3 One or more burial associations operating in North Carolina may merge into another  
4 burial association operating in North Carolina and two or more burial associations  
5 operating in North Carolina may consolidate into a new burial association provided  
6 that any such plan of merger or plan of consolidation shall be adopted and carried  
7 out in accordance with rules adopted by the Board pursuant to this Article.

8 All rules heretofore adopted by the North Carolina Mutual Burial Association  
9 Commission or the North Carolina Board of Mortuary Science in accordance with  
10 prior law and which have not been amended, rescinded, revoked or otherwise  
11 changed, or which have not been nullified or made inoperative or unenforceable  
12 because of any statute enacted after the adoption of any such rule, shall remain in full  
13 force and effect until amended, rescinded, revoked or otherwise changed by action of  
14 the North Carolina Board of Mortuary Science as set out above, or until nullified or  
15 made inoperative or unenforceable because of statutory enactment or court decision.

16 Members of the Board shall receive, when attending such regular or special  
17 meetings such per diem, expense allowance and travel allowance as are allowed other  
18 commissions and boards of the State. The legal adviser to the Board shall be entitled  
19 to actual expenses when attending regular or special meetings of the Board held other  
20 than in Raleigh. All expenses of the Board shall be paid from funds coming to the  
21 Board pursuant to this Article or appropriated for this purpose."

22 Section 2. Article 4 of G.S. 143B-472.3 reads as rewritten:

23 "Article 4. The annual meeting of the association shall be held at ..... (here  
24 insert the place, date and hour); each member shall have one vote at said annual  
25 meeting and 15 members of the association shall constitute a quorum. There shall be  
26 elected at the annual meeting of said association a board of directors of seven  
27 members, each of whom shall serve for a period of from one to five years as the  
28 membership may determine and until his or her successor shall have been elected  
29 and qualified. Any member of the board of directors who shall fail to maintain his or  
30 her membership, as provided in the rules and bylaws of said association, shall cease  
31 to be a member of the board of directors and a director shall be appointed by the  
32 president of said association for the unexpired term of such disqualified member.  
33 There shall be at least an annual meeting of the board of directors, and such meeting  
34 shall be held immediately following the annual meeting of the membership of the  
35 association. The directors of the association may, by a majority vote, hold other  
36 meetings of which notice shall be given to each member by mailing such notice five  
37 days before the meeting to be held. At the annual meetings of the directors of the  
38 association, the board of directors shall elect a president, a vice-president, and a  
39 secretary-treasurer. The president and vice-president shall be elected from among the  
40 directors, but the secretary-treasurer may be selected from the director membership  
41 or from the membership of the association, it being provided that it is not necessary  
42 that the secretary-treasurer shall be a member of the board of directors. Among other  
43 duties that the secretary-treasurer may perform, he shall be chargeable with keeping  
44 an accurate and faithful roll of the membership of this association at all times and he

1 shall be chargeable with the duty of faithfully preserving and faithfully applying all  
2 moneys coming into his hands by virtue of his said office. The president, vice-  
3 president and secretary-treasurer shall constitute a board of control who shall direct  
4 the affairs of the association in accordance with these Articles and bylaws of the  
5 association, and subject to such modification as may be made or authorized by an act  
6 of the General Assembly. The secretary-treasurer shall keep a record of all  
7 assessments made, dues collected and benefits paid. The books of the association,  
8 together with all records and bank accounts shall be at all times open to the  
9 inspection of the Board of Mortuary Science or its duly constituted auditors or  
10 representatives. It shall be the duty of the secretary or secretary-treasurer of each  
11 association to keep the books of the association posted up-to-date so that the financial  
12 standing of the association may be readily ascertained by the Board of Mortuary  
13 Science or any auditor or representative employed by it. ~~Upon the failure of any~~  
14 ~~secretary or secretary-treasurer to comply with this provision, it shall be the duty of~~  
15 ~~the Board of Mortuary Science to take charge of the books of the association and do~~  
16 ~~whatever work is necessary to bring the books up to date. The actual costs of said~~  
17 ~~work may be charged the burial association and shall be paid from the thirty percent~~  
18 ~~(30%) allowed by law for the operation of the burial association.~~

19 Whenever in the opinion of the Board of Mortuary Science, it is necessary to audit  
20 the books of any burial association more than once in any calendar year, the Board of  
21 Mortuary Science shall have authority to assess such burial association the actual cost  
22 of any audit in excess of one per calendar year, provided that no more than one audit  
23 may be deemed necessary unless a discrepancy exists at the last regular audit. Such  
24 cost shall be paid from the thirty percent (30%) allowed by law for the operation of  
25 the burial association.

26 Every burial association shall file with the Board of Mortuary Science an annual  
27 report of its financial condition on a form furnished to it by the Board of Mortuary  
28 Science. Such report shall be certified by an accountant who is certified in this State  
29 under Chapter 93 of the General Statutes. The burial association shall be responsible  
30 for paying the cost of the certification. The report shall be filed on or before  
31 February 15 of each calendar year and shall cover the complete financial condition of  
32 the burial association for the immediate preceding calendar year. The Board of  
33 Mortuary Science shall levy and collect a penalty of twenty-five dollars (\$25.00) for  
34 each day after February 15 that the report called for herein is not filed. The Board  
35 may, in its discretion, grant any reasonable extension of the above filing date without  
36 the penalty provided in this section. Such penalty shall be paid from the thirty  
37 percent (30%) allowed by law for the operation of the burial association. Any  
38 secretary or secretary-treasurer who fails to file such financial report on or before  
39 February 15 of each calendar year or on or before the last day of any period of  
40 extension for the filing of such report granted by the Board to the burial association  
41 of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each  
42 day after February 15, or the last day of any period of extension for the filing of the  
43 report granted by the Board to the burial association of such secretary or secretary-

1 treasurer, that said report is not filed by the secretary or secretary-treasurer of a  
2 burial association, shall constitute a separate offense."

3 Section 3. Article 10 of G.S. 143B-472.3 reads as rewritten:

4 "Article 10. It is understood and stipulated that the benefits provided for shall be  
5 payable only to a funeral establishment which provides a funeral service for a  
6 deceased member and which, if located in North Carolina, is a funeral establishment  
7 registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or which, if located in any  
8 other state, territory or foreign country, is a funeral establishment recognized by and  
9 operating in conformity with the laws of such other state, territory or foreign country.  
10 Upon the death of any member, it shall be the duty of the person or persons making  
11 the funeral arrangements for such deceased member to notify the secretary of the  
12 member's burial association of the death of such member. The person or persons  
13 making the funeral arrangements for such deceased member shall have 30 days from  
14 the date of the death of such member in which to make demand upon the burial  
15 association for the funeral benefits to which such member is entitled.

16 The benefits provided for are to be paid by the burial association to the funeral  
17 director providing such funeral and burial service either in cash or in merchandise  
18 and service as elected by the person or persons making the funeral arrangements for  
19 such deceased member. If the burial association shall fail, on demand, to provide the  
20 benefits to which the deceased member was entitled to the funeral establishment  
21 which provided the funeral service for the deceased member, then the benefits shall  
22 be paid in cash to the representative of the deceased member qualified under law to  
23 receive such benefits."

24 Section 4. Part 13 of Article 10 of Chapter 143B is amended by adding  
25 the following new section:

26 "§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial  
27 associations.

28 (a) Any insurance company which desires to purchase the assets of or to merge  
29 with a burial association as provided in G.S. 143B-472.28 shall submit to the Board of  
30 Mortuary Science and to the secretary of the association a written proposal  
31 containing the terms and conditions of the proposed purchase or merger. A proposal  
32 may be conditioned upon an increase in the assessments of an association in the  
33 manner set out in subsection (g) of this section. In such a case, the issues of purchase  
34 or merger and an increase in assessments may be considered at the same meeting of  
35 the association.

36 (b) Upon receipt of a written proposal:

37 (1) The Board shall issue an order directing the association to hold a  
38 meeting of the membership within 30 days following receipt of the  
39 order for the purpose of voting on the proposal.

40 (2) Within 10 days of receiving the order from the Board, the  
41 association shall give at least 10 days' written notice of the meeting  
42 to each of its members. The notice shall:

43 a. State the date, time, and place of the meeting.

44 b. State the purpose of the meeting.

1                   c.    Contain or have attached the proposal submitted by the  
2                            insurance company.

3                   d.    Contain a statement limiting the time that each member will  
4                            be permitted to speak to the proposal, if the association  
5                            deems it advisable.

6           (c) A representative of the insurance company shall be permitted to attend the  
7 meeting held by the association for the purposes of explaining the proposal and  
8 answering any questions from the members. The officers of the association may  
9 present their views concerning the proposal. Any member of the association who  
10 wishes to speak to the proposal shall be permitted to do so subject to any time  
11 limitation stated in the notice of the meeting.

12           (d) The secretary of the association shall record the name of every member who is  
13 present at the meeting and shall determine whether there is a quorum. The presence  
14 of 15 paid-up members or fifteen percent (15%) of the paid-up membership,  
15 whichever is less, shall constitute a quorum. Acceptance or rejection of the proposal  
16 shall be by majority vote of the members present and voting. Any paid-up member  
17 who is at least 18 years of age shall be permitted to vote. A parent or guardian of  
18 any member who is under 18 years of age may vote on behalf of his or her child or  
19 ward, but only one vote may be cast on behalf of that member.

20           (e) The secretary of the association shall certify the result of the vote and the  
21 presence of a quorum to the Board within five days following the meeting and shall  
22 include with the certification a copy of the notice of the meeting that was sent to the  
23 members of the association.

24           (f) The Board shall immediately review the certification, the notice, and any other  
25 records that may be necessary to determine the adequacy of notice, the presence of a  
26 quorum, and the validity of the vote. Upon determining that the meeting and vote  
27 were regular and held following proper notice and that a majority of a quorum of the  
28 paid-up members voted in favor of the proposal, the Board shall issue an order  
29 approving the purchase or merger and directing that the purchase or merger proceed  
30 in accordance with the proposal.

31           (g) Any burial association whose current assessments are not, or are unlikely to be  
32 within the next three years, adequate to reach or maintain a reserve of at least  
33 twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements  
34 of a proposal from an insurance company to acquire the assets of or to merge with  
35 the association may increase its assessments by an amount necessary to reach and  
36 maintain the reserve or to meet the proposal. The increase shall be approved by a  
37 vote of the members of the association at a regular meeting of the association or at a  
38 special meeting called for the purpose of increasing assessments.

39                   (1) Any officer or director of the association may call a special  
40 meeting for the purpose of increasing assessments, and the  
41 secretary shall call a special meeting for such purpose upon the  
42 request of at least ten percent (10%) of the members or upon  
43 receipt of a proposal from an insurance company that is  
44 conditioned upon an increase in assessments.

1           (2) Written notice setting out the date, time, place, and the purpose of  
2 the meeting shall be hand delivered or sent by first-class mail,  
3 postage prepaid, to the last known address of each member of the  
4 association at least 10 days in advance of the meeting.

5           (3) No vote may be had on the question of an increase in assessments  
6 unless a quorum of the paid-up members of the association is  
7 present at the meeting. A quorum shall be conclusively presumed  
8 if 15 paid-up members or fifteen percent (15%) of the paid-up  
9 membership of the association, whichever is less, is present at the  
10 meeting.

11           (4) The proposal to increase the assessments shall be approved by an  
12 affirmative vote of a simple majority of the paid-up members  
13 present and voting.

14           (5) The secretary of the association within five days following the  
15 meeting shall certify the result of the vote and the presence of a  
16 quorum to the Board in the manner and for the purposes set out in  
17 subsections (e) and (f) of this section.

18           (h) Every association shall submit to the Board on or before June 1, 2000, and  
19 thereafter as may be required by the Board, but not more frequently than once each  
20 calendar year, a written report of financial soundness prepared by a qualified actuary.  
21 The report shall indicate the adequacy of reserves and other items to pay current and  
22 future claims of deceased members and shall reflect a consideration of the following:

23           (1) The current number of members of the association.

24           (2) The age of the members.

25           (3) The sex of the members.

26           (4) The amount of the association's annual assessments.

27           (5) The amount of the association's current reserves.

28           (6) The projected amount of the association's reserves for each of the  
29 next three years.

30           (7) The net gain in membership of the association during the  
31 preceding three years.

32           (8) The projected net gain in membership of the association for each  
33 of the next three years.

34           (9) The association's current liability for benefits to its members.

35           (10) The association's projected net liability for benefits to its members  
36 for each of the next three years.

37           (i) Upon a written request from an association that has held a valid meeting and  
38 vote for voluntary dissolution in accordance with G.S. 143B-472.3, the Board shall  
39 issue an order of liquidation for that association. The Board shall issue an order of  
40 liquidation to every association that has not been acquired by or merged with an  
41 insurance company if the association is not financially sound on June 1, 2001, as  
42 shown by the actuary's report required in subsection (h) of this section. The Board's  
43 order may direct that all members in good standing be transferred to a financially  
44 sound association as well as all records, property, and unexpended balances of funds



1 of the association to be liquidated, if the financially sound association agrees in  
2 writing to accept the transfer. The order shall direct the association to complete the  
3 liquidation and to file a final report with the Board no later than December 31, 2001.  
4 If the transfer of members cannot be accomplished, the association, upon receipt of  
5 an order of liquidation, shall:

- 6 (1) Cease accepting new members.
- 7 (2) Collect all debts owed to the association and pay all debts owed by  
8 the association from monies on hand, including the reserve.
- 9 (3) Distribute any remaining monies on hand and in the reserve pro  
10 rata among those who were members of the association on the date  
11 the liquidation order was issued by the Board. Each member's  
12 distributive share shall be determined by dividing the amount of  
13 that member's benefit by the aggregate benefits of all members of  
14 the association and then multiplying the total amount of money  
15 available for distribution by the percentage so derived.  
16 Assessments owed by the members to the association at the time of  
17 distribution shall be taken into account and shall be offset against  
18 the members' distributive shares.
- 19 (4) Issue a certificate to members in an amount that equals the  
20 difference between the distributive share issued in subdivision (3)  
21 of this subsection and the full amount of the member's association  
22 benefit. Any certificate issued shall supersede and supplant any  
23 other certificate already issued by the association. The certificate  
24 shall be on a form prescribed by the Board and shall be prepared  
25 and distributed by the association at its expense.
- 26 (5) File a final report with the Board on or before December 31, 2001,  
27 which shall show all receipts and disbursements, including the  
28 amount distributed to each member, since the last annual report of  
29 the association was filed with the Board.

30 (j) A certificate issued under subsection (i) of this section may be used as a credit  
31 toward the cost of funeral services, facilities, and merchandise at any funeral  
32 establishment that agrees on forms prescribed by the Board to accept such  
33 certificates. A funeral establishment that agrees to accept certificates shall do so until  
34 the agreement with the Board expires. The Board shall maintain and distribute to  
35 the public a list of funeral establishments that will accept certificates.

36 (k) If after June 1, 2001, the Board determines, upon receipt of a written report  
37 submitted by an association under subsection (h) of this section, that an association is  
38 no longer financially sound, the Board shall issue an order of liquidation, and the  
39 association shall comply with such order in the manner prescribed in subsection (i) of  
40 this section.

41 (l) The Board shall immediately review the final report filed pursuant to  
42 subdivision (i)(5) of this section and shall notify the association whether the report  
43 has been accepted. All licenses issued to soliciting agents of the association pursuant  
44 to G.S. 143B-472.4 and the written authority to operate issued to the association

1 pursuant to G.S. 143B-472.6 are automatically canceled upon acceptance of the final  
2 report by the Board.

3 (m) No new association may be authorized, organized, or licensed on or after  
4 January 1, 2000, but associations existing on that date may merge or consolidate as  
5 provided in G.S. 143B-472.2 and G.S. 143B-472.28."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

S212-CSSK-002

PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL 212

THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Mortuary Science Changes.

(Public)

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Sponsors:

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Referred to:

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March 2, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA  
3 BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 143B-472.2 reads as rewritten:  
6 "§ 143B-472.2. Duties of Board; meetings.  
7 It shall be the duty of the North Carolina Board of Mortuary  
8 Science to supervise, pursuant to this Article, all burial  
9 associations authorized by this Article to operate in North  
10 Carolina, to determine that such associations are operated in  
11 conformity with this Article and the rules adopted pursuant to  
12 this Article; to ~~assist the Board of Mortuary Science with~~  
13 ~~prosecution of~~ prosecute violations of this Article or rules  
14 adopted pursuant thereto; and to protect the interest of members  
15 of mutual burial associations.  
16 The North Carolina Board of Mortuary Science, after a public  
17 hearing, may promulgate reasonable rules and regulations for the  
18 enforcement of this Article and in order to carry out the intent  
19 thereof. The Board is authorized and directed to adopt specific  
20 rules to provide for the orderly transfer of a member's benefits  
21 in cash or merchandise and services from the funeral director

1 sponsoring the member's association to the funeral establishment  
2 which furnishes a funeral service, or merchandise, or both, for  
3 the burial of the member, provided that any funeral establishment  
4 to which the member's benefits are transferred in accordance with  
5 such rules shall, if located in North Carolina, be a funeral  
6 establishment registered and permitted under the provisions of  
7 G.S. 90-210.25 or shall, if located in any other state, territory  
8 or foreign country, be a funeral establishment recognized by and  
9 operating in conformity with the laws of such other state,  
10 territory or foreign country. One or more burial associations  
11 operating in North Carolina may merge into another burial  
12 association operating in North Carolina and two or more burial  
13 associations operating in North Carolina may consolidate into a  
14 new burial association provided that any such plan of merger or  
15 plan of consolidation shall be adopted and carried out in  
16 accordance with rules adopted by the Board pursuant to this  
17 Article.

18 All rules heretofore adopted by the North Carolina Mutual  
19 Burial Association Commission or the North Carolina Board of  
20 Mortuary Science in accordance with prior law and which have not  
21 been amended, rescinded, revoked or otherwise changed, or which  
22 have not been nullified or made inoperative or unenforceable  
23 because of any statute enacted after the adoption of any such  
24 rule, shall remain in full force and effect until amended,  
25 rescinded, revoked or otherwise changed by action of the North  
26 Carolina Board of Mortuary Science as set out above, or until  
27 nullified or made inoperative or unenforceable because of  
28 statutory enactment or court decision.

29 Members of the Board shall receive, when attending such regular  
30 or special meetings such per diem, expense allowance and travel  
31 allowance as are allowed other commissions and boards of the  
32 State. The legal adviser to the Board shall be entitled to actual  
33 expenses when attending regular or special meetings of the Board  
34 held other than in Raleigh. All expenses of the Board shall be  
35 paid from funds coming to the Board pursuant to this Article or  
36 appropriated for this purpose."

37 Section 2. Article 4 of G.S. 143B-472.3 reads as  
38 rewritten:

39 "Article 4. The annual meeting of the association shall be held  
40 at ..... (here insert the place, date and hour); each  
41 member shall have one vote at said annual meeting and 15 members  
42 of the association shall constitute a quorum. There shall be  
43 elected at the annual meeting of said association a board of  
44 directors of seven members, each of whom shall serve for a period

1 of from one to five years as the membership may determine and  
2 until his or her successor shall have been elected and qualified.  
3 Any member of the board of directors who shall fail to maintain  
4 his or her membership, as provided in the rules and bylaws of  
5 said association, shall cease to be a member of the board of  
6 directors and a director shall be appointed by the president of  
7 said association for the unexpired term of such disqualified  
8 member. There shall be at least an annual meeting of the board of  
9 directors, and such meeting shall be held immediately following  
10 the annual meeting of the membership of the association. The  
11 directors of the association may, by a majority vote, hold other  
12 meetings of which notice shall be given to each member by mailing  
13 such notice five days before the meeting to be held. At the  
14 annual meetings of the directors of the association, the board of  
15 directors shall elect a president, a vice-president, and a  
16 secretary-treasurer. The president and vice-president shall be  
17 elected from among the directors, but the secretary-treasurer may  
18 be selected from the director membership or from the membership  
19 of the association, it being provided that it is not necessary  
20 that the secretary-treasurer shall be a member of the board of  
21 directors. Among other duties that the secretary-treasurer may  
22 perform, he shall be chargeable with keeping an accurate and  
23 faithful roll of the membership of this association at all times  
24 and he shall be chargeable with the duty of faithfully preserving  
25 and faithfully applying all moneys coming into his hands by  
26 virtue of his said office. The president, vice-president and  
27 secretary-treasurer shall constitute a board of control who shall  
28 direct the affairs of the association in accordance with these  
29 Articles and bylaws of the association, and subject to such  
30 modification as may be made or authorized by an act of the  
31 General Assembly. The secretary-treasurer shall keep a record of  
32 all assessments made, dues collected and benefits paid. The books  
33 of the association, together with all records and bank accounts  
34 shall be at all times open to the inspection of the Board of  
35 Mortuary Science or its duly constituted auditors or  
36 representatives. It shall be the duty of the secretary or  
37 secretary-treasurer of each association to keep the books of the  
38 association posted up-to-date so that the financial standing of  
39 the association may be readily ascertained by the Board of  
40 Mortuary Science or any auditor or representative employed by it.  
41 ~~Upon the failure of any secretary or secretary-treasurer to~~  
42 ~~comply with this provision, it shall be the duty of the Board of~~  
43 ~~Mortuary Science to take charge of the books of the association~~  
44 ~~and do whatever work is necessary to bring the books up to date.~~

~~1 The actual costs of said work may be charged the burial  
2 association and shall be paid from the thirty percent (30%)  
3 allowed by law for the operation of the burial association.~~

4 Whenever in the opinion of the Board of Mortuary Science, it is  
5 necessary to audit the books of any burial association more than  
6 once in any calendar year, the Board of Mortuary Science shall  
7 have authority to assess such burial association the actual cost  
8 of any audit in excess of one per calendar year, provided that no  
9 more than one audit may be deemed necessary unless a discrepancy  
10 exists at the last regular audit. Such cost shall be paid from  
11 the thirty percent (30%) allowed by law for the operation of the  
12 burial association.

13 Every burial association shall file with the Board of Mortuary  
14 Science an annual report of its financial condition on a form  
15 furnished to it by the Board of Mortuary Science. Such report  
16 shall be certified by an accountant who is certified in this  
17 State under Chapter 93 of the General Statutes. The burial  
18 association shall be responsible for paying the cost of the  
19 certification. The report shall be filed on or before February  
20 15 of each calendar year and shall cover the complete financial  
21 condition of the burial association for the immediate preceding  
22 calendar year. If the annual report of the financial condition  
23 of the burial association is deemed insufficient by the Board,  
24 then the Board may, at its own expense, initiate a new financial  
25 audit. Board of Mortuary Science shall levy and collect a  
26 penalty of twenty-five dollars (\$25.00) for each day after  
27 February 15 that the report called for herein is not filed. The  
28 Board may, in its discretion, grant any reasonable extension of  
29 the above filing date without the penalty provided in this  
30 section. Such penalty shall be paid from the thirty percent (30%)  
31 allowed by law for the operation of the burial association. Any  
32 secretary or secretary-treasurer who fails to file such financial  
33 report on or before February 15 of each calendar year or on or  
34 before the last day of any period of extension for the filing of  
35 such report granted by the Board to the burial association of  
36 such secretary or secretary-treasurer shall be guilty of a Class  
37 3 misdemeanor. Each day after February 15, or the last day of any  
38 period of extension for the filing of the report granted by the  
39 Board to the burial association of such secretary or secretary-  
40 treasurer, that said report is not filed by the secretary or  
41 secretary-treasurer of a burial association, shall constitute a  
42 separate offense."

43 Section 3. Article 10 of G.S. 143B-472.3 reads as  
44 rewritten:

1 "Article 10. It is understood and stipulated that the benefits  
2 provided for shall be payable only to a funeral establishment  
3 which provides a funeral service for a deceased member and which,  
4 if located in North Carolina, is a funeral establishment  
5 registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or  
6 which, if located in any other state, territory or foreign  
7 country, is a funeral establishment recognized by and operating  
8 in conformity with the laws of such other state, territory or  
9 foreign country. Upon the death of any member, it shall be the  
10 duty of the person or persons making the funeral arrangements for  
11 such deceased member to notify the secretary of the member's  
12 burial association of the death of such member. The person or  
13 persons making the funeral arrangements for such deceased member  
14 shall have 30 days from the date of the death of such member in  
15 which to make demand upon the burial association for the funeral  
16 benefits to which such member is entitled.

17 The benefits provided for are to be paid by the burial  
18 association to the funeral director providing such funeral and  
19 burial service either in cash or in merchandise and service as  
20 elected by the person or persons making the funeral arrangements  
21 for such deceased member. If the burial association shall fail,  
22 on demand, to provide the benefits to which the deceased member  
23 was entitled to the funeral establishment which provided the  
24 funeral service for the deceased member, then the benefits shall  
25 be paid in cash to the representative of the deceased member  
26 qualified under law to receive such benefits."

27 Section 4. Part 13 of Article 10 of Chapter 143B is  
28 amended by adding the following new section:

29 "§ 143B-472.29. Acquisition, merger, dissolution, and  
30 liquidation of mutual burial associations.

31 (a) Any insurance company which desires to purchase the assets  
32 of or to merge with a burial association as provided in G.S.  
33 143B-472.28 shall submit to the Board of Mortuary Science and to  
34 the secretary of the association a written proposal containing  
35 the terms and conditions of the proposed purchase or merger. A  
36 proposal may be conditioned upon an increase in the assessments  
37 of an association in the manner set out in subsection (g) of this  
38 section. In such a case, the issues of purchase or merger and an  
39 increase in assessments may be considered at the same meeting of  
40 the association.

41 (b) Upon receipt of a written proposal:

42 (1) The Board shall issue an order directing the  
43 association to hold a meeting of the membership

- 1                   within 30 days following receipt of the order for  
2                   the purpose of voting on the proposal.
- 3           (2)   Within 10 days of receiving the order from the  
4                   Board, the association shall give at least 10 days'  
5                   written notice of the meeting to each of its  
6                   members. The notice shall:
- 7                   a.   State the date, time, and place of the  
8                         meeting.
- 9                   b.   State the purpose of the meeting.
- 10                  c.   Contain or have attached the proposal  
11                         submitted by the insurance company.
- 12                  d.   Contain a statement limiting the time that  
13                         each member will be permitted to speak to the  
14                         proposal, if the association deems it  
15                         advisable.
- 16   (c)   A representative of the insurance company shall be  
17   permitted to attend the meeting held by the association for the  
18   purposes of explaining the proposal and answering any questions  
19   from the members. The officers of the association may present  
20   their views concerning the proposal. Any member of the  
21   association who wishes to speak to the proposal shall be  
22   permitted to do so subject to any time limitation stated in the  
23   notice of the meeting.
- 24   (d)   The secretary of the association shall record the name of  
25   every member who is present at the meeting and shall determine  
26   whether there is a quorum. The presence of 15 members or ten  
27   percent (10%) of the membership, whichever is greater, shall  
28   constitute a quorum. Acceptance or rejection of the proposal  
29   shall be by majority vote of the members present and voting. Any  
30   member who is at least 18 years of age shall be permitted to  
31   vote. A parent or guardian of any member who is under 18 years  
32   of age may vote on behalf of his or her child or ward, but only  
33   one vote may be cast on behalf of that member.
- 34   (e)   The secretary of the association shall certify the result  
35   of the vote and the presence of a quorum to the Board within five  
36   days following the meeting and shall include with the  
37   certification a copy of the notice of the meeting that was sent  
38   to the members of the association.
- 39   (f)   The Board shall immediately review the certification, the  
40   notice, and any other records that may be necessary to determine  
41   the adequacy of notice, the presence of a quorum, and the  
42   validity of the vote. Upon determining that the meeting and vote  
43   were regular and held following proper notice and that a majority  
44   of a quorum of the members voted in favor of the proposal, the



1 Board shall issue an order approving the purchase or merger and  
2 directing that the purchase or merger proceed in accordance with  
3 the proposal.

4 (g) Any burial association whose current assessments are not,  
5 or are unlikely to be within the next three years, adequate to  
6 reach or maintain a reserve of at least twenty-one dollars  
7 (\$21.00) per member or are inadequate to meet the requirements of  
8 a proposal from an insurance company to acquire the assets of or  
9 to merge with the association may increase its assessments by an  
10 amount necessary to reach and maintain the reserve or to meet the  
11 proposal. The increase shall be approved by a vote of the members  
12 of the association at a regular meeting of the association or at  
13 a special meeting called for the purpose of increasing  
14 assessments.

15 (1) Any officer or director of the association may call  
16 a special meeting for the purpose of increasing  
17 assessments, and the secretary shall call a special  
18 meeting for such purpose upon the request of at  
19 least ten percent (10%) of the members or upon  
20 receipt of a proposal from an insurance company  
21 that is conditioned upon an increase in  
22 assessments.

23 (2) Written notice setting out the date, time, place,  
24 and the purpose of the meeting shall be hand  
25 delivered or sent by first-class mail, postage  
26 prepaid, to the last known address of each member  
27 of the association at least 10 days in advance of  
28 the meeting.

29 (3) No vote may be had on the question of an increase  
30 in assessments unless a quorum of the members of  
31 the association is present at the meeting. A  
32 quorum shall be conclusively presumed if 15 members  
33 or ten percent (10%) of the membership of the  
34 association, whichever is greater, is present at  
35 the meeting.

36 (4) The proposal to increase the assessments shall be  
37 approved by an affirmative vote of a majority of  
38 the members present and voting.

39 (5) The secretary of the association within five days  
40 following the meeting shall certify the result of  
41 the vote and the presence of a quorum to the Board  
42 in the manner and for the purposes set out in  
43 subsections (e) and (f) of this section.

- 1 (h) Every association shall submit to the Board on or before  
2 June 1, 2001, a written report of financial soundness prepared by  
3 a qualified actuary. If the annual report prepared, pursuant to  
4 G.S. 143B-472.3, of an association's financial condition shows a  
5 decline in reserves per member for two consecutive years, then  
6 the Board may require a written report of financial soundness  
7 prepared by a qualified actuary annually thereafter. The report  
8 of financial soundness shall indicate the adequacy of reserves  
9 and other items to pay current and future claims of deceased  
10 members and shall include the following:
- 11 (1) The current number of members of the association.
  - 12 (2) The age of the members.
  - 13 (3) The amount of the association's annual assessments.
  - 14 (4) The amount of the association's current reserves.
  - 15 (5) The projected amount of the association's reserves  
16 for each of the next three years.
  - 17 (6) The net gain in membership of the association  
18 during the preceding three years.
  - 19 (7) The projected net gain in membership of the  
20 association for each of the next three years.
  - 21 (8) The association's current liability for benefits to  
22 its members.
  - 23 (9) The association's projected net liability for  
24 benefits to its members for each of the next three  
25 years.
- 26 (i) Upon a written request from an association that has held a  
27 valid meeting and voted for voluntary dissolution in accordance  
28 with G.S. 143B-472.3, the Board shall issue an order of  
29 liquidation for that association.
- 30 (j) If, after June 1, 2003 and upon receipt of a written report  
31 of financial soundness submitted by the association under  
32 subsection (h), the Board determines that a burial association is  
33 no longer financially sound, the Board shall issue an order of  
34 liquidation and the burial association shall comply with the  
35 order in a manner prescribed in subsection (k) of this section.
- 36 (k) Upon receipt of a request for voluntary dissolution under  
37 subsection (i) or upon an order of dissolution under subsection  
38 (j), the Board shall issue an order of liquidation. The Board's  
39 order may direct that the agreements for members' benefits be  
40 transferred to a financially sound mutual burial association, as  
41 well as all records, property, and unexpended balances of funds  
42 of the association to be liquidated, if the financially sound  
43 mutual burial association agrees in writing to accept the  
44 transfer. The Board's order shall direct the burial association

1 to complete the liquidation and to file a final report with the  
2 Board no later than December 31 of the year of the liquidation.  
3 Upon receipt of the order of liquidation, the burial association  
4 shall:

- 5           (1) Cease accepting new members.  
6           (2) Collect all debts owed to the association and pay  
7           all debts owed by the association from monies on  
8           hand, including the reserve.  
9           (3) Distribute pro rata any remaining monies on hand  
10           and in the reserve among those who were members of  
11           the association and whose transfer could not be  
12           accomplished on the date that the liquidation order  
13           was issued by the Board. Each member's distributive  
14           share shall be determined by dividing the amount of  
15           the member's benefit by the aggregate benefits of  
16           all members of the association and then multiplying  
17           the total amount of money available for  
18           distribution by the percentage so derived.  
19           Assessments owed by the members to the association  
20           at the time of distribution shall be taken into  
21           account and shall be offset against the members'  
22           distributive shares.  
23           (4) Issue a certificate to members in an amount that  
24           equals the difference between the distributive  
25           share issued in subdivision (3) of this subsection  
26           and the full amount of the member's association  
27           benefit. Any certificate issued shall supersede  
28           and supplant any other certificate already issued  
29           by the association. The certificate shall be on a  
30           form prescribed by the Board and shall be prepared  
31           and distributed by the association at its expense.  
32           (5) File a final report with the Board on or before  
33           December 31 in the year in which the order of  
34           liquidation was issued. This report shall show all  
35           receipts and disbursements, including the amount  
36           distributed to each member, since the last annual  
37           report of the association was filed with the Board.  
38           (1) A certificate issued under subsection (k) of this section  
39           may be used as a credit toward the cost of funeral services,  
40           facilities, and merchandise at any funeral establishment that  
41           agrees on forms prescribed by the Board to accept such  
42           certificates. A funeral establishment that agrees to accept  
43           certificates shall do so until the agreement with the Board

1 expires. The Board shall maintain and distribute to the public a  
2 list of funeral establishments that will accept certificates.

3 (m) Upon receipt of the final report of dissolution by the  
4 association, which is required by subsection (k) of this section,  
5 the Board shall immediately review the final report and shall  
6 notify the association whether the report is complete and has  
7 been accepted. Upon acceptance of the final report by the Board,  
8 all licenses issued to soliciting agents of the association  
9 pursuant to G.S. 143B-472.6 are automatically cancelled.

10 (n) No new association may be authorized, organized, or  
11 licensed on or after January 1, 2000, but associations existing  
12 on that date may merge or consolidate as provided in G.S. 143B-  
13 472.2 and G.S. 143B-472.28."

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



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 212

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_

S212-ASK-001.2

Date April 13, 1999

Comm. Sub. [YES]  
Amends Title [YES]  
Second Edition

Senator Kerr

1 moves to amend the bill on page 1, line 3,  
2 by rewriting that line to read:

3  
4 "BOARD OF MORTUARY SCIENCE, MUTUAL BURIAL ASSOCIATIONS, AND MINIMUM  
5 BURIAL DEPTH;"

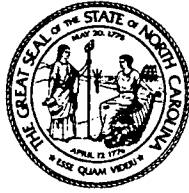
6  
7 and on page 10, line 7, by rewriting the line to read:

8  
9 "Section 5. G.S. 90-210.25A reads as rewritten:

10  
11 **'§ 90-210.25A. Minimum burial depth.**

12 When final disposition of a human body entails interment, the top  
13 of the uppermost part of the burial vault or other encasement shall  
14 be a minimum of 18 inches below the ground surface. This section  
15 does not apply to burials where no part of the burial vault or other  
16 encasement containing the body is touching the ground. to:

17 (1) Burials where no part of the burial vault or other  
18 encasement containing the body is touching the ground.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 212

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 2 of \_\_\_\_

S212-ASK-001.2

1  
2  
3  
4  
5  
6  
7

(2) Burials where the land is located in a family owned cemetery that was established by deed recorded prior to January 1, 1989, and the individual to be buried is to be buried in a surface burial vault in a manner similar to that of the individual's deceased spouse who was buried prior to January 1, 1981.'"

SIGNED J. Ken  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED ✓ \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



# SENATE BILL 212: Mortuary Science Changes.

## BILL ANALYSIS

**Committee:** Commerce Committee  
**Date:** April 13, 1999  
**Version:** Committee Substitute  
S212-CSSK-002

**Introduced by:** Senator Rand  
**Summary by:** Esther Manheimer  
Committee Counsel

**SUMMARY:** Senate Bill 212 changes current law so as to require burial associations to comply with certain financial accounting requirements. Additionally, SB 212 establishes procedures for insurance companies to purchase the assets of or merge with burial associations. The bill provides conditions whereby an association may increase their assessments and the procedures the associations must follow to effect such an increase. Finally, SB 212 requires associations to submit a report of financial soundness and mandates when an association is subject to an order of liquidation by the Board of Mortuary Science.

### BILL ANALYSIS:

**Section 1.** Includes technical changes to G.S. 143B-472.2 that are necessary due to the 1987 abolition of the North Carolina Mutual Burial Association Commission.

**Section 2.** Repeals the portion of G.S. 143B-472.3 that imposes a duty on the Board of Mortuary Science (the Board) to take charge of the books of any burial association that fails to keep their books up-to-date. G.S. 143B-472.3 is amended to require that the annual report of a burial association's financial condition be certified by a certified accountant. The burial association must pay for the cost of the certification. If the annual report of the financial condition is deemed insufficient by the Board, the Board may, at its own expense, initiate a new financial audit.

**Section 3.** Makes a technical change to 143B-472.3.

#### Asset Purchase or Merger.

**Section 4.** Part 13 of Article 10 of Chapter 143B is amended by adding a new section (G.S. 143B-472.29). Under current law, insurance companies may purchase the assets of or merge with burial associations (G.S. 143B-472.28). The proposed new section, G.S. 143B-472.29, provides guidelines for such an asset purchase or merger. The guidelines include:

- Insurance companies desiring to purchase the assets of or merge with a burial association must submit to the Board of Mortuary Science and to the secretary of the burial association a written proposal of the proposed purchase or merger.
- The association must meet regarding the proposal and a representative of the insurance company shall be permitted to explain the proposal at this meeting.

# SENATE BILL 212

Page 2

- The Board shall review the procedures of the meeting (which are specified in this section of the bill), and, in the event that a purchase or merger was approved at the association's meeting, shall issue an order approving of the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

## Increase in Assessments.

An association may increase its assessments if the association's current assessments are unlikely to be, within the next three years,:

- Adequate to reach or maintain a reserve of at least \$21.00 per member, or
- Adequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association.

The bill provides requirements for the association to meet regarding an assessment increase.

## Written Report of Financial Soundness.

By June 1, 2001, every association must submit to the Board a written report of financial soundness prepared by an actuary. **If the financial condition report (prepared by a CPA) shows a decline in reserves per member for two consecutive years, then the Board may require and financial soundness report prepared by an actuary annually thereafter.** The financial soundness report shall include information regarding the association's membership, amount of assessments, reserves, and liabilities.

## Liquidation and Dissolution of an Association.

By June 1, 2003, the Board must issue an order of liquidation for every association that is not financially sound. Financial soundness will be based on the actuary's report. Additionally, the Board will also issue an order of liquidation where an association has voted for voluntary dissolution.

*The liquidation order may include:*

- The Board may direct that the agreements for members' benefits, as well as the association's records, property, and unexpended balances of funds be liquidated be transferred to a financially sound association with the financially sound association's approval.
- The liquidations must be complete and a final report filed with the Board no later than December 31 of the year of liquidation.
- Upon receipt of the order of liquidation, the association must follow various requirements including the issuance of a certificate to members. The certificate can be used as a credit



FINANCIAL INFORMATION PERTAINING TO MUTUAL BURIAL ASSOCIATIONS

County	Burial Association	Income	Claims & Expenses	Cash Flow	Funds on Hand	Unpaid Claims	Balance	Number of Members	Cash Reserve Per Member
ALAMANCE	Hargett	\$ 3,780.14	\$ 2,485.43	\$ 1,294.71	\$ 83,298.30		\$ 83,298.30	700	\$ 119.00
ALAMANCE	Sharpe	\$ 4,868.86	\$ 2,773.61	\$ 2,095.25	\$ 144,009.28	\$ 700.00	\$ 143,309.28	546	\$ 262.47
ANSON	Smith of Anson Co.	\$ 4,385.40	\$ 3,220.63	\$ 1,164.77	\$ 46,976.97		\$ 46,976.97	658	\$ 71.39
ANSON	Pee Dee	\$ 4,099.28	\$ 583.00	\$ 3,516.28	\$ 43,787.46		\$ 43,787.46	924	\$ 47.39
BERTIE	Gilliam	\$ 3,783.46	\$ -	\$ 3,783.46	\$ 27,662.61	\$ 5,000.00	\$ 22,662.61	620	\$ 36.55
BERTIE	Roanoke Cashie	\$ 660.08	\$ -	\$ 645.08	\$ 36,823.44		\$ 36,823.44	214	\$ 172.07
BEUFORT	Pilot Paul	\$ 32,437.30	\$ 4,994.31	\$ 27,442.99	\$ 441,677.40		\$ 441,677.40	8500	\$ 51.96
BEUFORT	Whitefield Whitley	\$ 2,844.12	\$ 2,252.90	\$ 591.22	\$ 17,850.28		\$ 17,850.28	532	\$ 33.55
BUNCOMBE	Berryman	\$ 1,618.09	\$ 1,613.99	\$ 4.10	\$ 7,841.44	\$ 17,900.00	\$ (10,058.56)	247	\$ (40.72)
BUNCOMBE	Groce	\$ 14,786.57	\$ 12,520.00	\$ 2,266.57	\$ 145,459.70		\$ 145,459.70	4382	\$ 33.19
BUNCOMBE	West	\$ 3,822.63	\$ 3,607.69	\$ 214.94	\$ 13,202.09	\$ 3,800.00	\$ 9,402.09	1379	\$ 6.82
BURKE	Burke	\$ 10,954.50	\$ 1,210.80	\$ 9,743.70	\$ 139,022.81		\$ 139,022.81	2310	\$ 60.18
BURKE	Kirksey	\$ 7,365.55	\$ 4,897.99	\$ 2,467.56	\$ 62,866.30		\$ 62,866.30	2100	\$ 29.94
CABARRUS	Leroy L. Kelsey	\$ 1,072.40	\$ 175.76	\$ 896.64	\$ 11,048.51	\$ 2,000.00	\$ 9,048.51	216	\$ 41.89
CABARRUS	Ladys	\$ 4,734.51	\$ 3,653.99	\$ 1,080.52	\$ 28,126.99		\$ 28,126.99	1630	\$ 17.26
CABARRUS	Peninger	\$ 2,579.02	\$ 7,431.81	\$ (4,852.79)	\$ 25,340.09		\$ 25,340.09	487	\$ 52.03
CABARRUS	Whitely	\$ 3,909.55	\$ 3,505.10	\$ 404.45	\$ 34,980.11		\$ 34,980.11	892	\$ 39.22
CABARRUS	Wilkinson	\$ 1,529.08	\$ 1,012.96	\$ 516.12	\$ 14,005.27		\$ 14,005.27	440	\$ 31.83
CALDWELL	Miller	\$ 1,828.63	\$ 1,685.89	\$ 142.74	\$ 12,122.30		\$ 12,122.30	333	\$ 36.40
CASWELL	Fulton	\$ 1,626.57	\$ 438.71	\$ 1,187.86	\$ 21,499.63		\$ 21,499.63	240	\$ 89.58
CATAWBA	Bass Smith	\$ 2,525.81	\$ 2,986.00	\$ (460.19)	\$ 13,965.26		\$ 13,965.26	829	\$ 16.85
CATAWBA	Van Drum	\$ 1,571.50	\$ 1,408.62	\$ 162.88	\$ 33,526.86		\$ 33,526.86	1503	\$ 22.31
CATAWBA	Goodin Drum	\$ 395.00	\$ 587.18	\$ (192.18)	\$ 3,975.77		\$ 3,975.77	233	\$ 17.06
CHATHAM	Friendly	\$ 2,393.10	\$ 748.20	\$ 1,644.90	\$ 32,483.90	\$ 1,200.00	\$ 31,283.90	365	\$ 85.71
CHEROKEE	Ivie	\$ 17,009.62	\$ 13,366.60	\$ 3,643.02	\$ 230,997.40		\$ 230,997.40	4150	\$ 55.66
CHEROKEE	Western Carolina (M)	\$ 5,105.39	\$ 4,985.94	\$ 119.45	\$ 62,627.34		\$ 62,627.34	2505	\$ 25.00
CLEVELAND	Carpenter Brothers	\$ 1,325.60	\$ 1,255.96	\$ 69.64	\$ 25,858.40		\$ 25,858.40	780	\$ 33.15
CLEVELAND	Shelby	\$ 872.59	\$ 462.00	\$ 410.59	\$ 11,054.45		\$ 11,054.45	1045	\$ 10.58
DAVIDSON	Cumby	\$ 4,338.95	\$ 1,800.00	\$ 2,538.95	\$ 39,947.60	\$ 41,900.00	\$ (1,952.40)	1100	\$ (1.77)
DAVIDSON	Hazlip	\$ 682.90	\$ 974.61	\$ (291.71)	\$ 9,702.40	\$ 3,800.00	\$ 5,902.40	336	\$ 17.57
DAVIDSON	Kirkman's	\$ 3,004.73	\$ 4,120.40	\$ (1,115.67)	\$ 49,977.23		\$ 49,977.23	1080	\$ 46.28

FINANCIAL INFORMATION PERTAINING TO MUTUAL BURIAL ASSOCIATIONS

County	Burial Association	Income	Claims & Expenses	Cash Flow	Funds on Hand	Unpaid Claims	Balance	Number of Members	Cash Reserve Per Member
DAVIDSON	Piedmont	\$ 2,299.04	\$ 1,941.88	\$ 357.16	\$ 23,657.31	\$ 22,200.00	\$ 1,457.31	754	\$ 1.93
DAVIE	Eaton	\$ 3,416.00	\$ 2,198.56	\$ 1,217.44	\$ 33,678.20	\$ 2,700.00	\$ 30,978.20	1350	\$ 22.95
DAVIE	Greens	\$ 9,920.73	\$ 10,169.60	\$ (248.87)	\$ 57,857.53	\$ 17,900.00	\$ 39,957.53	2682	\$ 14.90
DUPLIN	Colored United	\$ 3,534.27	\$ 2,624.64	\$ 909.63	\$ 77,716.25		\$ 77,716.25	1590	\$ 48.88
DUPLIN	Community	\$ 6,199.62	\$ 8,539.62	\$ (2,340.00)	\$ 59,831.05		\$ 59,831.05	925	\$ 64.68
DUPLIN	Friendship	\$ 21,241.52	\$ 13,709.91	\$ 7,531.61	\$ 258,333.78		\$ 258,333.78	3356	\$ 76.98
DUPLIN	Matthews	\$ 3,407.80	\$ 165.00	\$ 3,242.80	\$ 69,817.45	\$ 1,400.00	\$ 68,417.45	2114	\$ 32.36
DUPLIN	Nixon	\$ 2,019.13	\$ 824.00	\$ 1,195.13	\$ 30,672.53		\$ 30,672.53	157	\$ 195.37
DUPLIN	Wallace	\$ 9,267.35	\$ 9,043.50	\$ 223.85	\$ 32,537.48		\$ 32,537.48	2386	\$ 13.64
EDGECOMBE	Peoples	\$ 5,686.87	\$ 4,240.80	\$ 1,446.07	\$ 21,043.05	\$ 200.00	\$ 20,843.05	1490	\$ 13.99
EDGECOMBE	Stokes	\$ 16,142.12	\$ 15,886.10	\$ 256.02	\$ 153,796.41	\$ 600.00	\$ 153,196.41	2462	\$ 62.22
FORSYTH	Brown	\$ 1,065.15	\$ 1,669.42	\$ (604.27)	\$ 20,645.73		\$ 20,645.73	58	\$ 355.96
FORSYTH	Gilmore	\$ 1,726.73	\$ 117.00	\$ 1,609.73	\$ 37,594.65		\$ 37,594.65	34	\$ 1,105.73
FORSYTH	Lewis	\$ 1,632.36	\$ 688.75	\$ 943.61	\$ 14,956.56		\$ 14,956.56	298	\$ 50.19
FORSYTH	Ragland	\$ 8,142.01	\$ 727.05	\$ 7,414.96	\$ 7,414.96		\$ 7,414.96	190	\$ 39.03
FRANKLIN	Richardson	\$ 6,313.63	\$ 8,748.09	\$ (2,434.46)	\$ 82,152.27		\$ 82,152.27	1960	\$ 41.91
GRAHAM	Western Carolina (R)	\$ 2,933.03	\$ 2,777.60	\$ 155.43	\$ 17,100.05		\$ 17,100.05	825	\$ 20.73
GREENE	Brotherly	\$ 4,834.49	\$ 1,805.30	\$ 3,029.19	\$ 80,807.55	\$ 2,300.00	\$ 78,507.55	1009	\$ 77.81
GREENE	Joyners	\$ 3,831.02	\$ 989.89	\$ 2,841.13	\$ 33,989.20		\$ 33,989.20	663	\$ 51.27
GUILFORD	Browns	\$ 1,612.73	\$ 3,690.00	\$ (2,077.27)	\$ 8,105.94		\$ 8,105.94	283	\$ 28.64
GUILFORD	Hanes-Lineberry	\$ 2,862.52	\$ 2,458.50	\$ 404.02	\$ 33,259.33		\$ 33,259.33	1042	\$ 31.92
HALIFAX	Coffield	\$ 2,688.70	\$ 915.50	\$ 1,773.20	\$ 54,787.03	\$ 200.00	\$ 54,587.03	1516	\$ 36.01
HAYWOOD	Garrett	\$ 6,203.17	\$ 8,041.82	\$ (1,838.65)	\$ 91,187.12		\$ 91,187.12	2772	\$ 32.90
IREDELL	Mooreville	\$ 1,057.96	\$ 353.60	\$ 704.36	\$ 15,420.01	\$ 2,100.00	\$ 13,320.01	262	\$ 50.84
IREDELL	Nicholson	\$ 781.53	\$ 519.00	\$ 262.53	\$ 23,263.25	\$ 1,000.00	\$ 22,263.25	204	\$ 109.13
JOHNSTON	Banner	\$ 5,066.24	\$ 2,194.10	\$ 2,872.14	\$ 38,897.91		\$ 38,897.91	1400	\$ 27.78
JOHNSTON	Hood	\$ 1,787.66	\$ 1,200.00	\$ 587.66	\$ 23,119.83	\$ 300.00	\$ 22,819.83	238	\$ 95.88
JOHNSTON	Walker Sanders	\$ 2,277.72	\$ 845.76	\$ 1,431.96	\$ 21,907.80		\$ 21,907.80	260	\$ 84.26
LENOIR	Albritton	\$ 610.93	\$ 563.50	\$ 47.43	\$ 1,994.46		\$ 1,994.46	91	\$ 21.92
LENOIR	Howard-Carter	\$ 4,390.74	\$ 4,344.50	\$ 46.24	\$ 88,150.62		\$ 88,150.62	1100	\$ 80.14
LINCOLN	Warlick	\$ 4,090.18	\$ 6,036.00	\$ (1,945.82)	\$ 89,164.02		\$ 89,164.02	2405	\$ 37.07
MACON	Bryant	\$ 16,060.75	\$ 11,390.60	\$ 4,670.15	\$ 245,149.16		\$ 245,149.16	3655	\$ 67.07
MACON	Potts	\$ 43,306.15	\$ 2,125.20	\$ 41,180.95	\$ 68,087.22		\$ 68,087.22	850	\$ 80.10

FINANCIAL INFORMATION PERTAINING TO MUTUAL BURIAL ASSOCIATIONS

County	Burial Association	Income	Claims & Expenses	Cash Flow	Funds on Hand	Unpaid Claims	Balance	Number of Members	Cash Reserve Per Member
MADISON	Bowman Capps	\$ 20,806.50	\$ 21,854.63	\$ (1,048.13)	\$ 167,139.99	\$ 2,558.73	\$ 167,139.99	4850	\$ 34.46
MARTIN	Manson	\$ 2,972.13	\$ 215.00	\$ 2,757.13	\$ 117,795.91	\$ 2,558.73	\$ 115,237.18	343	\$ 335.97
MCDOWELL	McCall	\$ 5,774.32	\$ 4,530.77	\$ 1,243.55	\$ 36,043.52	\$ 36,043.52	\$ 36,043.52	2030	\$ 17.76
MECKLENBURG	Alexander	\$ 1,129.76	\$ 1,388.74	\$ (258.98)	\$ 7,016.00	\$ 11,800.00	\$ (4,784.00)	193	\$ (24.79)
MECKLENBURG	Grier	\$ 3,477.27	\$ 2,695.57	\$ 781.70	\$ 12,620.88	\$ 3,800.00	\$ 8,820.88	875	\$ 10.08
NASH	Spring Hope	\$ 14,682.70	\$ 95,545.92	\$ (80,863.22)	\$ 184,500.43	\$ 2,600.00	\$ 184,500.43	2131	\$ 86.58
NORTHHAMPTON	Faison	\$ 2,771.85	\$ 3,400.00	\$ (628.15)	\$ 110,445.02	\$ 1,900.00	\$ 107,845.02	437	\$ 246.78
ONslow	McIvers	\$ 2,651.51	\$ 212.94	\$ 2,438.57	\$ 12,852.29	\$ 1,900.00	\$ 10,952.29	371	\$ 29.52
PASQUOTANK	Walston	\$ 925.34	\$ 861.20	\$ 64.14	\$ 9,060.07	\$ 25,200.00	\$ 9,060.07	145	\$ 62.48
PERSON	Brooks-White	\$ 783.60	\$ 795.52	\$ (11.92)	\$ 9,302.32	\$ 17,711.08	\$ (15,897.68)	525	\$ (30.28)
PERSON	Woody's	\$ 1,630.28	\$ 1,730.85	\$ (100.57)	\$ 17,711.08	\$ 54,497.44	\$ 17,711.08	752	\$ 23.55
PITT	Ayden	\$ 3,191.98	\$ 3,255.08	\$ (63.10)	\$ 54,497.44	\$ 33,018.18	\$ 54,497.44	1657	\$ 32.89
PITT	Greenville	\$ 6,117.86	\$ 6,071.03	\$ 46.83	\$ 33,018.18	\$ 623,832.67	\$ 33,018.18	926	\$ 35.66
PITT	Pilot Wilkerson	\$ 17,314.92	\$ 19,608.40	\$ (2,293.48)	\$ 623,832.67	\$ 1,400.00	\$ 623,832.67	11277	\$ 55.32
RICHMOND	Marks	\$ 2,347.43	\$ 1,828.55	\$ 518.88	\$ 13,321.23	\$ 1,400.00	\$ 11,921.23	528	\$ 22.58
ROBESON	Butler	\$ 731.48	\$ 336.67	\$ 394.81	\$ 20,931.49	\$ 20,931.49	\$ 20,931.49	40	\$ 523.29
ROBESON	McMillan	\$ 816.04	\$ 1,239.40	\$ (423.36)	\$ 6,988.36	\$ 2,800.00	\$ 6,988.36	240	\$ 29.12
ROBESON	Mautsby	\$ 949.57	\$ 319.32	\$ 630.25	\$ 5,778.57	\$ 2,800.00	\$ 5,778.57	289	\$ 20.00
ROCKINGHAM	City	\$ 872.84	\$ 204.10	\$ 668.74	\$ 7,695.69	\$ 1,800.00	\$ 4,895.69	140	\$ 34.97
ROCKINGHAM	McLaurin	\$ 473.02	\$ 360.50	\$ 112.52	\$ 2,116.87	\$ 1,800.00	\$ 316.87	84	\$ 3.77
ROCKINGHAM	Rockingham	\$ 6,105.11	\$ 9,502.13	\$ (3,397.02)	\$ 51,211.18	\$ 15,550.00	\$ 35,661.18	1830	\$ 19.49
ROCKINGHAM	Wilkerson	\$ 1,255.91	\$ 1,052.78	\$ 203.13	\$ 8,502.21	\$ 1,600.00	\$ 6,902.21	322	\$ 21.44
ROWAN	Florence Progressive	\$ 1,615.78	\$ 5,464.00	\$ (3,848.22)	\$ 30,306.87	\$ 2,600.00	\$ 30,306.87	88	\$ 344.40
ROWAN	Lyerly	\$ 3,372.23	\$ 1,555.22	\$ 1,817.01	\$ 24,690.95	\$ 2,600.00	\$ 22,090.95	807	\$ 27.37
ROWAN	Rowan-Linn-Wright	\$ 6,979.68	\$ 3,370.43	\$ 3,609.25	\$ 51,724.99	\$ 9,000.00	\$ 42,724.99	1860	\$ 22.97
RUTHERFORD	Padgett King	\$ 671.15	\$ 1,034.00	\$ (362.85)	\$ 5,498.76	\$ 5,498.76	\$ 5,498.76	220	\$ 24.99
RUTHERFORD	Washburn	\$ 1,357.72	\$ 1,174.20	\$ 183.52	\$ 15,642.90	\$ 600.00	\$ 15,642.90	434	\$ 36.04
SAMPSON	Grove	\$ 6,814.58	\$ 6,888.95	\$ (74.37)	\$ 71,066.30	\$ 200.00	\$ 70,466.30	920	\$ 76.59
SAMPSON	Lawson	\$ 2,002.25	\$ 2,154.84	\$ (152.59)	\$ 5,351.69	\$ 200.00	\$ 5,151.69	545	\$ 9.45
SAMPSON	Roseboro	\$ 20,890.47	\$ 21,492.22	\$ (601.75)	\$ 181,504.78	\$ 5,807.59	\$ 181,504.78	5258	\$ 34.52
SCOTLAND	Grace	\$ 4,060.68	\$ 4,481.50	\$ (420.82)	\$ 5,807.59	\$ 2,300.00	\$ 5,807.59	372	\$ 15.61
SCOTLAND	Jackson	\$ 5,236.31	\$ 510.20	\$ 4,726.11	\$ 72,901.32	\$ 2,300.00	\$ 70,601.32	275	\$ 256.73
STANLEY	Hartsell-Hartsell	\$ 18,505.38	\$ 30,620.00	\$ (12,114.62)	\$ 131,997.85	\$ 131,997.85	\$ 131,997.85	4970	\$ 26.56



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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1

SENATE BILL 660

Short Title: Revised Limited Liability Company Act.

(Public)

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Sponsors: Senator Clodfelter.

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Referred to: Commerce.

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March 31, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW GOVERNING LIMITED LIABILITY  
3 COMPANIES TO CLARIFY CERTAIN DEFINITIONS OF TERMS, TO  
4 PROVIDE MORE FLEXIBILITY WITH REGARD TO ORGANIZERS, TO  
5 CLARIFY THAT THE FILING OF THE ARTICLES OF ORGANIZATION IS  
6 CONCLUSIVE EVIDENCE OF THE FORMATION OF A COMPANY, TO  
7 REVISE THE CIRCUMSTANCES AND RESTRICTIONS REGARDING  
8 FORMATION OF A COMPANY, TO PROVIDE FOR THE INDEXING OF  
9 REAL ESTATE RECORDS TO REFLECT MERGERS AND CONVERSIONS  
10 OF BUSINESS ENTITIES, TO ALLOW ALTERNATIVE MANAGEMENT  
11 STRUCTURES, TO PROVIDE FOR WITHDRAWAL FROM A COMPANY  
12 ONLY AS PERMITTED BY THE ARTICLES OF ORGANIZATION OR  
13 WRITTEN OPERATING AGREEMENT, TO REVISE THE PERMITTED  
14 GROUNDS FOR DISSOLUTION, AND TO CLARIFY THAT A COMPANY  
15 MAY ENGAGE IN A BUSINESS UNDER AN ASSUMED NAME.

16 The General Assembly of North Carolina enacts:

17

18 **PART I. DEFINITIONS.**

19 Section 1. G.S. 57C-1-03 reads as rewritten:

20 "**§ 57C-1-03. Definitions.**

21 The following definitions apply in this Chapter, unless otherwise specifically  
22 provided:

- 1 (1) Articles of organization. -- The document filed under G.S. 57C-2-  
2 20 of this Chapter for the purpose of forming a limited liability  
3 company, as amended or restated.
- 4 (2) Bankrupt. -- Bankrupt under the United States Bankruptcy Code,  
5 as amended, or insolvent under State insolvency laws.
- 6 (3) Business. -- Any lawful trade, ~~occupation~~, investment, or other  
7 purpose or commercial activity activity, whether or not such trade,  
8 investment, purpose, or activity is carried on engaged in for gain or  
9 profit.
- 10 (4) Corporation. -- Has the same meaning as in G.S. 55-1-40(4).
- 11 (5) Court. -- Includes every court and judge having jurisdiction in the  
12 case.
- 13 (6) Distribution. -- A direct or indirect transfer of money or other  
14 property or incurrance of indebtedness by a limited liability  
15 company to or for the benefit of its members in respect of their  
16 membership interests.
- 17 (7) Foreign corporation. -- Has the same meaning as in G.S. 55-1-  
18 40(10).
- 19 (8) Foreign limited liability company. -- An unincorporated  
20 organization formed under laws other than the laws of this State,  
21 that affords to each of its members, pursuant to the laws under  
22 which it is formed, limited liability with respect to the liabilities of  
23 the organization.
- 24 (9) Foreign limited partnership. -- Has the same meaning as in G.S.  
25 59-102(5).
- 26 (10) Individual. -- A human being.
- 27 (10a) Liabilities, debts, and obligations. -- Have one and the same  
28 meaning and are used interchangeably throughout this Chapter.  
29 Reference to 'liabilities,' 'debts,' or 'obligations' whether  
30 individually or in any combination, is deemed to reference 'all  
31 liabilities, debts, and obligations, whether arising in contract, tort,  
32 or otherwise.'
- 33 (11) Limited liability company or domestic limited liability company. --  
34 An entity formed and existing under this Chapter.
- 35 (12) Limited partnership or domestic limited partnership. -- Has the  
36 same meaning as in G.S. 59-102(8).
- 37 (13) Manager. -- Has the following meanings: (i) with respect to a  
38 limited liability company that has set forth in its articles of  
39 organization that it is to be or may be managed by persons other  
40 than members, any person designated in accordance with G.S.  
41 57C-3-20(a), (ii) with respect to any other limited liability  
42 company, its members, and (iii) with respect to a foreign limited  
43 liability company, any person authorized to act for and bind the  
44 foreign limited liability company.

- 1 (14) Member. -- A person who has been admitted to membership in the  
2 limited liability company as provided in G.S. 57C-3-01 until the  
3 person's membership ceases as provided in G.S. 57C-3-02 or G.S.  
4 57C-5-02.
- 5 (15) Membership interest or interest. -- All of a member's rights in the  
6 limited liability company, including without limitation the  
7 member's share of the profits and losses of the limited liability  
8 company, the right to receive distributions of the limited liability  
9 company assets, any right to vote, and any right to participate in  
10 management.
- 11 (16) Operating agreement. -- Any agreement, written or oral, of the  
12 members with respect to the affairs of a limited liability company  
13 and the conduct of its business that is binding on all the members.  
14 An operating agreement shall include, in the case of a limited  
15 liability company with only one member, any writing signed by the  
16 member, without regard to whether the writing constitutes an  
17 agreement, that relates to the affairs of the limited liability  
18 company and the conduct of its business.
- 19 (16a) Organizer. -- A person who executes the articles of organization of  
20 a limited liability company in the capacity of an organizer.
- 21 (17) Person. -- An individual, a trust, an estate, or a domestic or foreign  
22 corporation, a domestic or foreign professional corporation, a  
23 domestic or foreign partnership, a domestic or foreign limited  
24 partnership, a domestic or foreign limited liability company, an  
25 unincorporated association, or another entity.
- 26 (18) State. -- A state, territory, or possession of the United States, the  
27 District of Columbia, or the Commonwealth of Puerto Rico."  
28

29 **PART II. FORMATION.**

30 Section 2.1. G.S. 57C-1-20(f)(3) reads as rewritten:

- 31 "(3) If the limited liability company has not been ~~formed~~, formed or if  
32 no initial members of the limited liability company have been  
33 identified in the manner provided in this Chapter, by an organizer;  
34 or".

35 Section 2.2. G.S. 57C-2-20 reads as rewritten:

36 "**§ 57C-2-20. Formation.**

37 (a) One or more persons may ~~organize~~ form a limited liability company by  
38 delivering executed articles of organization to the Secretary of State for filing.

39 (b) (1) When the filing by the Secretary of State ~~files~~ of the articles of  
40 ~~organization~~, organization becomes effective, the proposed  
41 organization becomes a limited liability company subject to this  
42 Chapter and to the purposes, conditions, and provisions stated in  
43 the ~~articles, and the persons executing the articles of organization~~

1 ~~become members of the limited liability company.~~ articles of  
2 organization.

- 3 (2) Filing of the articles of organization by the Secretary of State is  
4 conclusive evidence of the ~~organization~~ formation of the limited  
5 liability company, except in a proceeding by the State to cancel or  
6 revoke the articles of organization or involuntarily dissolve the  
7 limited liability company.

8 (c) If initial members are not identified in the articles of organization of a limited  
9 liability company in the manner provided in G.S. 57C-3-01(a), the organizers shall  
10 hold one or more meetings at the call of a majority of the organizers to identify the  
11 initial members of the limited liability company. Unless otherwise provided in this  
12 Chapter or in the articles of organization of the limited liability company, all  
13 decisions to be made by the organizers at such meetings shall require the approval,  
14 consent, agreement, or ratification of a majority of the organizers. Unless otherwise  
15 provided in the articles of organization, the organizers may, in lieu of a meeting, take  
16 action as described in this subsection by written consent signed by all of the  
17 organizers. The written consent may be incorporated in, or otherwise made part of,  
18 the initial written operating agreement of the limited liability company.

19 (d) A limited liability company may also be formed through the conversion of  
20 another business entity in accordance with Part 1 of Article 9 of this Chapter."

21 Section 2.3. G.S. 57C-2-21(a) reads as rewritten:

22 "(a) The articles of organization must set forth:

- 23 (1) A name for the limited liability company that satisfies the  
24 provisions of G.S. 57C-2-30;
- 25 (2) ~~The latest date on which~~ If the limited liability company is to  
26 dissolve, dissolve by a specific date, the latest date on which the  
27 limited liability company is to dissolve, otherwise there shall be no  
28 limit on the duration of the limited liability company;
- 29 (3) The name and address of each person executing the articles of  
30 ~~organization;~~ organization and whether the person is executing the  
31 articles of organization in the capacity of a member of an  
32 organizer;
- 33 (4) The street address, and the mailing address if different from the  
34 street address, of the limited liability company's initial registered  
35 office, the county in which the initial registered office is located,  
36 and the name of the limited liability company's initial registered  
37 agent at that address; and
- 38 (5) Unless all of the members by virtue of their status as members shall  
39 be managers of the limited liability company, a statement that,  
40 except as provided in G.S. 57C-3-20(a), the members shall not be  
41 managers by virtue of their status as members."

42 Section 2.4. G.S. 57C-2-22(b) reads as rewritten:

43 "(b) Unless otherwise provided in the articles of organization or a written  
44 operating agreement, any amendment to the articles of organization shall require the



1 unanimous vote of the ~~members.~~ members or, if no initial members of the limited  
2 liability company have been identified in the manner provided in this Chapter, by the  
3 unanimous vote of the organizers."

4 Section 2.5. G.S. 57C-2-22.1(b) reads as rewritten:

5 "(b) The restated articles of organization may include one or more amendments to  
6 the ~~articles.~~ articles of organization. Unless otherwise provided in the articles of  
7 organization or a written operating agreement, any amendment requires the  
8 unanimous vote of the ~~members.~~ members or, if no initial members of the limited  
9 liability company have been identified in the manner provided in this Chapter, by the  
10 unanimous vote of the organizers. The restated articles of organization may include a  
11 statement of the address of the current registered office and the name of the current  
12 registered agent of the limited liability company."

13

#### 14 PART III. REAL ESTATE RECORDS INDEX.

15 Section 3. G.S. 57C-2-34 reads as rewritten:

##### 16 "§ 57C-2-34. Real property records.

17 (a) Whenever the name of any domestic or foreign limited liability company  
18 holding title to real property in this State is changed upon amendment to its articles  
19 of organization or whenever title to its real property in this State is ~~transferred~~ vested  
20 by operation of law in another entity upon merger or conversion of ~~two or more the~~  
21 limited liability ~~companies,~~ company, a certificate reciting the ~~change or transfer~~  
22 name change, merger, or conversion shall be recorded in the office of the register of  
23 deeds of the county where the property lies, or if the property is located in more than  
24 one county, then in each county where any portion of the property lies.

25 (b) The Secretary of State shall adopt uniform certificates to be furnished for  
26 registration in accordance with this section. In the case of a foreign limited liability  
27 company, a similar certificate by any competent authority of the jurisdiction of  
28 organization may be registered in accordance with this section.

29 (c) The certificate required by this section shall be recorded by the register of  
30 deeds in the same manner as deeds, and for the same fees, but no formalities as to  
31 acknowledgement, probate, or approval by any other officer shall be required. The  
32 former name of the limited liability company holding title to the real property before  
33 the ~~amendment or merger~~ name change, merger, or conversion shall appear in the  
34 'Grantor' index, and the ~~amended~~ new name of the limited liability company or the  
35 name of the other entity holding title to the real property by virtue of the ~~amendment~~  
36 ~~or merger or conversion, as applicable,~~ shall appear in the 'Grantee' index."

37

#### 38 PART IV. MEMBERSHIP.

39 Section 4.1. G.S. 57C-3-01 reads as rewritten:

##### 40 "§ 57C-3-01. Admission of members.

41 ~~The persons executing~~ Unless the articles of organization of a limited liability  
42 company become members upon the effective time of filing of the articles of  
43 organization by the Secretary of State as specified in G.S. 57C-2-20; provide  
44 otherwise, each person executing the articles of organization of a limited liability

1 company in the capacity of a member, and each person who is otherwise named in  
2 the articles of organization as a member of the limited liability company, becomes a  
3 member at the time that the filing by the Secretary of State of the articles of  
4 organization of the limited liability company becomes effective.

5 (b) ~~After the formation of a limited liability company, a~~ A person may be  
6 admitted as a ~~member.~~ member of a limited liability company:

7 (1) In the case of a person acquiring a membership interest directly  
8 from the limited liability company, (i) upon being so identified by  
9 the organizers of the limited liability company in accordance with  
10 G.S. 57C-2-20(c) or (ii) upon compliance with the articles of  
11 organization or operating agreement or, if the articles of  
12 organization or operating agreement do not so provide, upon the  
13 unanimous consent of the members; and

14 (2) In the case of an assignee of an interest of a member, upon  
15 compliance with the provisions of G.S. 57C-5-04(a)."

16 Section 4.2. G.S. 57C-3-05 reads as rewritten:

17 "**§ 57C-3-05. Members bound by operating agreements.**

18 A member shall be bound by any operating agreement, including any amendment  
19 thereto, otherwise valid under this Chapter and other applicable law, (i) to which the  
20 member has expressly assented, or (ii) which was in effect at the time the member  
21 became a member and either was in writing or the terms of which were actually  
22 known to the member, or (iii) with respect to any amendment, if the member was  
23 bound by the operating agreement as in effect immediately prior to such amendment  
24 and such amendment was adopted in accordance with the terms of such operating  
25 agreement. The articles of organization or written operating agreement may require  
26 that all agreements of the members constituting the operating agreement be in  
27 writing, in which case the term 'operating agreement' shall not include oral  
28 agreements of the members. Except to the extent otherwise provided in a written  
29 operating agreement, a limited liability company shall be deemed for all purposes to  
30 be a party to the operating agreement of its member or members."

31 Section 4.3. G.S. 57C-3-20(b) reads as rewritten:

32 "(b) Except to the extent otherwise provided in the articles of organization or a  
33 written operating agreement, Management management of the affairs of the limited  
34 liability company shall be vested in ~~its~~ the managers. Subject to any provisions in the  
35 articles of organization or a written operating agreement or this Chapter restricting,  
36 enlarging, or modifying the management rights and duties of any manager or  
37 managers, or management procedures, each manager shall have equal rights and  
38 authority to participate in the management of the limited liability company, and  
39 management decisions shall require the approval, consent, agreement, or ratification  
40 of a majority of the managers."

41 Section 4.4. G.S. 57C-3-32(b) reads as rewritten:

42 "(b) No provision permitted under subsection (a) of this section shall limit,  
43 eliminate, or indemnify against the liability of a manager for (i) acts or omissions that  
44 the manager knew at the time of the acts or omissions were clearly in conflict with

1 the interests of the limited liability company, (ii) any transaction from which the  
2 manager derived an improper personal benefit, or (iii) acts or omissions occurring  
3 prior to the date the provision became effective, except that indemnification pursuant  
4 to subdivision (2) of subsection (a) of this section may be provided if approved by all  
5 the members. As used in this subsection, 'improper personal benefit' does not include  
6 reasonable compensation or other reasonable incidental benefit for or on account of  
7 service as a manager, an officer, an employee, an independent contractor, an  
8 attorney, or a consultant of the limited liability company.

9 ~~No provision permitted under subsection (a) of this section shall limit or eliminate~~  
10 ~~the liability of a member or manager for any taxes owed by the limited liability~~  
11 ~~company under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of~~  
12 ~~the General Statutes."~~

13 Section 4.5. G.S. 57C-5-06 reads as rewritten:

14 "**§ 57C-5-06. Voluntary withdrawal of member.**

15 A member may withdraw only at the time or upon the happening of the events  
16 specified in the articles of organization or a written operating agreement. ~~by giving~~  
17 ~~not less than six months' prior written notice to the other members at their respective~~  
18 ~~addresses as shown on the books of the limited liability company, unless:~~

19 (1) ~~The articles of organization or a written operating agreement~~  
20 ~~provide that the member does not have the right or power to~~  
21 ~~withdraw; or~~

22 (2) ~~The articles of organization or a written operating agreement~~  
23 ~~specify another time for or impose other conditions on~~  
24 ~~withdrawal."~~

25 Section 4.6. G.S. 57C-5-07 reads as rewritten:

26 "**§ 57C-5-07. Distribution upon withdrawal.**

27 Except as provided in and to the extent provided under this Article, Chapter, upon  
28 withdrawal, any withdrawing member is entitled to receive any distribution to which  
29 he is otherwise entitled under the articles of organization or a written operating  
30 agreement, or, if not otherwise provided in the articles of organization or a written  
31 operating agreement, upon a reasonable time after withdrawal, the fair value of the  
32 member's interest in the limited liability company as of the date of withdrawal based  
33 upon the member's right to share in distributions from the limited liability company."  
34

## 35 PART V. DISSOLUTION.

36 Section 5.1. G.S. 57C-6-01 reads as rewritten:

37 "**§ 57C-6-01. Dissolution.**

38 A limited liability company is dissolved and its affairs shall be wound up at or  
39 upon the first to occur of the following:

40 (1) The time specified in the articles of organization or a written  
41 operating agreement;

42 (2) The happening of an event specified in the articles of organization  
43 or a written operating agreement;

44 (3) The written consent of all members;

- 1 (4) Unless otherwise provided in the articles of organization or a  
2 written operating agreement, at such time that the limited liability  
3 company no longer has any members, the happening of any event  
4 of withdrawal described in G.S. 57C-3-02 (cessation of  
5 membership) with respect to any member, unless at the time of the  
6 event of withdrawal (i) there is at least one remaining member,  
7 (ii) the provisions of the articles of organization or a written  
8 operating agreement permit the business of the limited liability  
9 company to be carried on by the remaining member or members,  
10 and (iii) the remaining member or members elect to do so  
11 pursuant to such vote, to procedures prescribed in the articles of  
12 organization or a written operating agreement, or, in the absence  
13 of prescribed voting requirements or procedures, by a unanimous  
14 vote of the remaining member or members taken after the event of  
15 withdrawal. The foregoing to the contrary notwithstanding, unless  
16 otherwise provided in the articles of organization or a written  
17 operating agreement, a limited liability company shall not be  
18 dissolved and is not required to be wound up by reason of any  
19 event of withdrawal of the last remaining member if, within 90  
20 days after the event of withdrawal, the assignee or the fiduciary of  
21 the estate of the last remaining member all remaining members  
22 agree agrees in writing that the business of the limited liability  
23 company may be continued, or continued until the admission of  
24 the assignee or the fiduciary of the estate of the member or its  
25 designee to the limited liability company as a member, effective as  
26 of the occurrence of the event that causes the withdrawal of the  
27 last remaining member; or  
28 (5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or  
29 the filing by the Secretary of State of a certificate of dissolution  
30 under G.S. 57C-6-03."

31 Section 5.2. G.S. 57C-6-02 reads as rewritten:

32 "**§ 57C-6-02. Judicial Grounds for judicial dissolution.**

33 ~~(a) On application by or for a member, the~~ The superior court may decree  
34 ~~dissolution of dissolve~~ a limited liability company ~~whenever it is not reasonably~~  
35 ~~practicable to carry on the business in conformity with the articles of organization or~~  
36 ~~an operating agreement. The clerk of court shall deliver a certified copy of the decree~~  
37 ~~to the Secretary of State, who shall file it.~~ company in a proceeding by the following:

- 38 (1) The Attorney General if it is established that (i) the limited  
39 liability company obtained its articles of organization through  
40 fraud; or (ii) the limited liability company has, after written notice  
41 by the Attorney General given at least 120 days prior thereto,  
42 continued to exceed or abuse the authority conferred upon it by  
43 law;

1           (2) A member if it is established that (i) the managers or those in  
2 control of the limited liability company are deadlocked in the  
3 management of the affairs of the limited liability company, the  
4 members are unable to break the deadlock, and irreparable injury  
5 to the limited liability company is threatened or being suffered, or  
6 the business and affairs of the limited liability company can no  
7 longer be conducted to the advantage of the members generally,  
8 because of the deadlock; (ii) liquidation is reasonably necessary for  
9 the protection of the rights or interests of the complaining member,  
10 (iii) the assets of the limited liability company are being misapplied  
11 or wasted; or (iv) the articles of organization or a written operating  
12 agreement entitles the complaining member to dissolution of the  
13 limited liability company; or

14           (3) The limited liability company to have its voluntary dissolution  
15 continued under court supervision.

16 ~~(b) Venue for a proceeding under subsection (a) of this section to dissolve a~~  
17 ~~limited liability company lies in the county where the limited liability company's~~  
18 ~~principal office (or, if none in this State, its registered office) is or was last located."~~

19           Section 5.3. Article 6 of Chapter 57C is amended by adding a new  
20 section to read:

21 **"§ 57C-6-02.1. Procedure for judicial dissolution.**

22           (a) Venue for a proceeding to dissolve a limited liability company lies in the  
23 county where the limited liability company's principal office (or, if none in this State,  
24 its registered office) is or was last located.

25           (b) It is not necessary to make members parties to a proceeding to dissolve a  
26 limited liability company unless relief is sought against them individually.

27           (c) A court in a proceeding brought to dissolve a limited liability company may  
28 issue injunctions, appoint a receiver with all powers and duties the court directs, take  
29 other action required to preserve the assets of the limited liability company, wherever  
30 located, and carry on the business of the limited liability company.

31           (d) In any proceeding brought by a member under G.S. 57C-6-02(2)(ii) in which  
32 the court determines that dissolution would be appropriate, the court shall not order  
33 dissolution if, after the court's determination, the limited liability company elects to  
34 purchase the membership interest of the complaining member at its fair value, as  
35 determined in accordance with any procedures the court may provide."

36           Section 5.4. Article 6 of Chapter 57C is amended by adding a new  
37 section to read:

38 **"§ 57C-6-02.2. Receivership.**

39           (a) A court in a judicial proceeding brought to dissolve a limited liability  
40 company may appoint one or more receivers to wind up or to manage the business  
41 and affairs of the limited liability company. Before appointing a receiver, the court  
42 shall hold a hearing after notifying all parties to the proceeding and any interested  
43 persons designated by the court. The court appointing a receiver has exclusive

1 jurisdiction over the limited liability company and all of its property, wherever  
2 located.

3 (b) The court may appoint an individual or other person as a receiver. The court  
4 may require the receiver to post bond, with or without sureties, in an amount the  
5 court directs.

6 (c) The court shall describe the powers and duties of the receiver in its appointing  
7 order, which may be amended from time to time. The powers may include the  
8 authority to:

9 (1) Dispose of all or any part of the assets of the limited liability  
10 company wherever located, at a public or private sale, if  
11 authorized by the court;

12 (2) Sue and defend in the receiver's own name as receiver of the  
13 limited liability company in all courts of this State; and

14 (3) Exercise all of the powers of the limited liability company, through  
15 or in place of its managers, to the extent necessary to manage the  
16 affairs of the limited liability company in the best interests of its  
17 members and creditors.

18 (d) From time to time during the receivership, the court may order compensation  
19 paid and expense disbursements or reimbursements made to the receiver and the  
20 receiver's counsel from the assets of the limited liability company or proceeds from  
21 the sale of the assets."

22 Section 5.5. Article 6 of Chapter 57C is amended by adding a new  
23 section to read:

24 **"§ 57C-6-02.3. Decree of dissolution.**

25 (a) If after a hearing the court determines that one or more grounds for judicial  
26 dissolution described in G.S. 57C-6-02 exist, it may enter a decree dissolving the  
27 limited liability company and specifying the effective date of the dissolution, and the  
28 clerk of the court shall deliver a certified copy of the decree to the Secretary of State,  
29 who shall file it.

30 (b) After entering the decree of dissolution, the court shall direct the winding up  
31 of the limited liability company's business and affairs in accordance with G.S. 57C-6-  
32 04 and G.S. 57C-6-05 and the notification of claimants in accordance with G.S. 57C-  
33 6-07 and G.S. 57C-6-08."

34  
35 **PART VI. ASSUMED NAME.**

36 Section 6. G.S. 66-68 reads as rewritten:

37 **"§ 66-68. Certificate to be filed; contents; exemption of certain partnerships and**  
38 **limited liability companies engaged in rendering professional services; withdrawal or**  
39 **transfer of assumed name.**

40 (a) Unless exempt under subsection (e) hereof, before any person or partnership  
41 engages in business in any county in this State under an assumed name or under any  
42 designation, name or style other than the real name of the owner or owners thereof,  
43 before any limited partnership engaged in business in any county in this State other  
44 than under the name set out in the Certificate filed with the Office of the Secretary

1 of ~~State~~ State, before any limited liability company engages in business in any county  
2 other than under the name set out in the articles of organization filed with the Office  
3 of the Secretary of State, or before a corporation engages in business in any county  
4 other than under its corporate name, such person, partnership, limited partnership,  
5 limited liability company, or corporation must file in the office of the register of  
6 deeds of such county a certificate giving the following information:

7 (1) The name under which the business is to be conducted; and

8 (2) The name and address of the owner, or if there is more than one  
9 owner, the name and address of each.

10 (b) If the owner is an individual or a partnership, the certificate must be signed  
11 and duly acknowledged by the individual owner, or by each general partner. If the  
12 owner is a ~~corporation~~, corporation or limited liability company, it must be signed in  
13 the name of the corporation or limited liability company and duly acknowledged as  
14 provided by G.S. 47-41.01 or G.S. 47-41.02.

15 (c) Whenever a general partner withdraws from or a new general partner joins a  
16 partnership, a new certificate shall be filed. For limited partnerships, the requirement  
17 of this subsection (c) shall be deemed satisfied if the partnership is identified as the  
18 owner as provided in subsection (a) and the partnership's certificate of limited  
19 partnership is amended as provided in G.S. 59-202.

20 (d) It is not necessary that any person, partnership, limited liability company, or  
21 corporation file such certificate in any county where no place of business is  
22 maintained and where the only business done in such county is the sale of goods by  
23 sample or by traveling agents or by mail.

24 (e) Any partnership or limited liability company engaged in rendering  
25 professional services, as defined in G.S. 55B-2(6), in this State, shall be exempt from  
26 the requirements of this section if it shall file annually with the licensing board  
27 responsible for regulating the rendering of such professional services, or at such  
28 intervals as shall be designated from time to time by such licensing board, a listing of  
29 the names and addresses of its ~~partners~~ partners or members. The listing shall be  
30 open to public inspection during normal working hours.

31 (f) Any person, partnership, limited liability company, or corporation executing  
32 and filing a certificate of assumed name as required by this section may, upon ceasing  
33 to engage in business in this State under the assumed name, withdraw the assumed  
34 name or transfer the assumed name to any other person, partnership, or corporation  
35 by filing in the office of the register of deeds of the county in which the certificate of  
36 assumed name is filed a certificate of withdrawal or a certificate of transfer executed  
37 as provided in subsection (b) of this section and setting forth:

38 (1) The assumed name being withdrawn or transferred;

39 (2) The date of filing of the certificate of assumed name;

40 (3) The name and address of the owner or owners of the business;

41 (4) A statement that such owner or owners have ceased engaging in  
42 business under the assumed name;

43 (5) If the assumed name is to be withdrawn, the effective date (which  
44 shall be a date certain but not more than 20 days from the date of

1 filing) of the withdrawal if it is not to be effective upon the filing  
2 of the certificate of withdrawal; and

3 (6) If the assumed name is to be transferred, the name and address of  
4 the transferee or transferees, and the effective date (which shall be  
5 a date certain but not more than 20 days from the date of filing) of  
6 the transfer if it is not to be effective upon the filing of the  
7 certificate of transfer. This subsection does not relieve a transferee  
8 of the obligation to file a certificate of assumed name as required  
9 by this Article."

10  
11 **PART VII. EFFECTIVE DATE.**

12 Section 7. This act becomes effective October 1, 1999, and applies to  
13 actions occurring on or after that date.



NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

S. B. No. 660

COMMITTEE SUBSTITUTE \_\_\_\_\_

DATE April 13, 1999

Amendment No. 1

(to be filled in by  
Principal Clerk)

Rep.) KERR

Sen.)

1 moves to amend the bill on page 12, line s 12 & 13

2 ( ) WHICH CHANGES THE TITLE

3 by REWRITING THE LINES TO READ:

4 "SECTION 7. THIS ACT IS EFFECTIVE WHEN IT BECOMES  
5 LAW, APPLIES TO LIMITED LIABILITY COMPANIES IN EXISTENCE  
6 OR FORMED ON OR AFTER JANUARY 1, 1999, AND APPLIES  
7 TO ACTIONS COMMENCED ON OR AFTER OCTOBER 1, 1999."

8 AND ON PAGE 4, LINE 27

9 BY DELETING THE WORDS "DISSOLVE, OTHERWISE"  
10 AND SUBSTITUTING THE WORDS "DISSOLVE, IF NO  
11 DATE FOR DISSOLUTION IS SPECIFIED,"

12 AND ON PAGE 4, LINE 31

13 BY DELETING THE WORD "OF" AND SUBSTITUTING  
14 THE WORD "OR".

SIGNED J. Kerr

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

S. B. No. 660

COMMITTEE SUBSTITUTE \_\_\_\_\_

DATE April 13, 1999

Amendment No. 2

(to be filled in by  
Principal Clerk)

Rep.) RAND  
Sen.)

1 moves to amend the bill on page 9, line 25

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORD "MAKE" AND SUBSTITUTING

4 THE WORDS "JOIN ~~AND~~ MEMBERS AS"; AND

5

6 ON PAGE 9, LINE 26,

7 BY DELETING THE WORD "INDIVIDUALLY." AND

8 SUBSTITUTING THE WORDS "INDIVIDUALLY, HOWEVER

9 THE COURT SHALL ORDER THAT APPROPRIATE NOTICE

10 OF <sup>THE</sup> DISSOLUTION PROCEEDINGS BE GIVEN TO ALL

11 MEMBERS BY THE PARTY INITIATING THE PROCEEDING."

12

13

14

15

16

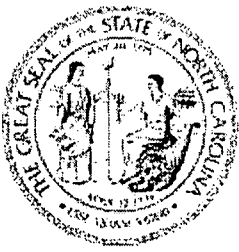
17

18

19

SIGNED Troy Rand

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



# SENATE BILL 660: Revised Limited Liability Company Act

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** April 13, 1999  
**Version:** First Edition

**Introduced by:** Senator Clodfelter  
**Summary by:** O. Walker Reagan,  
Committee Co-Counsel

**SUMMARY:** *Senate Bill 660 would make certain clarifying and operational changes to the Limited Liability Company Act in order to permit limited liability companies (LLC) to have much of the same operational and management flexibility allowed other business organizations.*

**CURRENT LAW:** The current Limited Liability Act was initially enacted in 1993 to allow creation of business organizations that blended the flexibility of a partnership with the limitation of liability provided by incorporation.

**BILL ANALYSIS:** Part 1 of Senate Bill 660 amends definitions that apply in the act. This Part defines the business a LLC may engage in to include an activity that may or may not be entered into for profit. This Part clarifies that the terms "liabilities, debts, and obligations" all have the same meaning. This Part also clarifies that one person may execute an operating agreement for the LLC whether or not the writing constitutes an agreement (agreements normally are between two or more parties).

Part 2 makes provisions for the formation of the LLC when members have not been identified, by giving the organizers authority to act for the company in certain situations. This Part permits members to be identified after the articles of organization are filed with Secretary of State. It also clarifies that unless the articles of organization specify a latest date of dissolution, the company may continue to exist for an unlimited time.

Part 3 provides for the title to property owned by a LLC to reflect the transfer of the to a new entity when the LLC merges with or converts to another entity.

Part 4 allows for greater flexibility in specifying when a person becomes a member of the LLC. This Part also changes the law governing when a member may withdraw from the company to those times specified in the articles of organization or a written operating agreement.

Part 5 provides that a LLC dissolve when it has no members except upon the death of the last member, the assignee or fiduciary of the last remaining member may become a member. This Part also authorized the Attorney General to seek judicial dissolution of a LLC if it were created by fraud or continues to operate outside its authority after warning by the Attorney General. This section also allows a member to petition for judicial dissolution when management is deadlocked and dissolution is necessary to preserve the company assets and protect the interest of the members. The procedures for judicial dissolution are set forth, and a receivership is permitted in certain circumstances.

Part 6 amends the assumed name statute to permit a LLC to operate under an assumed name.

**EFFECTIVE DATE:** The bill becomes effective October 1, 1999 and applies to actions occurring on or after that date.

S660-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 606

Short Title: Tourism Resort ABC Permits.

(Public)

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Sponsors: Senator Ballance.

---

Referred to: Commerce.

---

March 29, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH TOURISM RESORTS AND TO AUTHORIZE THE  
3 ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS  
4 TO THESE ENTITIES AND TO PROHIBIT DISCRIMINATION BY ABC  
5 PERMITTEES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 18B-101 is amended by adding a new subdivision to read:  
8 "(14b) 'Tourism resort' means any restaurant and lodging facility owned  
9 and operated as a resort property offering food, beverage, lodging,  
10 and meeting facilities to travelers and tourists and featuring one or  
11 more golf courses or featuring tennis courts along with other  
12 recreational and sporting activities."

13 Section 2. G.S. 18B-603(f) reads as rewritten:

14 "(f) Permits Not Dependent on Elections. -- The Commission may issue the  
15 following kinds of permits without approval at an election:  
16 (1) Special occasion permits;  
17 (2) Limited special occasion permits;  
18 (3) Brown-bagging permits for private clubs and congressionally  
19 chartered veterans organizations;  
20 (4) Culinary permits, except as restricted by subdivision (d)(5);  
21 (5) Special one-time permits issued under G.S. 18B-1002;  
22 (6) All permits listed in G.S. 18B-1100;  
23 (7) On-premises malt beverage permits and on-premises unfortified  
24 wine permits for a tourism ABC ~~establishment.~~ establishment;

1           (8) On-premises malt beverage permits, on-premises unfortified wine  
2           permits, on-premises fortified wine permits, and mixed beverage  
3           permits for qualified establishments located within a tourism  
4           resort."

5           Section 3. G.S. 18B-404(b) is rewritten to read:

6           "(b) Issuance. -- If mixed beverages sales have been approved for an establishment  
7           under the last paragraph of G.S. 18B-603(d) or under G.S. 18B-603(e), the purchase-  
8           transportation permit for that establishment may be issued by the local board of any  
9           city located in the same county as the establishment, provided the city has approved  
10          the sale of mixed beverages. Otherwise a licensed establishment may obtain a mixed  
11          beverages purchase-transportation permit only from the local board for the  
12          jurisdiction in which it is located. If there is no ABC store within the establishment's  
13          jurisdiction, then the mixed beverages permittee shall obtain a mixed beverages  
14          purchase-transportation permit from the nearest or most convenient ABC store."

15          Section 4. G.S. 18B-305 is amended by adding a new subsection to read:

16          "(c) Notwithstanding subsection (b) of this section, no permittee may refuse to sell  
17          alcoholic beverages to a person solely based on that person's race, religion, color,  
18          national origin, sex, or disability."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 606

Proposed Committee Substitute: S606-PCSSK-001  
Attention: line numbers may change after adoption.

Short Title: Tourism Resort ABC Permits. (Public)

Sponsors:

Referred to:

March 29, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH TOURISM RESORTS AND TO AUTHORIZE THE  
3 ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO THESE  
4 ENTITIES AND TO PROHIBIT DISCRIMINATION BY ABC PERMITTEES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 18B-101 is amended by adding a new  
7 subdivision to read:

8 "(14b) 'Tourism resort' means any restaurant and  
9 lodging facility owned and operated as a  
10 resort property offering food, beverage,  
11 lodging, and meeting facilities to travelers  
12 and tourists and featuring one or more golf  
13 courses or featuring tennis courts along with  
14 other recreational and sporting activities."

15 Section 2. G.S. 18B-603(f) reads as rewritten: (b) *sqw/1/01*  
16 "(f) Permits Not Dependent on Elections. -- The Commission *GA*  
17 issue the following kinds of permits without approval at an  
18 election:

- 19 (1) Special occasion permits;  
20 (2) Limited special occasion permits;  
21 (3) Brown-bagging permits for private clubs and  
22 congressionally chartered veterans organizations;  
23 (4) Culinary permits, except as restricted by  
24 subdivision (d)(5);

- 1 (5) Special one-time permits issued under G.S. 18B-  
2 1002;
- 3 (6) All permits listed in G.S. 18B-1100;
- 4 (7) On-premises malt beverage permits and on-premises  
5 unfortified wine permits for a tourism ABC  
6 establishment, establishment;
- 7 (8) On-premises malt beverage permits, on-premises  
8 unfortified wine permits, on-premises fortified  
9 wine permits, and mixed beverage permits for  
10 qualified establishments located within a tourism  
11 resort."

12 Section 3.. G.S. 18B-404(b) reads as rewritten:

13 "(b) Issuance. -- If mixed beverages sales have been approved  
14 for an establishment under the last paragraph of G.S. 18B-603(d)  
15 G.S. ~~18B-603(d2)~~ or under G.S. 18B-603(e), the purchase-  
16 transportation permit for that establishment may be issued by the  
17 local board of any city located in the same county as the  
18 establishment, provided the city has approved the sale of mixed  
19 beverages. Otherwise a licensed establishment may obtain a mixed  
20 beverages purchase-transportation permit only from the local  
21 board for the jurisdiction in which it is located. If there is  
22 no ABC store within the establishment's jurisdiction, then the  
23 mixed beverages permittee shall obtain a mixed beverages  
24 purchase-transportation permit from the nearest or most  
25 convenient ABC store."

26 Section 4. G.S. 18B-305 is amended by adding a new  
27 subsection to read:

28 "(c) Notwithstanding subsection (b) of this section, no  
29 permittee may refuse to sell alcoholic beverages to a person  
30 solely based on that person's race, religion, color, national  
31 origin, sex, or disability."

32 Section 5. G.S. 18B-603(d) reads as rewritten:

33 "(d) Mixed Beverage Elections. -- If a mixed beverage election  
34 is held under G.S. 18B-602(h) and the sale of mixed beverages is  
35 approved, the Commission may issue permits to qualified persons  
36 and establishments in the jurisdiction that held the election as  
37 follows:

- 38 (1) The Commission may issue mixed beverage permits.
- 39 (2) The Commission may issue on-premises malt beverage,  
40 unfortified wine, and fortified wine permits for  
41 establishments with mixed beverage permits  
42 regardless of any other election or any local act  
43 concerning sales of those kinds of alcoholic  
44 beverages.

- 1           (3) The Commission may issue off-premises malt beverage  
2 permits to any establishment that meets the  
3 requirements under G.S. 18B-1001(2) in any township  
4 which has voted to permit the sale of mixed  
5 beverages, regardless of any other local act  
6 concerning sales of those kinds of alcoholic  
7 beverages. The Commission may also issue off-  
8 premises unfortified wine permits to any  
9 establishment that meets the requirements under  
10 G.S. 18B-1001(4) in any township which has voted to  
11 permit the sale of mixed beverages, regardless of  
12 any other local act concerning sales of those kinds  
13 of alcoholic beverages.
- 14           (4) The Commission may issue brown-bagging permits for  
15 private clubs and congressionally chartered  
16 veterans organizations but may no longer issue and  
17 may not renew brown-bagging permits for  
18 restaurants, hotels, and community theatres. A  
19 restaurant, hotel, or community theatre may not be  
20 issued a mixed beverage permit under subdivision  
21 (1) until it surrenders its brown-bagging permit.
- 22           (5) The Commission may continue to issue culinary  
23 permits for establishments that do not have mixed  
24 beverage permits. An establishment may not be  
25 issued a mixed beverage permit under subdivision  
26 (1) until it surrenders its culinary permit.
- 27       (d1) Mixed Beverages Approved in Elections in at Least Three  
28 Cities. In any county in which the sale of mixed beverages has  
29 been approved in elections in at least three cities that,  
30 combined, contain more than two-thirds the total county  
31 population as of the most recent federal census, the county board  
32 of commissioners may by resolution approve the sale of mixed  
33 beverages throughout the county, and the Commission may issue  
34 permits as if mixed beverages had been approved in a county  
35 election.
- 36       (d2) County or City Mixed Beverage Elections and ABC Store  
37 Elections. If a county or city holds a mixed beverage election  
38 and an ABC store election at the same time and the voters do not  
39 approve the establishment of an ABC store, the Commission may not  
40 issue mixed beverages permits in that county or city."
- 41           Section 6. G.S. 18B-603(h) reads as rewritten:  
42       "(h) Permits Based on Existing Permits. -- In any county in  
43 which the sale of malt beverage on and off premises, the sale of  
44 unfortified wine on and off premises, the sale of mixed



1 beverages, and the operation of an ABC system has been allowed in  
2 at least six cities in the county, or in any county adjacent to  
3 that county in which an ABC system has been allowed and which  
4 borders on the Atlantic Ocean, the Commission may issue permits  
5 to sports clubs as defined in G.S. 18B-1000(8) throughout the  
6 county. The Commission may issue the following permits:

- 7 (1) On and Off Premises Malt Beverage;
- 8 (2) On and Off Premises Unfortified Wine;
- 9 (3) On and Off Premises Fortified Wine; or
- 10 (4) Mixed Beverages.

11 The Commission may also issue on-premises malt beverage,  
12 unfortified wine, fortified wine and mixed beverages permits to a  
13 sports club located in a county adjacent to any county that has  
14 approved the sale of mixed beverages pursuant to ~~the last~~  
15 ~~paragraph of G.S. 18B-603(d),~~ G.S. 18B-603(d1), if the county in  
16 which the sports club is located borders another state and has at  
17 least one city that has approved the sale of mixed beverages.  
18 Sports clubs holding mixed beverages permits shall purchase their  
19 spirituous liquor at the nearest ABC system store that is located  
20 in the county.

21 The Commission may further issue on-premises malt beverage and  
22 on-premises unfortified wine permits to a sports club located in  
23 a county bordering on another state that is adjacent to any  
24 county in which permits were issued pursuant to this subsection  
25 prior to August 1, 1993. The sports clubs must be located in the  
26 unincorporated areas of a county, in which the sale of malt  
27 beverages and unfortified wine is not permitted, and where there  
28 are six or more municipalities in that county where the sale of  
29 malt beverages and unfortified wine is permitted."

30 Section 7. G.S. 18B-805(f) reads as rewritten:

31 "(f) Surcharge Profit Shared. -- When, pursuant to ~~the last~~  
32 ~~paragraph of G.S. 18B-603(d),~~ G.S. 18B-603(d1), spirituous liquor  
33 is bought at a city ABC store by a mixed beverages permittee for  
34 premises located outside the city, the local board operating the  
35 store at which the sale is made shall retain seventy-five percent  
36 (75%) of the local share of both the mixed beverages surcharge  
37 required by G.S. 18B-804(b)(8) and the guest room cabinet  
38 surcharge required by G.S. 18B-804(b)(9) and the remaining  
39 twenty-five percent (25%) shall be divided equally among the  
40 local ABC boards for all other cities in the county that have  
41 authorized the sale of mixed beverages.

42 When, pursuant to G.S. 18B-603(e), spirituous liquor is bought  
43 at a city ABC store by a mixed beverages permittee for premises  
44 located at an airport outside the city, the local share of both

1 the mixed beverages surcharge required by G.S. 18B-804(b)(8) and  
2 the guest room cabinet surcharge required by G.S. 18B-804(b)(9)  
3 shall be divided equally among the local ABC boards for all  
4 cities in the county that have authorized the sale of mixed  
5 beverages."

6           Section 8. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

S. B. No. 606

COMMITTEE SUBSTITUTE

DATE April 13, 1999

Amendment No. 1

(to be filled in by  
Principal Clerk)

Rep. )

Sen. )

1 moves to amend the bill on page 2, line 15

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "18B-603(dz)" and inserting  
4 "18B-603(d1)".

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

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17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

SIGNED [Signature]

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE April 13, 1999

S. B. No. 604

Amendment No. 2

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.) Ballance

Sen.)

1 moves to amend the bill on page 1, line ~~8~~ 8

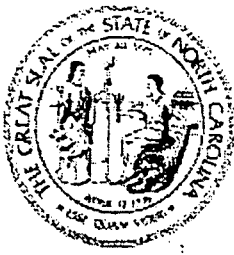
2 ( ) WHICH CHANGES THE TITLE

3 by ~~inserting~~ inserting "g." before the word  
4 ~~the~~ "any"; and on page 1, line 14  
5 by rewriting that line to read:

6  
7 "other recreational and sporting activities or  
8 ~~an~~ ~~part of~~ a restaurant owned and operated  
9 as <sup>part of</sup> an equestrian center and <sup>that</sup> meets the  
10 requirements of ~~the~~ clause a. of this subdivision  
11 other than lodging."  
12  
13  
14  
15  
16  
17  
18  
19

SIGNED [Signature]

ADOPTED  FAILED  TABLED



# SENATE BILL 606: Tourism Resort ABC Permits

## BILL ANALYSIS

**Committee:** Commerce Committee  
**Date:** April 13, 1999  
**Version:** Proposed Committee Substitute  
S606-PCSSK-001

**Introduced by:** Senator Ballance  
**Summary by:** Esther Manheimer  
Committee Counsel

**SUMMARY:** Senate Bill 606 adds a definition for "tourism resort" to Chapter 18B and would allow the ABC Commission to issue the following kinds or permits without the approval of an election: on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverage permits, for qualified establishments located within a tourism resort. In addition, the bill would allow mixed beverage permittees to obtain a mixed beverages purchase-transportation permit from the nearest or most convenient ABC store when there is no ABC store within an establishment's jurisdiction. Finally, the bill would prohibit discrimination in the sale of alcohol and makes numerous technical changes to Chapter 18B.

## BILL ANALYSIS:

### Tourism Resort.

**Section 1.** Amends G.S. 18B-101 by adding the term "tourism resort." Tourist resort shall mean any restaurant and lodging facility offering food, beverage, lodging, and meeting facilities and having either a golf course or tennis courts along with other recreational and sporting activities.

### Tourism Resort Permits Not Dependent on Elections.

**Section 2.** Amends G.S. 18B-603(f). Under current law, the Alcoholic Beverage Control Commission may issue certain kinds of permits without the approval of an election. These permits include: special occasion permits, limited special occasion permits, certain brown bagging permits, certain culinary permits, special one-time permits, certain commercial permits, and one-time malt beverage permits for a tourism ABC establishment.

This section would allow the ABC Commission to issue the following kinds or permits without the approval of an election: on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverage permits, for qualified establishments located within a tourism resort.

### Permittees may Obtain Permits from the Nearest ABC Store in Certain Situations.

**Section 3.** Amends G.S. 18B-404(b) and would allow mixed beverage permittees to obtain a mixed beverages purchase-transportation permit from the nearest or most convenient ABC store when there is no ABC store within an establishment's jurisdiction.

### Discrimination Prohibited in the Sale of Alcohol.

**Section 4.** Amends G.S. 18B-305 to add a new subsection. Under current law, permittees and ABC store employees are prohibited from selling or giving alcohol to intoxicated persons. In

# SENATE BILL 606

Page 2

addition, they have discretion to refuse to sell to anyone. Under the proposed subsection, no permittee may refuse to sell alcohol to a person solely on the basis of race, religion, color, national origin, sex, or disability.

**Sections 5, 6 and 7.** These sections make technical changes only.

**This act is effective when it becomes law.**

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

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SENATE BILL 607

Short Title: Sports Club ABC Permits.

(Public)

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Sponsors: Senator Ballance.

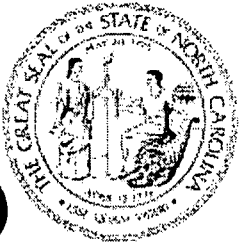
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Referred to: Commerce.

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March 29, 1999

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL  
3 COMMISSION TO ISSUE PERMITS TO SPORTS CLUBS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 18B-603(f) reads as rewritten:  
6 "(f) Permits Not Dependent on Elections. -- The Commission may issue the  
7 following kinds of permits without approval at an election:  
8 (1) Special occasion permits;  
9 (2) Limited special occasion permits;  
10 (3) Brown-bagging permits for private clubs and congressionally  
11 chartered veterans organizations;  
12 (4) Culinary permits, except as restricted by subdivision (d)(5);  
13 (5) Special one-time permits issued under G.S. 18B-1002;  
14 (6) All permits listed in G.S. 18B-1100;  
15 (7) On-premises malt beverage permits and on-premises unfortified  
16 wine permits for a tourism ABC ~~establishment~~ establishment;  
17 (8) The permits authorized by G.S. 18B-1001(1), (3), (5), and (10) for  
18 sports clubs."  
19 Section 2. G.S. 18B-305 is amended by adding a new subsection to read:  
20 "(c) Notwithstanding subsection (b) of this section, no permittee may refuse to sell  
21 alcoholic beverages to a person solely based on that person's race, religion, color,  
22 national origin, sex, or disability."  
23 Section 3. This act is effective when it becomes law.



# SENATE BILL 607: Sports Club ABC Permits

## BILL ANALYSIS

**Committee:** Commerce Committee  
**Date:** April 13, 1999  
**Version:** First Edition

**Introduced by:** Senator Ballance  
**Summary by:** Esther Manheimer  
Committee Counsel

**SUMMARY:** Senate Bill 607 would allow the ABC Commission to issue the following kinds or permits without the approval of an election: on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverage permits, for sports clubs. In addition, the bill would prohibit discrimination in the sale of alcohol.

### BILL ANALYSIS:

#### Sports Clubs Permits Not Dependent on Elections.

**Section 1.** Amends G.S. 18B-603(f). Under current law, the Alcoholic Beverage Control Commission may issue certain kinds of permits without the approval of an election. These permits include: special occasion permits, limited special occasion permits, certain brown bagging permits, certain culinary permits, special one-time permits, certain commercial permits, and one-time malt beverage permits for a tourism ABC establishment.

This section would allow the ABC Commission to issue the following kinds or permits without the approval of an election: on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverage permits, for sports clubs.

#### Discrimination Prohibited in the Sale of Alcohol.

**Section 3.** Amends G.S. 18B-305 to add a new subsection. Under current law, permittees and ABC store employees are prohibited from selling or giving alcohol to intoxicated persons. In addition, they have discretion to refuse to sell to anyone. Under the proposed subsection, no permittee may refuse to sell alcohol to a person solely on the basis of race, religion, color, national origin, sex, or disability.

**This act is effective when it becomes law.**





1 established by the manufacturer before seeking redress from the Commissioner as  
2 provided in this Article."

3 Section 2. G.S. 20-305 reads as rewritten:

4 "**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**  
5 **franchise; preventing transfer of ownership; granting additional franchises;**  
6 **terminating franchises without good cause; preventing family succession.**

7 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor  
8 branch, or any field representative, officer, agent, or any representative whatsoever of  
9 any of them:

- 10 (1) To require, coerce, or attempt to coerce any dealer to accept  
11 delivery of any motor vehicle or vehicles, parts or accessories  
12 therefor, or any other commodities, which shall not have been  
13 ordered by ~~such dealer~~, that dealer, or to accept delivery of any  
14 motor vehicle or vehicles which have been equipped in a manner  
15 other than as specified by the dealer.
- 16 (2) To require, coerce, or attempt to coerce any dealer to enter into  
17 any agreement with such manufacturer, factory branch, distributor,  
18 or distributor branch, or representative thereof, or do any other act  
19 unfair to such dealer, by threatening to cancel any franchise  
20 existing between such manufacturer, factory branch, distributor,  
21 distributor branch, or representative thereof, and such dealer;
- 22 (3) Unfairly without due regard to the equities of the dealer, and  
23 without just provocation, to cancel the franchise of such dealer;
- 24 (4) Notwithstanding the terms of any franchise agreement, to prevent  
25 or refuse to approve the sale or transfer of the ownership of a  
26 dealership by the sale of the business, stock transfer, or otherwise,  
27 or the transfer, sale or assignment of a dealer franchise, or a  
28 change in the executive management or principal operator of the  
29 dealership, or relocation of the dealership to another site within  
30 the dealership's relevant market area, if the Commissioner has  
31 determined, if requested in writing by the dealer within 30 days  
32 after receipt of an objection to the proposed transfer, sale,  
33 assignment, relocation, or change, and after a hearing on the  
34 matter, that the failure to permit or honor the transfer, sale,  
35 assignment, relocation, or change is unreasonable under the  
36 circumstances. No franchise may be transferred, sold, assigned,  
37 relocated, or the executive management or principal operators  
38 changed, unless the franchisor has been given at least 30 days'  
39 prior written notice as to the identity, financial ability, and  
40 qualifications of the proposed transferee, the identity and  
41 qualifications of the persons proposed to be involved in executive  
42 management or as principal operators, and the location and site  
43 plans of any proposed relocation. The franchisor shall send the  
44 dealership notice of objection, by registered or certified mail,

1 return receipt requested, to the proposed transfer, sale, assignment,  
2 relocation, or change within 30 days after receipt of notice from  
3 the dealer, as provided in this section. Failure by the franchisor to  
4 send notice of objection within 30 days shall constitute waiver by  
5 the franchisor of any right to object to the proposed transfer, sale,  
6 assignment, relocation, or change. ~~The manufacturer or distributor~~  
7 ~~has the burden of proving that the proposed transfer, sale,~~  
8 ~~assignment, relocation, or change is unreasonable under the~~  
9 ~~circumstances.~~ With respect to a proposed transfer of ownership,  
10 sale, or assignment, the sole issue for determination by the  
11 Commissioner and the sole issue upon which the Commissioner  
12 shall hear or consider evidence is whether, by reason of poor  
13 character or lack of financial ability, the proposed transferee is  
14 unfit to own the dealership. For purposes of this subdivision, the  
15 refusal by the manufacturer to accept a proposed transferee who is  
16 of good moral character and who otherwise meets the written,  
17 reasonable, and uniformly applied financial requirements, if any,  
18 required by the manufacturer of owners of its franchised  
19 automobile dealerships is presumed to demonstrate the  
20 manufacturer's failure to prove that the proposed transferee is unfit  
21 to own the dealership. With respect to a proposed change in the  
22 executive management or principal operator of the dealership, the  
23 sole issue for determination by the Commissioner and the sole  
24 issue on which the Commissioner shall hear or consider evidence  
25 shall be whether, by reason of lack of training, lack of prior  
26 experience, poor past performance, or poor character, the  
27 proposed candidate for a position within the executive  
28 management or as principal operator of the dealership is unfit for  
29 the position. For purposes of this subdivision, the refusal by the  
30 manufacturer to accept a proposed candidate for executive  
31 management or as principal operator who is of good moral  
32 character and who otherwise meets the written, reasonable, and  
33 uniformly applied standards or qualifications, if any, of the  
34 manufacturer relating to the business experience and prior  
35 performance of executive management required by the  
36 manufacturers of its dealers is presumed to demonstrate the  
37 manufacturer's failure to prove the proposed candidate for  
38 executive management or as principal operator is unfit to serve the  
39 the capacity. With respect to a proposed relocation or other  
40 proposed change, the issue for determination by the Commissioner  
41 is whether the proposed relocation or other change is unreasonable  
42 under the circumstances. For purposes of this subdivision, the  
43 refusal by the manufacturer to agree to a proposed relocation  
44 which meets the written, reasonable, and uniformly applied

1 standards or criteria, if any, of the manufacturer relating to dealer  
2 relocations is presumed to demonstrate that the manufacturer's  
3 failure to prove the proposed relocation is unreasonable under the  
4 circumstances. The manufacturer shall have the burden of proof  
5 before the Commissioner under this subdivision. It is unlawful for  
6 a manufacturer to in any way condition its approval of a proposed  
7 transfer, sale, assignment, change in the dealer's executive  
8 management or principal operator on the existing or proposed  
9 dealer's willingness to construct a new facility, renovate the  
10 existing facility, acquire or refrain from acquiring one or more  
11 line-makes of vehicles, separate or divest one or more line-makes  
12 of vehicle, or establish or maintain exclusive facilities, personnel,  
13 or display space. It is unlawful for a manufacturer to, in any way,  
14 condition its approval of a proposed relocation on the existing or  
15 proposed dealer's willingness to acquire or refrain from acquiring  
16 one or more line-makes of vehicles, separate or divest one or more  
17 line-makes of vehicle, or establish or maintain exclusive facilities,  
18 personnel, or display space.

19 (5) To enter into a franchise establishing an additional new motor  
20 vehicle dealer or relocating an existing new motor vehicle dealer  
21 into a relevant market area where the same line make is then  
22 represented without first notifying in writing the Commissioner and  
23 each new motor vehicle dealer in that line make in the relevant  
24 market area of the intention to establish an additional dealer or to  
25 relocate an existing dealer within or into that market area. Within  
26 30 days of receiving such notice or within 30 days after the end of  
27 any appeal procedure provided by the manufacturer, any new  
28 motor vehicle dealer may file with the Commissioner a protest to  
29 the establishing or relocating of the new motor vehicle dealer.  
30 When a protest is filed, the Commissioner shall promptly inform  
31 the manufacturer that a timely protest has been filed, and that the  
32 manufacturer shall not establish or relocate the proposed new  
33 motor vehicle dealer until the Commissioner has held a ~~hearing,~~  
34 ~~nor thereafter, if the Commissioner~~ hearing and has determined  
35 that there is good cause for not permitting the addition or  
36 relocation of such new motor vehicle dealer.

37 a. This section does not apply:

- 38 1. To the relocation of an existing new motor vehicle  
39 dealer within that dealer's relevant market area,  
40 provided that the relocation not be at a site within 10  
41 miles of a licensed new motor vehicle dealer for the  
42 same line make of motor ~~vehicle;~~ vehicle. If this sub-  
43 subdivision is applicable, only dealers trading in the  
44 same line-make of vehicle that are located within the



1 of this sub-subdivision, the term 'adequate' shall be  
2 defined in relation to markets of similar size and  
3 demographic makeup within North Carolina and the  
4 Commissioner shall not hear or consider evidence of  
5 any comparisons to markets outside this State; and

6 ~~6. Whether the establishment of an additional new~~  
7 ~~motor vehicle dealer or relocation of an existing new~~  
8 ~~motor vehicle dealer in the relevant market area~~  
9 ~~would increase competition in a manner such as to be~~  
10 ~~in the long-term public interest; and~~

11 7. 3. The effect on the relocating dealer of a denial of its  
12 relocation into the relevant market area.

13 c. The Commissioner shall try to conduct the hearing and  
14 render his final determination if possible, within 180 days  
15 after a protest is filed.

16 d. Any parties to a hearing by the Commissioner concerning  
17 the establishment or relocating of a new motor vehicle  
18 dealer shall have a right of review of the decision in a court  
19 of competent jurisdiction pursuant to Chapter 150B of the  
20 General Statutes. Any determination of the Commissioner  
21 under this section allowing the establishment of a proposed  
22 additional dealership or relocation of an existing dealership  
23 shall automatically be stayed during any period that any  
24 dealer having standing to appeal the determination under  
25 this section shall have the right to judicial review or appeal  
26 of the determination before the superior court or any other  
27 appellate court and during the pendency of any appeal.

28 e. In a hearing involving a proposed additional dealership, the  
29 manufacturer or distributor has the burden of proof under  
30 this section. In a proceeding involving the relocation of an  
31 existing dealership, the dealer seeking to relocate has the  
32 burden of proof under this section.

33 f. If the Commissioner determines, following a hearing, that  
34 good cause ~~does not exist for refusing to permit~~ exists for  
35 permitting the proposed additional or relocated motor  
36 vehicle dealership, the dealer seeking the proposed  
37 additional or relocated motor vehicle dealership must,  
38 within two years, obtain a license from the Commissioner  
39 for the sale of vehicles at the relevant site, and actually  
40 commence operations at the site selling new motor vehicles  
41 of all line makes, as permitted by the Commissioner. Failure  
42 to obtain a permit and commence sales within two years  
43 shall constitute waiver by the dealer of the dealer's right to  
44 the additional or relocated dealership, requiring

1 renotification, a new hearing, and a new determination as  
2 provided in this section. If the Commissioner fails to  
3 determine that good cause exists for permitting the proposed  
4 additional or relocated motor vehicle dealership, the  
5 manufacturer seeking the proposed additional dealership or  
6 dealer seeking to relocate may not again provide notice of  
7 its intention or otherwise attempt to establish an additional  
8 dealership or relocate to any location within 10 miles of the  
9 site of the original proposed additional dealership or  
10 relocation site for a minimum of five years from the date of  
11 the Commissioner's determination.

12 g. (See editor's note for applicability) For purposes of this  
13 subdivision, the addition, creation, or operation of a  
14 "satellite" or other facility, not physically part of or  
15 contiguous to an existing licensed new motor vehicle dealer,  
16 whether or not owned or operated by a person or other  
17 entity holding a franchise as defined by G.S. 20-286(8a), at  
18 which warranty service work authorized or reimbursed by a  
19 manufacturer is performed or at which new motor vehicles  
20 are offered for sale to the public, shall be considered an  
21 additional new motor vehicle dealer requiring a showing of  
22 good cause, prior notification to existing new motor vehicle  
23 dealers of the same line make of vehicle within the relevant  
24 market area by the manufacturer and the opportunity for a  
25 hearing before the Commissioner as provided in this  
26 subdivision.

27 (6) Notwithstanding the terms, provisions or conditions of any  
28 franchise or notwithstanding the terms or provisions of any waiver,  
29 to terminate, cancel or fail to renew any franchise with a licensed  
30 new motor vehicle dealer unless the manufacturer has satisfied the  
31 notice requirements of subparagraph c. and the Commissioner has  
32 determined, if requested in writing by the dealer within the time  
33 period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and  
34 after a hearing on the matter, that there is good cause for the  
35 termination, cancellation, or nonrenewal of the franchise and that  
36 the manufacturer has acted in good faith as defined in this act  
37 regarding the termination, cancellation or nonrenewal. When such  
38 a petition is made to the Commissioner by a dealer for  
39 determination as to the existence of good cause and good faith for  
40 the termination, cancellation or nonrenewal of a franchise, the  
41 Commissioner shall promptly inform the manufacturer that a  
42 timely petition has been filed, and the franchise in question shall  
43 continue in effect pending the Commissioner's decision. The  
44 Commissioner shall try to conduct the hearing and render a final

1 determination within 180 days after a petition has been filed. If the  
2 termination, cancellation or nonrenewal is pursuant to G.S. 20-  
3 305(6)c1III then the Commissioner shall give the proceeding  
4 priority consideration and shall try to render his final  
5 determination no later than 90 days after the petition has been  
6 filed. Any parties to a hearing by the Commissioner under this  
7 section shall have a right of review of the decision in a court of  
8 competent jurisdiction pursuant to Chapter 150B of the General  
9 Statutes. Any determination of the Commissioner under this  
10 section finding that good cause exists for the nonrenewal,  
11 cancellation, or termination of any franchise shall automatically be  
12 stayed during any period that the affected dealer shall have the  
13 right to judicial review or appeal of the determination before the  
14 superior court or any other appellate court and during the  
15 pendency of any appeal. Furthermore, unless and until the  
16 termination, cancellation, or nonrenewal of a dealer's franchise  
17 shall finally become effective, in light of any stay or any order of  
18 the commissioner determining that good cause exists for the  
19 termination, cancellation, or nonrenewal of a dealer's franchise as  
20 provided in this paragraph, a dealer who receives a notice of  
21 termination, cancellation, or nonrenewal from a manufacturer as  
22 provided in this subdivision shall continue to have the same rights  
23 to assign, sell, or transfer the franchise to a third party under the  
24 franchise and as permitted under G.S. 20-305(4) as if notice of the  
25 termination had not been given by the manufacturer. Any  
26 franchise under notice or threat of termination, cancellation, or  
27 nonrenewal by the manufacturer which is duly transferred in  
28 accordance with G.S. 20-305(4) shall not be subject to termination  
29 by reason of failure of performance or breaches of the franchise on  
30 the part of the transferor.

31 a. Notwithstanding the terms, provisions or conditions of any  
32 franchise or the terms or provisions of any waiver, good  
33 cause shall exist for the purposes of a termination,  
34 cancellation or nonrenewal when:

- 35 1. There is a failure by the new motor vehicle dealer to  
36 comply with a provision of the franchise which  
37 provision is both reasonable and of material  
38 significance to the franchise relationship provided  
39 that the dealer has been notified in writing of the  
40 failure within ~~180~~ 90 days after the manufacturer first  
41 acquired knowledge of such failure;
- 42 2. If the failure by the new motor vehicle dealer relates  
43 to the performance of the new motor vehicle dealer  
44 in sales or service, then good cause shall be defined



- 1 as the failure of the new motor vehicle dealer to  
2 comply with reasonable performance criteria  
3 established by the manufacturer if the new motor  
4 vehicle dealer was apprised by the manufacturer in  
5 writing of the failure; and
- 6 I. The notification stated that notice was  
7 provided of failure of performance pursuant to  
8 this section;
- 9 II. The new motor vehicle dealer was afforded a  
10 reasonable opportunity, for a period of not less  
11 than 180 days, to comply with the criteria; and
- 12 III. The new motor vehicle dealer failed to  
13 demonstrate substantial progress towards  
14 compliance with the manufacturer's  
15 performance criteria during such period and  
16 the new motor vehicle dealer's failure was not  
17 primarily due to economic or market factors  
18 within the dealer's relevant market area which  
19 were beyond the dealer's control.
- 20 b. The manufacturer shall have the burden of proof under this  
21 section.
- 22 c. Notification of Termination, Cancellation and Nonrenewal.  
23 --
- 24 1. Notwithstanding the terms, provisions or conditions of  
25 any franchise prior to the termination, cancellation or  
26 nonrenewal of any franchise, the manufacturer shall  
27 furnish notification of termination, cancellation or  
28 nonrenewal to the new motor vehicle dealer as  
29 follows:
- 30 I. In the manner described in G.S. 20-305(6)c2  
31 below; and
- 32 II. Not less than 90 days prior to the effective date  
33 of such termination, cancellation or  
34 nonrenewal; or
- 35 III. Not less than 15 days prior to the effective date  
36 of such termination, cancellation or  
37 nonrenewal with respect to any of the  
38 following:
- 39 A. Insolvency of the new motor vehicle  
40 dealer, or filing of any petition by or  
41 against the new motor vehicle dealer  
42 under any bankruptcy or receivership  
43 law;

- 1 B. Failure of the new motor vehicle dealer  
2 to conduct its customary sales and  
3 service operations during its customary  
4 business hours for seven consecutive  
5 business days, except for acts of God or  
6 circumstances beyond the direct control  
7 of the new motor vehicle dealer;  
8 C. Revocation of any license which the new  
9 motor vehicle dealer is required to have  
10 to operate a dealership;  
11 D. Conviction of a felony involving moral  
12 turpitude, under the laws of this State or  
13 any other state, or territory, or the  
14 District of Columbia.  
15 IV. Not less than 180 days prior to the effective  
16 date of such termination or cancellation where  
17 the manufacturer or distributor is discontinuing  
18 the sale of the product line.  
19 V. Unless the failure by the new motor vehicle  
20 dealer relates to the performance of the new  
21 motor vehicle dealer in sales or service, not  
22 more than 1 year after the manufacturer first  
23 acquired knowledge of the basic facts  
24 comprising the failure.  
25 2. Notification under this section shall be in writing;  
26 shall be by certified mail or personally delivered to  
27 the new motor vehicle dealer; and shall contain:  
28 I. A statement of intention to terminate, cancel  
29 or not to renew the franchise;  
30 II. A detailed statement of all of the material  
31 reasons for the termination, cancellation or  
32 nonrenewal; and  
33 III. The date on which the termination,  
34 cancellation or nonrenewal takes effect.  
35 3. Notification provided in G.S. 20-305(6)c1II of 90 days  
36 prior to the effective date of such termination,  
37 cancellation or renewal may run concurrent with the  
38 180 days designated in G.S. 20-305(6)a2II provided  
39 the notification is clearly designated by a separate  
40 written document mailed by certified mail or  
41 personally delivered to the new motor vehicle dealer.  
42 d. Payments. --  
43 1. Upon the termination, nonrenewal or cancellation of  
44 any franchise by the manufacturer or distributor,

1 pursuant to this section, the new motor vehicle dealer  
2 shall be allowed fair and reasonable compensation by  
3 the manufacturer for the:

- 4 I. New motor vehicle inventory that has been  
5 acquired from the manufacturer within 18  
6 months, at a price not to exceed the original  
7 manufacturer's price to the dealer, and which  
8 has not been altered or damaged, and which  
9 has not been driven more than 200 miles, and  
10 for which no certificate of title has been issued;
- 11 II. Unused, undamaged and unsold supplies and  
12 parts purchased from the manufacturer, at a  
13 price not to exceed the original manufacturer's  
14 price to the dealer, provided such supplies and  
15 parts are currently offered for sale by the  
16 manufacturer or distributor in its current parts  
17 catalogs and are in salable condition;
- 18 III. ~~Equipment~~ Equipment, signs, and furnishings  
19 that have not been altered or damaged and that  
20 have been required by the manufacturer or  
21 distributor to be purchased by the new motor  
22 vehicle dealer from the manufacturer or  
23 distributor, or their approved sources; and
- 24 IV. Special tools that have not been altered or  
25 damaged and that have been required by the  
26 manufacturer or distributor to be purchased by  
27 the new motor vehicle dealer from the  
28 manufacturer or distributor, or their approved  
29 sources within five years immediately  
30 preceding the termination, nonrenewal or  
31 cancellation of the franchise.

- 32 2. Fair and reasonable compensation for the above shall  
33 be paid by the manufacturer within 90 days of the  
34 effective date of termination, cancellation or  
35 nonrenewal, provided the new motor vehicle dealer  
36 has offered to convey clear title ~~to the inventory and~~  
37 ~~has conveyed~~ title and possession of the same to the  
38 manufacturer. The manufacturer shall be obligated to  
39 pay or reimburse the dealer for any transportation  
40 charges associated with the manufacturer's repurchase  
41 obligations under this sub-subparagraph. The  
42 manufacturer may not charge the dealer any  
43 handling, restocking, or other similar costs or fees

1                   associated with items repurchased by the  
2                   manufacturer under this sub-subparagraph.

3           e.   Dealership Facilities Assistance upon Termination,  
4           Cancellation or Nonrenewal. --

5                   In the event of the termination, cancellation or  
6                   nonrenewal by the manufacturer or distributor under this  
7                   section, except termination, cancellation or nonrenewal for  
8                   insolvency, license revocation, conviction of a crime  
9                   involving moral turpitude, or fraud by a dealer-owner:

10           1.   Subject to paragraph 3, if the new motor vehicle  
11                   dealer is leasing the dealership facilities from a lessor  
12                   other than the manufacturer, the manufacturer shall  
13                   pay the new motor vehicle dealer a sum equivalent to  
14                   the rent for the unexpired term of the lease or ~~one~~  
15                   three year's rent, whichever is less, or such longer  
16                   term as is provided in the franchise agreement  
17                   between the dealer and manufacturer; or

18           2.   Subject to paragraph 3, if the new motor vehicle  
19                   dealer owns the dealership facilities, the manufacturer  
20                   shall pay the new motor vehicle dealer a sum  
21                   equivalent to the reasonable rental value of the  
22                   dealership facilities for ~~one year.~~ three years.

23           3.   ~~Provided nothing in this paragraph e. shall relieve a~~  
24                   ~~lessee or owner, as the case may be, from the~~  
25                   ~~obligation to mitigate damages under the lease, nor~~  
26                   ~~prevent a manufacturer from occupying and using the~~  
27                   ~~dealership facilities while paying rent under~~  
28                   ~~subsections 1 and 2, nor prevent a manufacturer from~~  
29                   ~~obligations by negotiating a lease termination, a~~  
30                   ~~sublease or a new lease. Any amounts recovered by~~  
31                   ~~the lessee or owner resulting from mitigation of~~  
32                   ~~damages shall be deducted from the amount due from~~  
33                   ~~the manufacturer.~~

34                   In order to be entitled to facilities assistance from the  
35                   manufacturer, as provided in this paragraph e., no  
36                   dealer, owner, or lessee, as the case may be, shall  
37                   have no obligation to mitigate damages under the  
38                   lease; provided, however, that to the extent that a  
39                   dealer, owner, or lessee does elect to voluntarily  
40                   mitigate damages, the dealer shall be obligated to pay  
41                   the manufacturer the net revenue received from such  
42                   mitigation up to the total amount of facilities  
43                   assistance which the dealer has received from the  
44                   manufacturer pursuant to sub-subdivisions 1, and 2.

1 To the extent and for such uses and purposes as may  
2 be consistent with the terms of the lease, a  
3 manufacturer who pays facilities assistance to a dealer  
4 under this paragraph e. shall be entitled to occupy  
5 and use the dealership facilities during the years for  
6 which the manufacturer shall have paid rent under  
7 sub-subdivisions 1. and 2.

8 4. In the event the termination relates to fewer than all  
9 of the franchises operated by the dealer at a single  
10 location, the amount of facilities assistance which the  
11 manufacturer is required to pay the dealer under this  
12 sub-subdivision shall be based on the proportion of  
13 gross revenue received from the sale and lease of new  
14 vehicles by the dealer and from the dealer's parts and  
15 service operations during the three years immediately  
16 preceding the effective date of the termination (or  
17 any shorter period that the dealer may have held  
18 these franchises) of the line-makes being terminated,  
19 in relation to the gross revenue received from the sale  
20 and lease of all line-makes of new vehicles by the  
21 dealer and from the total of the dealer's and parts  
22 and service operations from this location during the  
23 same three-year period.

24 5. The compensation required for facilities assistance  
25 under this paragraph e. shall be paid by the  
26 manufacturer within 90 days of the effective date of  
27 termination, cancellation, or nonrenewal.

28 f. The provisions of ~~paragraphs~~ sub-subdivisions d. and e.  
29 above shall not be applicable when the termination,  
30 nonrenewal or cancellation of the franchise agreement is the  
31 result of the voluntary act of the dealer.

32 Notwithstanding the terms of any contract or agreement,  
33 any dealer's termination or resignation shall not be deemed  
34 to be voluntary if that termination or resignation occurred  
35 under the manufacturer's threat of nonrenewal, cancellation,  
36 or termination of the franchise.

37 (7) Notwithstanding the terms of any contract or agreement, to prevent  
38 or refuse to honor the succession to a dealership, including the  
39 franchise, by a motor vehicle dealer's designated successor as  
40 provided for under this subsection.

41 a. Any owner of a new motor vehicle dealership may appoint  
42 by will, or any other written instrument, a designated  
43 successor to succeed in the respective ownership interest or  
44 interest as principal operator of the said owner in the new

1 motor vehicle dealership, including the franchise, upon the  
2 death or incapacity of the ~~owner~~ owner or principal  
3 operator. In order for succession to the position of principal  
4 operator to occur by operation of law in accordance with  
5 sub-subdivision c. below, the owner's choice of a successor  
6 must be approved by the dealer, in accordance with the  
7 dealer's bylaws, if applicable, either prior or subsequent to  
8 the death or incapacity of the existing principal operator.

9 b. Any objections by a manufacturer or distributor to an  
10 owner's appointment of a designated successor shall be  
11 asserted in accordance with the following procedure:

12 1. Within 30 days after receiving written notice of the  
13 identity of the owner's designated successor and  
14 general information as to the financial ability and  
15 qualifications of the designated successor, the  
16 franchisor shall send the owner and designated  
17 successor notice of objection, by registered or  
18 certified mail, return receipt requested, to the  
19 appointment of the designated successor. The notice  
20 of objection shall state in detail all facts which  
21 constitute the basis for the contention on the part of  
22 the manufacturer or distributor that good cause, as  
23 defined in this sub-subdivision below, exists for  
24 rejection of the designated successor. Failure by the  
25 franchisor to send notice of objection within 30 days  
26 and otherwise as provided in this sub-subdivision  
27 shall constitute waiver by the franchisor of any right  
28 to object to the appointment of the designated  
29 successor.

30 2. Any time within 30 days of receipt of the  
31 manufacturer's notice of objection the owner or the  
32 designated successor may file a request in writing  
33 with the Commissioner that the Commissioner hold  
34 an evidentiary hearing and determine whether good  
35 cause exists for rejection of the designated successor.  
36 When such a request is filed, the Commissioner shall  
37 promptly inform the affected manufacturer or  
38 distributor that a timely request has been filed.

39 3. The Commissioner shall endeavor to hold the  
40 evidentiary hearing required under this sub-  
41 subdivision and render a determination within 180  
42 days after receipt of the written request from the  
43 owner or designated successor. In determining  
44 whether good cause exists for rejection of the owner's

- 1 appointed designated successor, the manufacturer or  
2 distributor has the burden of proving that the  
3 designated successor is a person who is not of good  
4 moral character or does not meet the franchisor's  
5 existing written and reasonable standards and,  
6 considering the volume of sales and service of the  
7 new motor vehicle dealer, uniformly applied  
8 minimum business experience standards in the market  
9 area.
- 10 4. Any parties to a hearing by the Commissioner  
11 concerning whether good cause exists for the  
12 rejection of the dealer's designated successor shall  
13 have a right of review of the decision in a court of  
14 competent jurisdiction pursuant to Chapter 150B of  
15 the General Statutes.
- 16 5. Nothing in this sub-subdivision shall preclude a  
17 manufacturer or distributor from, upon its receipt of  
18 written notice from ~~a dealer~~ an owner of the identity  
19 of the ~~dealer's~~ owner's designated successor, requiring  
20 that the designated successor promptly provide  
21 personal and financial data that is reasonably  
22 necessary to determine the financial ability and  
23 qualifications of the designated successor; provided,  
24 however, that such a request for additional  
25 information shall not delay any of the time periods or  
26 constraints contained herein.
- 27 6. In the event death or incapacity of the owner or  
28 principal operator occurs prior to the time a  
29 manufacturer or distributor receives notice of the  
30 owner's appointment of a designated successor or  
31 before the Commissioner has rendered a  
32 determination as provided above, the existing  
33 franchise shall remain in effect and the designated  
34 successor shall be deemed to have succeeded to all of  
35 the owner's or principal operator's rights and  
36 obligations in the dealership and under the franchise  
37 until a determination is made by the Commissioner or  
38 the rights of the parties have otherwise become fixed  
39 in accordance with this sub-subdivision.
- 40 c. Except as otherwise provided in sub-subdivision d. of this  
41 subdivision, any designated successor of a deceased or  
42 incapacitated owner or principal operator of a new motor  
43 vehicle dealership appointed by such owner in substantial  
44 compliance with this section shall, by operation of law,

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succeed at the time of such death or incapacity to all of the ~~ownership~~ rights and obligations of the owner or principal operator in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the ~~owner,~~ owner or principal operator, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ~~ownership position of owner~~ or principal operator of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the ~~owner's~~ death or incapacity of the owner or principal operator shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of



- 1 this subdivision. In any such hearing, the manufacturer or  
 2 distributor shall be limited to facts and circumstances which  
 3 did not exist at the time the designated successor was  
 4 originally approved or evidence which was originally  
 5 requested to be produced by the designated successor at the  
 6 time of the original request and was ~~either not produced or~~  
 7 ~~the material which was produced was incorrect.~~ fraudulent.
- 8 e. The designated successor shall agree to be bound by all  
 9 terms and conditions of the franchise in effect between the  
 10 manufacturer or distributor and the owner at the time of the  
 11 owner's or principal operator's death or incapacity, if so  
 12 requested in writing by the manufacturer or distributor  
 13 subsequent to the owner's or principal operator's death or  
 14 incapacity.
- 15 f. This section does not preclude an owner of a new motor  
 16 vehicle dealership from designating any person as his or her  
 17 successor by written instrument filed with the manufacturer  
 18 or distributor, and, in the event there is an inconsistency  
 19 between the successor named in such written instrument and  
 20 the designated successor otherwise appointed by the owner  
 21 consistent with the provisions of this section, and that  
 22 written instrument has not been revoked by the owner of  
 23 the new motor vehicle dealership in writing to the  
 24 manufacturer or distributor, then the written instrument  
 25 filed with the manufacturer or distributor shall govern as to  
 26 the appointment of the successor.
- 27 (8) To require, coerce, or attempt to coerce any new motor vehicle  
 28 dealer in this State to order or accept delivery of any new motor  
 29 vehicle with special features, options, accessories or equipment  
 30 which are either:
- 31 a. ~~not~~ Not included in the list price of ~~such~~ those motor  
 32 vehicles as publicly advertised by the manufacturer or  
 33 ~~distributor.~~ distributor; or
- 34 b. Added by the manufacturer or distributor at port or at any  
 35 other time subsequent to the time assembly of the vehicle  
 36 has been completed at the manufacturer's factory.
- 37 (9) To require, coerce, or attempt to coerce any new motor vehicle  
 38 dealer in this State to participate monetarily in an advertising  
 39 campaign or contest, or to purchase unnecessary or unreasonable  
 40 quantities of any promotional materials, training materials, ~~training~~  
 41 ~~programs,~~ showroom or other display ~~decorations or materials~~  
 42 decorations, materials, computer equipment or programs, or special  
 43 tools at the expense of the new motor vehicle dealer, provided that  
 44 nothing in this subsection shall preclude a manufacturer or

1 distributor from including an unitemized uniform charge in the  
2 base price of the new motor vehicle charged to the dealer where  
3 such charge is attributable to advertising costs incurred or to be  
4 incurred by the manufacturer or distributor in the ordinary courses  
5 of its business.

6 (10) To require, coerce, or attempt to coerce any new motor vehicle  
7 dealer in this State to change the capital structure of the new  
8 motor vehicle dealer or the means by or through which the new  
9 motor vehicle dealer finances the operation of the dealership  
10 provided that the new motor vehicle dealer at all times meets any  
11 reasonable capital standards determined by the manufacturer in  
12 accordance with uniformly applied criteria; and also provided that  
13 no change in the capital structure shall cause a change in the  
14 principal management or have the effect of a sale of the franchise  
15 without the consent of the manufacturer or distributor, provided  
16 that said consent shall not be unreasonably withheld.

17 (11) To require, coerce, or attempt to coerce any new motor vehicle  
18 dealer in this State to refrain from participation in the management  
19 of, investment in, or the acquisition of any other line of new motor  
20 vehicle or related products; Provided, however, that this subsection  
21 does not apply unless the new motor vehicle dealer maintains a  
22 reasonable line of credit for each make or line of new motor  
23 vehicle, and the new motor vehicle dealer remains in compliance  
24 with any reasonable capital standards and facilities requirements of  
25 the manufacturer. The reasonable facilities requirements shall not  
26 include any requirement that a new motor vehicle dealer establish  
27 or maintain exclusive facilities, personnel, or display space, ~~when~~  
28 ~~such requirements, or any of them, would be unreasonable in light~~  
29 ~~of current economic conditions and would not otherwise be~~  
30 ~~justified by reasonable business considerations.~~ space.

31 (12) To require, coerce, or attempt to coerce any new motor vehicle  
32 dealer in this State to change location of the dealership, or to make  
33 any substantial alterations to the dealership premises or facilities,  
34 when to do so would be unreasonable, or without written  
35 assurance of a sufficient supply of new motor vehicles so as to  
36 justify such an expansion, in light of the current market and  
37 economic conditions.

38 (13) To require, coerce, or attempt to coerce any new motor vehicle  
39 dealer in this State to prospectively assent to a release, assignment,  
40 novation, waiver or estoppel which would relieve any person from  
41 liability to be imposed by this law or to require any controversy  
42 between a new motor vehicle dealer and a manufacturer,  
43 distributor, or representative, to be referred to any person other  
44 than the duly constituted courts of the State or the United States of

- 1 America, or to the Commissioner, if such referral would be  
2 binding upon the new motor vehicle dealer.
- 3 (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle  
4 parts or accessories in reasonable quantities relative to the new  
5 motor vehicle dealer's facilities and sales potential in the new  
6 motor vehicle dealer's ~~relevant market area, and area as~~  
7 determined in accordance with reasonably applied economic  
8 principles, or within a reasonable time, after receipt of an order  
9 from a dealer having a franchise for the retail sale of any new  
10 motor vehicle sold or distributed by the manufacturer or  
11 distributor, any new vehicle, parts or accessories to new vehicles as  
12 are covered by such franchise, and such vehicles, parts or  
13 accessories as are publicly advertised as being available or actually  
14 being delivered. The delivery to another dealer of a motor vehicle  
15 of the same model and similarly equipped as the vehicle ordered  
16 by a motor vehicle dealer who has not received delivery thereof,  
17 but who has placed his written order for the vehicle prior to the  
18 order of the dealer receiving the vehicle, shall be evidence of a  
19 delayed delivery of, or refusal to deliver, a new motor vehicle to a  
20 motor vehicle dealer within a reasonable time, without cause. This  
21 subsection is not violated, however, if such failure is caused by acts  
22 or causes beyond the control of the manufacturer, distributor,  
23 factory branch, or factory representative.
- 24 (15) To refuse to disclose to any new motor vehicle dealer, handling the  
25 same line make, the manner and mode of distribution of that line  
26 make within the State.
- 27 (16) To award money, goods, services, or any other benefit to any new  
28 motor vehicle dealership employee, either directly or indirectly,  
29 unless such benefit is promptly accounted for, and transmitted to,  
30 or approved by, the new motor vehicle dealer.
- 31 (17) To increase prices of new motor vehicles which the new motor  
32 vehicle dealer had ordered and which the manufacturer or  
33 distributor has accepted for immediate delivery for private retail  
34 consumers prior to the new motor vehicle dealer's receipt of the  
35 written official price increase notification. A sales contract signed  
36 by a private retail consumer shall constitute evidence of each such  
37 order provided that the vehicle is in fact delivered to that  
38 customer. Price differences applicable to new model or series shall  
39 not be considered a price increase or price decrease. Price changes  
40 caused by either: (i) the addition to a new motor vehicle of  
41 required or optional equipment; or (ii) revaluation of the United  
42 States dollar, in the case of foreign-make vehicles or components;  
43 or (iii) an increase in transportation charges due to increased rates  
44 imposed by carriers; or (iv) new tariffs or duties imposed by the

- 1 United States of America or any other governmental authority,  
2 shall not be subject to the provisions of this subsection.
- 3 (18) To prevent or attempt to prevent a dealer from receiving fair and  
4 reasonable compensation for the value of the franchised business  
5 transferred in accordance with G.S. 20-305(4) above.
- 6 (19) To offer any refunds or other types of inducements to any person  
7 for the purchase of new motor vehicles of a certain line make to be  
8 sold to the State or any political subdivision thereof without  
9 making the same offer available upon request to all other new  
10 motor vehicle dealers in the same line make within the State.
- 11 (20) To release to any outside party, except under subpoena or as  
12 otherwise required by law or in an administrative, judicial or  
13 arbitration proceeding involving the manufacturer or new motor  
14 vehicle dealer, any confidential business, financial, or personal  
15 information which may be from time to time provided by the new  
16 motor vehicle dealer to the manufacturer, without the express  
17 written consent of the new motor vehicle dealer.
- 18 (21) To deny any new motor vehicle dealer the right of free association  
19 with any other new motor vehicle dealer for any lawful purpose.
- 20 (22) To unfairly discriminate among its new motor vehicle dealers with  
21 respect to warranty reimbursements or authority granted its new  
22 motor vehicle dealers to make warranty adjustments with retail  
23 customers.
- 24 (23) To engage in any predatory practice against or unfairly compete  
25 with a new motor vehicle dealer located in this State.
- 26 (24) To terminate any franchise solely because of the death or  
27 incapacity of an owner who is not listed in the franchise as one on  
28 whose expertise and abilities the manufacturer relied in the  
29 granting of the franchise.
- 30 (25) To require, coerce, or attempt to coerce a new motor vehicle  
31 dealer in this State to either establish or maintain exclusive  
32 facilities, personnel, or display space, ~~when such requirements, or~~  
33 ~~any of them, would be unreasonable in light of current economic~~  
34 ~~conditions and would not otherwise be justified by reasonable~~  
35 ~~business considerations.~~ space.
- 36 (26) To resort to or to use any false or misleading advertisement in the  
37 conducting of its business as a manufacturer or distributor in this  
38 State.
- 39 (27) To knowingly make, either directly or through any agent or  
40 employee, any material statement which is false or misleading ~~and~~  
41 or conceal any material facts which ~~induces~~ induce any new motor  
42 vehicle dealer to enter into any agreement or franchise or to take  
43 any action which is materially prejudicial to that new motor  
44 vehicle dealer or his business.

1 (28) To require, coerce, or attempt to coerce any new motor vehicle  
2 dealer to purchase or order any new motor vehicle as a  
3 precondition to purchasing, ordering, or receiving any other new  
4 motor vehicle or vehicles. Nothing herein shall prevent a  
5 manufacturer from requiring that a new motor vehicle dealer fairly  
6 represent and inventory the full line of new motor vehicles which  
7 are covered by the franchise agreement.

8 (29) To require, coerce, or attempt to coerce any new motor vehicle  
9 dealer to sell, transfer, or otherwise issue stock or other ownership  
10 interest in the dealership corporation to a general manager or any  
11 other person involved in the management of the dealership other  
12 than the dealer principal or dealer operator named in the  
13 franchise, unless the dealer principal or dealer operator is an  
14 absentee owner who is not involved in the operation of the  
15 dealership on a regular basis.

16 (30) To vary the price charged to any of its franchised new motor  
17 vehicle dealers located in this State for new motor vehicles based  
18 on the dealer's purchase of new facilities, supplies, computers,  
19 tools, equipment, or other merchandise from the manufacturer or  
20 any other person or entity designated, endorsed, or approved by  
21 the manufacturer, the dealer's relocation, remodeling, repair, or  
22 renovation of existing dealerships or construction of a new facility  
23 facility; the dealer's willingness or commitment to either establish  
24 or maintain exclusive facilities, personnel, or display space; the  
25 dealer's success in achieving certain scores or levels of customer  
26 satisfaction under a program or system for measuring customer  
27 satisfaction established or endorsed by the manufacturer; the  
28 dealer's willingness to provide loaner vehicles in whole or in part  
29 at the dealer's expense to customers who are having a vehicle  
30 serviced at the dealership; or upon the dealer's participation in  
31 training programs or employment or association of one or more  
32 consultants which are sponsored, endorsed, or recommended by  
33 the manufacturer; manufacturer, the payment for which is in any  
34 part the responsibility of the dealer.

35 The price of the vehicle, for purposes of this subdivision shall  
36 include the manufacturer's use of rebates, credits, bonuses, or  
37 other consideration which has the effect of causing a variance in  
38 the price of new motor vehicles offered to its franchised dealers  
39 located in the State.

40 Notwithstanding the foregoing, nothing in this subdivision shall  
41 be deemed to preclude a manufacturer from establishing sales  
42 contests or promotions which provide or award dealers or  
43 consumers rebates or incentives.

1           Nothing contained in this subdivision shall prohibit a  
2 manufacturer from providing assistance or encouragement to a  
3 franchised dealer to remodel, renovate, recondition, or relocate the  
4 dealer's existing facilities, provided that this assistance,  
5 encouragement, or rewards are not determined on a per vehicle  
6 basis.

7           In the event that at the time of the ratification of this act a  
8 manufacturer is currently operating a program or has in effect a  
9 policy which would violate this subdivision after the effective date  
10 of this act, it shall be lawful for that program or policy to continue  
11 in effect as to the manufacturer's franchised dealers located in this  
12 State until December 31, 1999. Any manufacturer shall be required  
13 to pay or otherwise compensate any franchise dealer who has  
14 earned the right to receive payment or other compensation under a  
15 program as of December 31, 1999, in accordance with the  
16 manufacturer's program or policy.

17           (31) Notwithstanding the terms of any contract, franchise, agreement,  
18 release, or waiver, to require that in any civil or administrative  
19 proceeding in which a new motor vehicle dealer asserts any claims,  
20 rights, or defenses arising under this Article or under the franchise,  
21 that the dealer or any nonprevailing party compensate the  
22 manufacturer or prevailing party for any court costs, attorneys'  
23 fees, or other expenses incurred in the litigation.

24           (32) To require that any of its franchised new motor vehicle dealers  
25 located in this State pay any extra fee, purchase unreasonable or  
26 unnecessary quantities of advertising displays or other materials, or  
27 remodel, renovate, or recondition the dealers' existing facilities in  
28 order to receive any particular model or series of vehicles  
29 manufactured or distributed by the manufacturer for which the  
30 dealers have a valid franchise. Notwithstanding the foregoing,  
31 nothing contained in this subdivision shall be deemed to prohibit  
32 or prevent a manufacturer from requiring that its franchised  
33 dealers located in this State purchase special tools or equipment,  
34 stock reasonable quantities of certain parts, or participate in  
35 training programs which are reasonably necessary for those dealers  
36 to sell or service any model or series of vehicles.

37           (33) To fail to reimburse a dealer located in this State in full for the  
38 actual cost of providing a loaner vehicle to any customer who is  
39 having a vehicle serviced at the dealership if the provision of such  
40 a loaner vehicle is required by the manufacturer.

41           (34) To require, coerce, or attempt to coerce any new motor vehicle  
42 dealer in this State to participate monetarily in any training  
43 program whose subject matter is not expressly limited to specific  
44 information necessary to sell or service the models of vehicles the

1 dealer is authorized to sell or service under the dealer's franchise  
2 with that manufacturer. Examples of training programs with  
3 respect to which a manufacturer is prohibited from requiring the  
4 dealer's monetary participation include, but are not limited to,  
5 those which purport to teach morale-boosting employee  
6 motivation, teamwork, or general principles of customer relations.  
7 A manufacturer is further prohibited from requiring the personal  
8 attendance of an owner or dealer principal of any dealership  
9 located in this State at any meeting or training program at which it  
10 is reasonably possible for another member of the dealer's  
11 management to attend and later relate the subject matter of the  
12 meeting or training program to the dealership's owners or  
13 principal operator."

14 Section 3. G.S. 20-305.1(b) reads as rewritten:

15 "(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any  
16 motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail  
17 to perform any of its warranty obligations with respect to a motor vehicle, to fail to  
18 compensate its motor vehicle dealers licensed in this State for warranty parts other  
19 than parts used to repair the living facilities of recreational vehicles, at the prevailing  
20 retail rate according to the factors in subsection (a) of this section, or, in service in  
21 accordance with the schedule of compensation provided the dealer pursuant to  
22 subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers  
23 licensed in this State against any judgment for damages or settlements agreed to by  
24 the manufacturer, including, but not limited to, court costs and reasonable attorneys'  
25 fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits  
26 including, but not limited to, strict liability, negligence, misrepresentation, express or  
27 implied warranty, or rescission or revocation of acceptance of the sale of a motor  
28 vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement  
29 relates to the alleged defective negligent manufacture, assembly or design of new  
30 motor vehicles, parts or accessories or other functions by the manufacturer, factory  
31 branch, distributor or distributor branch, beyond the control of the dealer. Any audit  
32 for warranty parts or service compensation shall only be for the 12-month period  
33 immediately following the date of the payment of the claim by the manufacturer,  
34 factory branch, distributor, or distributor branch. Any audit for sales incentives,  
35 service incentives, rebates, or other forms of incentive compensation shall only be for  
36 the ~~24-month~~ 12-month period immediately following the date of the payment of the  
37 claim by the manufacturer, factory branch, distributor, or distributor branch.  
38 Provided, however, these limitations shall not be effective in the case of fraudulent  
39 claims."

40 Section 4. G.S. 20-305.1(c) reads as rewritten:

41 "(c) In the event there is a dispute between the manufacturer, factory branch,  
42 distributor, or distributor branch, and the dealer with respect to any matter referred  
43 to in ~~subsections~~ subsection (a), (b), ~~(b1)~~, or (d) of this section, either party may  
44 petition the Commissioner in writing, within 30 days after either party has given

1 written notice of the dispute to the other, for a hearing on the subject and the  
2 decision of the Commissioner shall be binding on the parties, subject to rights of  
3 judicial review and appeal as provided in Chapter 150B of the General Statutes;  
4 provided, however, that nothing contained herein shall give the Commissioner any  
5 authority as to the content of any manufacturer's or distributor's warranty. Upon the  
6 filing of a petition before the Commissioner under this subsection, any chargeback to  
7 or any payment required of a dealer by a manufacturer relating to warranty parts or  
8 service compensation, or to sales incentives, service incentives, rebates, or other forms  
9 of incentive compensation, shall be stayed during the pendency of the determination  
10 by the Commissioner."

11 Section 5. G.S. 20-305.2 reads as rewritten:

12 "**§ 20-305.2. Unfair methods of competition.**

13 It is unlawful for any motor vehicle manufacturer, factory branch, distributor,  
14 distributor branch, or subsidiary thereof, to directly or indirectly through any  
15 subsidiary or affiliated entity, own, own any ownership interest in, operate, or control  
16 any motor vehicle dealership ~~in a relevant market area of this State already served by~~  
17 ~~a motor vehicle dealer under a franchise for the same line make from such~~  
18 ~~manufacturer, factory branch, distributor, or distributor branch, or subsidiary, in this~~  
19 State, provided that this section shall not be construed to prohibit (i) the operation  
20 by a manufacturer, factory branch, distributor, distributor branch, or subsidiary  
21 thereof, of a dealership for a temporary period (not to exceed one year) during the  
22 transition from one owner or operator to another, or (ii) the ownership or control of  
23 a dealership by a manufacturer, factory branch, distributor, distributor branch, or  
24 subsidiary thereof, ~~during a period while such dealership is being sold under a bona~~  
25 ~~fide contract or purchase option to the operator of the dealership, while in a bona~~  
26 fide relationship with any independent person, other than a manufacturer, factory  
27 branch, distributor, distributor branch, or an agent or affiliate thereof, who has made  
28 a significant investment that is subject to loss in the dealership and who can  
29 reasonably expect to acquire full ownership of the dealership within a reasonable  
30 period of time and on reasonable terms and conditions, or (iii) the ownership,  
31 operation or control of a dealership by a manufacturer, factory branch, distributor,  
32 distributor branch, or subsidiary thereof, if such manufacturer, factory branch,  
33 distributor, distributor branch, or subsidiary has been engaged in the retail sale of  
34 motor vehicles through such dealership for a continuous period of three years prior  
35 to March 16, 1973, and if the Commissioner determines, after a hearing on the matter  
36 at the request of any party, that there is no independent dealer available in the  
37 relevant market area to own and operate the franchise in a manner consistent with  
38 the public interest, or (iv) the ownership, operation, or control of a dealership by a  
39 manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if  
40 the Commissioner determines after a hearing on the matter at the request of any  
41 party, that there is no independent dealer available in the relevant market area to  
42 own and operate the franchise in a manner consistent with the public interest.

43 Provided, this section shall not apply to manufacturers or distributors of trailers or  
44 semitrailers."



1                   Section 6. Section 5 of this act shall not apply to manufacturers or  
2 distributors of trailers or semitrailers.

3                   Section 7. This act becomes effective October 1, 1999.



1 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**  
2 **franchise; preventing transfer of ownership; granting additional franchises;**  
3 **terminating franchises without good cause; preventing family succession.**

4 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor  
5 branch, or any field representative, officer, agent, or any representative whatsoever of  
6 any of them:

7 (1) To require, coerce, or attempt to coerce any dealer to accept  
8 delivery of any motor vehicle or vehicles, parts or accessories  
9 therefor, or any other commodities, which shall not have been  
10 ordered by ~~such dealer~~; that dealer, or to accept delivery of any  
11 motor vehicle or vehicles which have been equipped in a manner  
12 other than as specified by the dealer.

13 (2) To require, coerce, or attempt to coerce any dealer to enter into  
14 any agreement with such manufacturer, factory branch, distributor,  
15 or distributor branch, or representative thereof, or do any other act  
16 unfair to such dealer, by threatening to cancel any franchise  
17 existing between such manufacturer, factory branch, distributor,  
18 distributor branch, or representative thereof, and such dealer;

19 (3) Unfairly without due regard to the equities of the dealer, and  
20 without just provocation, to cancel the franchise of such dealer;

21 (4) Notwithstanding the terms of any franchise agreement, to prevent  
22 or refuse to approve the sale or transfer of the ownership of a  
23 dealership by the sale of the business, stock transfer, or otherwise,  
24 or the transfer, sale or assignment of a dealer franchise, or a  
25 change in the executive management or principal operator of the  
26 dealership, or relocation of the dealership to another site within  
27 the dealership's relevant market area, if the Commissioner has  
28 determined, if requested in writing by the dealer within 30 days  
29 after receipt of an objection to the proposed transfer, sale,  
30 assignment, relocation, or change, and after a hearing on the  
31 matter, that the failure to permit or honor the transfer, sale,  
32 assignment, relocation, or change is unreasonable under the  
33 circumstances. No franchise may be transferred, sold, assigned,  
34 relocated, or the executive management or principal operators  
35 changed, unless the franchisor has been given at least 30 days'  
36 prior written notice as to the identity, financial ability, and  
37 qualifications of the proposed transferee, the identity and  
38 qualifications of the persons proposed to be involved in executive  
39 management or as principal operators, and the location and site  
40 plans of any proposed relocation. The franchisor shall send the  
41 dealership notice of objection, by registered or certified mail,  
42 return receipt requested, to the proposed transfer, sale, assignment,  
43 relocation, or change within 30 days after receipt of notice from  
44 the dealer, as provided in this section. Failure by the franchisor to

1 send notice of objection within 30 days shall constitute waiver by  
2 the franchisor of any right to object to the proposed transfer, sale,  
3 assignment, relocation, or change. ~~The manufacturer or distributor~~  
4 ~~has the burden of proving that the proposed transfer, sale,~~  
5 ~~assignment, relocation, or change is unreasonable under the~~  
6 ~~circumstances.~~ With respect to a proposed transfer of ownership,  
7 sale, or assignment, the sole issue for determination by the  
8 Commissioner and the sole issue upon which the Commissioner  
9 shall hear or consider evidence is whether, by reason of poor  
10 character or lack of financial ability, the proposed transferee is  
11 unfit to own the dealership. For purposes of this subdivision, the  
12 refusal by the manufacturer to accept a proposed transferee who is  
13 of good moral character and who otherwise meets the written,  
14 reasonable, and uniformly applied financial requirements, if any,  
15 required by the manufacturer of owners of its franchised  
16 automobile dealerships is presumed to demonstrate the  
17 manufacturer's failure to prove that the proposed transferee is unfit  
18 to own the dealership. With respect to a proposed change in the  
19 executive management or principal operator of the dealership, the  
20 sole issue for determination by the Commissioner and the sole  
21 issue on which the Commissioner shall hear or consider evidence  
22 shall be whether, by reason of lack of training, lack of prior  
23 experience, poor past performance, or poor character, the  
24 proposed candidate for a position within the executive  
25 management or as principal operator of the dealership is unfit for  
26 the position. For purposes of this subdivision, the refusal by the  
27 manufacturer to accept a proposed candidate for executive  
28 management or as principal operator who is of good moral  
29 character and who otherwise meets the written, reasonable, and  
30 uniformly applied standards or qualifications, if any, of the  
31 manufacturer relating to the business experience and prior  
32 performance of executive management required by the  
33 manufacturers of its dealers is presumed to demonstrate the  
34 manufacturer's failure to prove the proposed candidate for  
35 executive management or as principal operator is unfit to serve the  
36 the capacity. With respect to a proposed relocation or other  
37 proposed change, the issue for determination by the Commissioner  
38 is whether the proposed relocation or other change is unreasonable  
39 under the circumstances. For purposes of this subdivision, the  
40 refusal by the manufacturer to agree to a proposed relocation  
41 which meets the written, reasonable, and uniformly applied  
42 standards or criteria, if any, of the manufacturer relating to dealer  
43 relocations is presumed to demonstrate that the manufacturer's  
44 failure to prove the proposed relocation is unreasonable under the

1 circumstances. The manufacturer shall have the burden of proof  
2 before the Commissioner under this subdivision. It is unlawful for  
3 a manufacturer to in any way condition its approval of a proposed  
4 transfer, sale, assignment, change in the dealer's executive  
5 management or principal operator on the existing or proposed  
6 dealer's willingness to construct a new facility, renovate the  
7 existing facility, acquire or refrain from acquiring one or more  
8 line-makes of vehicles, separate or divest one or more line-makes  
9 of vehicle, or establish or maintain exclusive facilities, personnel,  
10 or display space. It is unlawful for a manufacturer to, in any way,  
11 condition its approval of a proposed relocation on the existing or  
12 proposed dealer's willingness to acquire or refrain from acquiring  
13 one or more line-makes of vehicles, separate or divest one or more  
14 line-makes of vehicle, or establish or maintain exclusive facilities,  
15 personnel, or display space.

16 (5) To enter into a franchise establishing an additional new motor  
17 vehicle dealer or relocating an existing new motor vehicle dealer  
18 into a relevant market area where the same line make is then  
19 represented without first notifying in writing the Commissioner and  
20 each new motor vehicle dealer in that line make in the relevant  
21 market area of the intention to establish an additional dealer or to  
22 relocate an existing dealer within or into that market area. Within  
23 30 days of receiving such notice or within 30 days after the end of  
24 any appeal procedure provided by the manufacturer, any new  
25 motor vehicle dealer may file with the Commissioner a protest to  
26 the establishing or relocating of the new motor vehicle dealer.  
27 When a protest is filed, the Commissioner shall promptly inform  
28 the manufacturer that a timely protest has been filed, and that the  
29 manufacturer shall not establish or relocate the proposed new  
30 motor vehicle dealer until the Commissioner has held a ~~hearing,~~  
31 ~~nor thereafter, if the Commissioner~~ hearing and has determined  
32 that there is good cause for ~~not~~ permitting the addition or  
33 relocation of such new motor vehicle dealer.

34 a. This section does not apply:

- 35 1. To the relocation of an existing new motor vehicle  
36 dealer within that dealer's relevant market area,  
37 provided that the relocation not be at a site within 10  
38 miles of a licensed new motor vehicle dealer for the  
39 same line make of motor ~~vehicle;~~ vehicle. If this sub-  
40 subdivision is applicable, only dealers trading in the  
41 same line-make of vehicle that are located within the  
42 10-mile radius shall be entitled to notice from the  
43 manufacturer and have the protest rights afforded  
44 under this section; or

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2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
  3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle ~~dealership~~; dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation; or
  4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.
- b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
1. ~~The permanency of the investment of both the existing and proposed additional new motor vehicle dealers; dealer;~~
  2. ~~Growth or decline in population, density of population, and new car registrations in the relevant market area;~~
  3. ~~Effect on the consuming public in the relevant market area;~~
  4. ~~Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;~~
  5. 2. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate ~~competition and convenient~~ customer care for the present and potential owners of motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service ~~personnel~~; personnel. For purposes of this sub-subdivision, the term 'adequate' shall be defined in relation to markets of similar size and demographic makeup within North Carolina and

- 1                                    the Commissioner shall not hear or consider evidence  
2                                    of any comparisons to markets outside this State; and  
3                                    6. ~~Whether the establishment of an additional new~~  
4                                    ~~motor vehicle dealer or relocation of an existing new~~  
5                                    ~~motor vehicle dealer in the relevant market area~~  
6                                    ~~would increase competition in a manner such as to be~~  
7                                    ~~in the long term public interest; and~~  
8                                    7. 3. The effect on the relocating dealer of a denial of its  
9                                    relocation into the relevant market area.
- 10                                   c. The Commissioner shall try to conduct the hearing and  
11                                   render his final determination if possible, within 180 days  
12                                   after a protest is filed.
- 13                                   d. Any parties to a hearing by the Commissioner concerning  
14                                   the establishment or relocating of a new motor vehicle  
15                                   dealer shall have a right of review of the decision in a court  
16                                   of competent jurisdiction pursuant to Chapter 150B of the  
17                                   General Statutes. Any determination of the Commissioner  
18                                   under this section allowing the establishment of a proposed  
19                                   additional dealership or relocation of an existing dealership  
20                                   shall automatically be stayed during any period that any  
21                                   dealer having standing to appeal the determination under  
22                                   this section shall have the right to judicial review or appeal  
23                                   of the determination before the superior court or any other  
24                                   appellate court and during the pendency of any appeal.
- 25                                   e. In a hearing involving a proposed additional dealership, the  
26                                   manufacturer or distributor has the burden of proof under  
27                                   this section. In a proceeding involving the relocation of an  
28                                   existing dealership, the dealer seeking to relocate has the  
29                                   burden of proof under this section.
- 30                                   f. If the Commissioner determines, following a hearing, that  
31                                   good cause ~~does not exist for refusing to permit~~ exists for  
32                                   permitting the proposed additional or relocated motor  
33                                   vehicle dealership, the dealer seeking the proposed  
34                                   additional or relocated motor vehicle dealership must,  
35                                   within two years, obtain a license from the Commissioner  
36                                   for the sale of vehicles at the relevant site, and actually  
37                                   commence operations at the site selling new motor vehicles  
38                                   of all line makes, as permitted by the Commissioner. Failure  
39                                   to obtain a permit and commence sales within two years  
40                                   shall constitute waiver by the dealer of the dealer's right to  
41                                   the additional or relocated dealership, requiring  
42                                   renotification, a new hearing, and a new determination as  
43                                   provided in this section. If the Commissioner fails to  
44                                   determine that good cause exists for permitting the proposed

1           additional or relocated motor vehicle dealership, the  
2           manufacturer seeking the proposed additional dealership or  
3           dealer seeking to relocate may not again provide notice of  
4           its intention or otherwise attempt to establish an additional  
5           dealership or relocate to any location within 10 miles of the  
6           site of the original proposed additional dealership or  
7           relocation site for a minimum of five years from the date of  
8           the Commissioner's determination.

9           g. (See editor's note for applicability) For purposes of this  
10          subdivision, the addition, creation, or operation of a  
11          "satellite" or other facility, not physically part of or  
12          contiguous to an existing licensed new motor vehicle dealer,  
13          whether or not owned or operated by a person or other  
14          entity holding a franchise as defined by G.S. 20-286(8a), at  
15          which warranty service work authorized or reimbursed by a  
16          manufacturer is performed or at which new motor vehicles  
17          are offered for sale to the public, shall be considered an  
18          additional new motor vehicle dealer requiring a showing of  
19          good cause, prior notification to existing new motor vehicle  
20          dealers of the same line make of vehicle within the relevant  
21          market area by the manufacturer and the opportunity for a  
22          hearing before the Commissioner as provided in this  
23          subdivision.

24          (6) Notwithstanding the terms, provisions or conditions of any  
25          franchise or notwithstanding the terms or provisions of any waiver,  
26          to terminate, cancel or fail to renew any franchise with a licensed  
27          new motor vehicle dealer unless the manufacturer has satisfied the  
28          notice requirements of subparagraph c. and the Commissioner has  
29          determined, if requested in writing by the dealer within the time  
30          period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and  
31          after a hearing on the matter, that there is good cause for the  
32          termination, cancellation, or nonrenewal of the franchise and that  
33          the manufacturer has acted in good faith as defined in this act  
34          regarding the termination, cancellation or nonrenewal. When such  
35          a petition is made to the Commissioner by a dealer for  
36          determination as to the existence of good cause and good faith for  
37          the termination, cancellation or nonrenewal of a franchise, the  
38          Commissioner shall promptly inform the manufacturer that a  
39          timely petition has been filed, and the franchise in question shall  
40          continue in effect pending the Commissioner's decision. The  
41          Commissioner shall try to conduct the hearing and render a final  
42          determination within 180 days after a petition has been filed. If the  
43          termination, cancellation or nonrenewal is pursuant to G.S. 20-  
44          305(6)c1III then the Commissioner shall give the proceeding



1 priority consideration and shall try to render his final  
2 determination no later than 90 days after the petition has been  
3 filed. Any parties to a hearing by the Commissioner under this  
4 section shall have a right of review of the decision in a court of  
5 competent jurisdiction pursuant to Chapter 150B of the General  
6 Statutes. Any determination of the Commissioner under this  
7 section finding that good cause exists for the nonrenewal,  
8 cancellation, or termination of any franchise shall automatically be  
9 stayed during any period that the affected dealer shall have the  
10 right to judicial review or appeal of the determination before the  
11 superior court or any other appellate court and during the  
12 pendency of any appeal. Furthermore, unless and until the  
13 termination, cancellation, or nonrenewal of a dealer's franchise  
14 shall finally become effective, in light of any stay or any order of  
15 the commissioner determining that good cause exists for the  
16 termination, cancellation, or nonrenewal of a dealer's franchise as  
17 provided in this paragraph, a dealer who receives a notice of  
18 termination, cancellation, or nonrenewal from a manufacturer as  
19 provided in this subdivision shall continue to have the same rights  
20 to assign, sell, or transfer the franchise to a third party under the  
21 franchise and as permitted under G.S. 20-305(4) as if notice of the  
22 termination had not been given by the manufacturer. Any  
23 franchise under notice or threat of termination, cancellation, or  
24 nonrenewal by the manufacturer which is duly transferred in  
25 accordance with G.S. 20-305(4) shall not be subject to termination  
26 by reason of failure of performance or breaches of the franchise on  
27 the part of the transferor.

28 a. Notwithstanding the terms, provisions or conditions of any  
29 franchise or the terms or provisions of any waiver, good  
30 cause shall exist for the purposes of a termination,  
31 cancellation or nonrenewal when:

- 32 1. There is a failure by the new motor vehicle dealer to  
33 comply with a provision of the franchise which  
34 provision is both reasonable and of material  
35 significance to the franchise relationship provided  
36 that the dealer has been notified in writing of the  
37 failure within ~~180~~ 90 days after the manufacturer first  
38 acquired knowledge of such failure;
- 39 2. If the failure by the new motor vehicle dealer relates  
40 to the performance of the new motor vehicle dealer  
41 in sales or service, then good cause shall be defined  
42 as the failure of the new motor vehicle dealer to  
43 comply with reasonable performance criteria  
44 established by the manufacturer if the new motor

- 1 vehicle dealer was apprised by the manufacturer in  
2 writing of the failure; and
- 3 I. The notification stated that notice was  
4 provided of failure of performance pursuant to  
5 this section;
- 6 II. The new motor vehicle dealer was afforded a  
7 reasonable opportunity, for a period of not less  
8 than 180 days, to comply with the criteria; and
- 9 III. The new motor vehicle dealer failed to  
10 demonstrate substantial progress towards  
11 compliance with the manufacturer's  
12 performance criteria during such period and  
13 the new motor vehicle dealer's failure was not  
14 primarily due to economic or market factors  
15 within the dealer's relevant market area which  
16 were beyond the dealer's control.
- 17 b. The manufacturer shall have the burden of proof under this  
18 section.
- 19 c. Notification of Termination, Cancellation and Nonrenewal.  
20 --
- 21 1. Notwithstanding the terms, provisions or conditions of  
22 any franchise prior to the termination, cancellation or  
23 nonrenewal of any franchise, the manufacturer shall  
24 furnish notification of termination, cancellation or  
25 nonrenewal to the new motor vehicle dealer as  
26 follows:
- 27 I. In the manner described in G.S. 20-305(6)c2  
28 below; and
- 29 II. Not less than 90 days prior to the effective date  
30 of such termination, cancellation or  
31 nonrenewal; or
- 32 III. Not less than 15 days prior to the effective date  
33 of such termination, cancellation or  
34 nonrenewal with respect to any of the  
35 following:
- 36 A. Insolvency of the new motor vehicle  
37 dealer, or filing of any petition by or  
38 against the new motor vehicle dealer  
39 under any bankruptcy or receivership  
40 law;
- 41 B. Failure of the new motor vehicle dealer  
42 to conduct its customary sales and  
43 service operations during its customary  
44 business hours for seven consecutive

- 1 business days, except for acts of God or  
2 circumstances beyond the direct control  
3 of the new motor vehicle dealer;
- 4 C. Revocation of any license which the new  
5 motor vehicle dealer is required to have  
6 to operate a dealership;
- 7 D. Conviction of a felony involving moral  
8 turpitude, under the laws of this State or  
9 any other state, or territory, or the  
10 District of Columbia.
- 11 IV. Not less than 180 days prior to the effective  
12 date of such termination or cancellation where  
13 the manufacturer or distributor is discontinuing  
14 the sale of the product line.
- 15 V. Unless the failure by the new motor vehicle  
16 dealer relates to the performance of the new  
17 motor vehicle dealer in sales or service, not  
18 more than 1 year after the manufacturer first  
19 acquired knowledge of the basic facts  
20 comprising the failure.
- 21 2. Notification under this section shall be in writing;  
22 shall be by certified mail or personally delivered to  
23 the new motor vehicle dealer; and shall contain:
- 24 I. A statement of intention to terminate, cancel  
25 or not to renew the franchise;
- 26 II. A detailed statement of all of the material  
27 reasons for the termination, cancellation or  
28 nonrenewal; and
- 29 III. The date on which the termination,  
30 cancellation or nonrenewal takes effect.
- 31 3. Notification provided in G.S. 20-305(6)c1II of 90 days  
32 prior to the effective date of such termination,  
33 cancellation or renewal may run concurrent with the  
34 180 days designated in G.S. 20-305(6)a2II provided  
35 the notification is clearly designated by a separate  
36 written document mailed by certified mail or  
37 personally delivered to the new motor vehicle dealer.
- 38 d. Payments. --
- 39 1. Upon the termination, nonrenewal or cancellation of  
40 any franchise by the manufacturer or distributor,  
41 pursuant to this section, the new motor vehicle dealer  
42 shall be allowed fair and reasonable compensation by  
43 the manufacturer for the:

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- I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;
  - II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;
  - III. ~~Equipment~~ Equipment, signs, and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and
  - IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.
2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has offered to convey clear title to the inventory and has conveyed title and possession of the same to the manufacturer. The manufacturer shall be obligated to pay or reimburse the dealer for any transportation charges associated with the manufacturer's repurchase obligations under this sub-subparagraph. The manufacturer may not charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.
- e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

1 In the event of the termination, cancellation or  
2 nonrenewal by the manufacturer or distributor under this  
3 section, except termination, cancellation or nonrenewal for  
4 insolvency, license revocation, conviction of a crime  
5 involving moral turpitude, or fraud by a dealer-owner:

- 6 1. Subject to paragraph 3, if the new motor vehicle  
7 dealer is leasing the dealership facilities from a lessor  
8 other than the manufacturer, the manufacturer shall  
9 pay the new motor vehicle dealer a sum equivalent to  
10 the rent for the unexpired term of the lease or ~~one~~  
11 three year's rent, whichever is less, or such longer  
12 term as is provided in the franchise agreement  
13 between the dealer and manufacturer; or  
14 2. Subject to paragraph 3, if the new motor vehicle  
15 dealer owns the dealership facilities, the manufacturer  
16 shall pay the new motor vehicle dealer a sum  
17 equivalent to the reasonable rental value of the  
18 dealership facilities for ~~one year~~ three years.  
19 3. ~~Provided nothing in this paragraph e. shall relieve a~~  
20 ~~lessee or owner, as the case may be, from the~~  
21 ~~obligation to mitigate damages under the lease, nor~~  
22 ~~prevent a manufacturer from occupying and using the~~  
23 ~~dealership facilities while paying rent under~~  
24 ~~subsections 1 and 2, nor prevent a manufacturer from~~  
25 ~~obligations by negotiating a lease termination, a~~  
26 ~~sublease or a new lease. Any amounts recovered by~~  
27 ~~the lessee or owner resulting from mitigation of~~  
28 ~~damages shall be deducted from the amount due from~~  
29 ~~the manufacturer.~~

30 In order to be entitled to facilities assistance from the  
31 manufacturer, as provided in this paragraph e., no  
32 dealer, owner, or lessee, as the case may be, shall  
33 have an obligation to mitigate damages under the  
34 lease; provided, however, that to the extent that a  
35 dealer, owner, or lessee does elect to voluntarily  
36 mitigate damages, the dealer shall be obligated to pay  
37 the manufacturer the net revenue received from such  
38 mitigation up to the total amount of facilities  
39 assistance which the dealer has received from the  
40 manufacturer pursuant to sub-subdivisions 1. and 2.  
41 To the extent and for such uses and purposes as may  
42 be consistent with the terms of the lease, a  
43 manufacturer who pays facilities assistance to a dealer  
44 under this paragraph e. shall be entitled to occupy



1                   sub-subdivision c. below, the owner's choice of a successor  
2                   must be approved by the dealer, in accordance with the  
3                   dealer's bylaws, if applicable, either prior or subsequent to  
4                   the death or incapacity of the existing principal operator.

5                   b. Any objections by a manufacturer or distributor to an  
6                   owner's appointment of a designated successor shall be  
7                   asserted in accordance with the following procedure:

8                   1. Within 30 days after receiving written notice of the  
9                   identity of the owner's designated successor and  
10                  general information as to the financial ability and  
11                  qualifications of the designated successor, the  
12                  franchisor shall send the owner and designated  
13                  successor notice of objection, by registered or  
14                  certified mail, return receipt requested, to the  
15                  appointment of the designated successor. The notice  
16                  of objection shall state in detail all facts which  
17                  constitute the basis for the contention on the part of  
18                  the manufacturer or distributor that good cause, as  
19                  defined in this sub-subdivision below, exists for  
20                  rejection of the designated successor. Failure by the  
21                  franchisor to send notice of objection within 30 days  
22                  and otherwise as provided in this sub-subdivision  
23                  shall constitute waiver by the franchisor of any right  
24                  to object to the appointment of the designated  
25                  successor.

26                  2. Any time within 30 days of receipt of the  
27                  manufacturer's notice of objection the owner or the  
28                  designated successor may file a request in writing  
29                  with the Commissioner that the Commissioner hold  
30                  an evidentiary hearing and determine whether good  
31                  cause exists for rejection of the designated successor.  
32                  When such a request is filed, the Commissioner shall  
33                  promptly inform the affected manufacturer or  
34                  distributor that a timely request has been filed.

35                  3. The Commissioner shall endeavor to hold the  
36                  evidentiary hearing required under this sub-  
37                  subdivision and render a determination within 180  
38                  days after receipt of the written request from the  
39                  owner or designated successor. In determining  
40                  whether good cause exists for rejection of the owner's  
41                  appointed designated successor, the manufacturer or  
42                  distributor has the burden of proving that the  
43                  designated successor is a person who is not of good  
44                  moral character or does not meet the franchisor's

- 1 existing written and reasonable standards and,  
2 considering the volume of sales and service of the  
3 new motor vehicle dealer, uniformly applied  
4 minimum business experience standards in the market  
5 area.
- 6 4. Any parties to a hearing by the Commissioner  
7 concerning whether good cause exists for the  
8 rejection of the dealer's designated successor shall  
9 have a right of review of the decision in a court of  
10 competent jurisdiction pursuant to Chapter 150B of  
11 the General Statutes.
- 12 5. Nothing in this sub-subdivision shall preclude a  
13 manufacturer or distributor from, upon its receipt of  
14 written notice from ~~a dealer~~ an owner of the identity  
15 of the ~~dealer's~~ owner's designated successor, requiring  
16 that the designated successor promptly provide  
17 personal and financial data that is reasonably  
18 necessary to determine the financial ability and  
19 qualifications of the designated successor; provided,  
20 however, that such a request for additional  
21 information shall not delay any of the time periods or  
22 constraints contained herein.
- 23 6. In the event death or incapacity of the owner or  
24 principal operator occurs prior to the time a  
25 manufacturer or distributor receives notice of the  
26 owner's appointment of a designated successor or  
27 before the Commissioner has rendered a  
28 determination as provided above, the existing  
29 franchise shall remain in effect and the designated  
30 successor shall be deemed to have succeeded to all of  
31 the owner's or principal operator's rights and  
32 obligations in the dealership and under the franchise  
33 until a determination is made by the Commissioner or  
34 the rights of the parties have otherwise become fixed  
35 in accordance with this sub-subdivision.
- 36 c. Except as otherwise provided in sub-subdivision d. of this  
37 subdivision, any designated successor of a deceased or  
38 incapacitated owner or principal operator of a new motor  
39 vehicle dealership appointed by such owner in substantial  
40 compliance with this section shall, by operation of law,  
41 succeed at the time of such death or incapacity to all of the  
42 ~~ownership~~ rights and obligations of the owner or principal  
43 operator in the new motor vehicle dealership and under the  
44 existing franchise.



1 d. Within 60 days after the death or incapacity of the ~~owner,~~  
2 owner or principal operator, a designated successor  
3 appointed in substantial compliance with this section shall  
4 give the affected manufacturer or distributor written notice  
5 of his or her succession to the ~~ownership position of owner~~  
6 or principal operator of the new motor vehicle dealership;  
7 provided, however, that the failure of the designated  
8 successor to give the manufacturer or distributor written  
9 notice as provided above within 60 days of the ~~owner's~~  
10 death or incapacity of the owner or principal operator shall  
11 not result in the waiver or termination of the designated  
12 successor's right to succeed to the ownership of the new  
13 motor vehicle dealership unless the manufacturer or  
14 distributor gives written notice of this provision to either the  
15 designated successor or the deceased or incapacitated  
16 owner's executor, administrator, guardian or other fiduciary  
17 by certified or registered mail, return receipt requested, and  
18 said written notice grants not less than 30 days time within  
19 which the designated successor may give the notice required  
20 hereunder, provided the designated successor or the  
21 deceased or incapacitated owner's executor, administrator,  
22 guardian or other fiduciary has given the manufacturer  
23 reasonable notice of death or incapacity. Within 30 days of  
24 receipt of the notice by the manufacturer or distributor from  
25 the designated successor provided in this paragraph, the  
26 manufacturer or distributor may request that the designated  
27 successor complete the application forms generally utilized  
28 by the manufacturer or distributor to review the designated  
29 successor's qualifications to establish a successor dealership.  
30 Within 30 days of receipt of the completed forms, the  
31 manufacturer or distributor shall send a letter by certified or  
32 registered mail, return receipt requested, advising the  
33 designated successor of facts and circumstances which have  
34 changed since the manufacturer's or distributor's original  
35 approval of the designated successor, and which have caused  
36 the manufacturer or distributor to object to the designated  
37 successor. Upon receipt of such notice, the designated  
38 successor may either designate an alternative successor or  
39 may file a request for evidentiary hearing in accordance  
40 with the procedures provided in sub-subdivisions b. 2.-5. of  
41 this subdivision. In any such hearing, the manufacturer or  
42 distributor shall be limited to facts and circumstances which  
43 did not exist at the time the designated successor was  
44 originally approved or evidence which was originally

- 1 requested to be produced by the designated successor at the  
2 time of the original request and was ~~either not produced or~~  
3 ~~the material which was produced was incorrect. fraudulent.~~
- 4 e. The designated successor shall agree to be bound by all  
5 terms and conditions of the franchise in effect between the  
6 manufacturer or distributor and the owner at the time of the  
7 owner's or principal operator's death or incapacity, if so  
8 requested in writing by the manufacturer or distributor  
9 subsequent to the owner's or principal operator's death or  
10 incapacity.
- 11 f. This section does not preclude an owner of a new motor  
12 vehicle dealership from designating any person as his or her  
13 successor by written instrument filed with the manufacturer  
14 or distributor, and, in the event there is an inconsistency  
15 between the successor named in such written instrument and  
16 the designated successor otherwise appointed by the owner  
17 consistent with the provisions of this section, and that  
18 written instrument has not been revoked by the owner of  
19 the new motor vehicle dealership in writing to the  
20 manufacturer or distributor, then the written instrument  
21 filed with the manufacturer or distributor shall govern as to  
22 the appointment of the successor.
- 23 (8) To require, coerce, or attempt to coerce any new motor vehicle  
24 dealer in this State to order or accept delivery of any new motor  
25 vehicle with special features, options, accessories or equipment  
26 which are either:
- 27 a. ~~not~~ Not included in the list price of ~~such~~ those motor  
28 vehicles as publicly advertised by the manufacturer or  
29 ~~distributor. distributor; or~~
- 30 b. Added by the manufacturer or distributor at port or at any  
31 other time subsequent to the time assembly of the vehicle  
32 has been completed at the manufacturer's factory.
- 33 (9) To require, coerce, or attempt to coerce any new motor vehicle  
34 dealer in this State to participate monetarily in an advertising  
35 campaign or contest, or to purchase unnecessary or unreasonable  
36 quantities of any promotional materials, training materials, ~~training~~  
37 ~~programs, showroom or other display decorations or materials~~  
38 decorations, materials, computer equipment or programs, or special  
39 tools at the expense of the new motor vehicle dealer, provided that  
40 nothing in this subsection shall preclude a manufacturer or  
41 distributor from including an unitemized uniform charge in the  
42 base price of the new motor vehicle charged to the dealer where  
43 such charge is attributable to advertising costs incurred or to be

1 incurred by the manufacturer or distributor in the ordinary courses  
2 of its business.

3 (10) To require, coerce, or attempt to coerce any new motor vehicle  
4 dealer in this State to change the capital structure of the new  
5 motor vehicle dealer or the means by or through which the new  
6 motor vehicle dealer finances the operation of the dealership  
7 provided that the new motor vehicle dealer at all times meets any  
8 reasonable capital standards determined by the manufacturer in  
9 accordance with uniformly applied criteria; and also provided that  
10 no change in the capital structure shall cause a change in the  
11 principal management or have the effect of a sale of the franchise  
12 without the consent of the manufacturer or distributor, provided  
13 that said consent shall not be unreasonably withheld.

14 (11) To require, coerce, or attempt to coerce any new motor vehicle  
15 dealer in this State to refrain from participation in the management  
16 of, investment in, or the acquisition of any other line of new motor  
17 vehicle or related products; Provided, however, that this subsection  
18 does not apply unless the new motor vehicle dealer maintains a  
19 reasonable line of credit for each make or line of new motor  
20 vehicle, and the new motor vehicle dealer remains in compliance  
21 with any reasonable capital standards and facilities requirements of  
22 the manufacturer. The reasonable facilities requirements shall not  
23 include any requirement that a new motor vehicle dealer establish  
24 or maintain exclusive facilities, personnel, or display ~~space, when~~  
25 ~~such requirements, or any of them, would be unreasonable in light~~  
26 ~~of current economic conditions and would not otherwise be~~  
27 ~~justified by reasonable business considerations.~~ space.

28 (12) To require, coerce, or attempt to coerce any new motor vehicle  
29 dealer in this State to change location of the dealership, or to make  
30 any substantial alterations to the dealership premises or facilities,  
31 when to do so would be unreasonable, or without written  
32 assurance of a sufficient supply of new motor vehicles so as to  
33 justify such an expansion, in light of the current market and  
34 economic conditions.

35 (13) To require, coerce, or attempt to coerce any new motor vehicle  
36 dealer in this State to prospectively assent to a release, assignment,  
37 novation, waiver or estoppel which would relieve any person from  
38 liability to be imposed by this law or to require any controversy  
39 between a new motor vehicle dealer and a manufacturer,  
40 distributor, or representative, to be referred to any person other  
41 than the duly constituted courts of the State or the United States of  
42 America, or to the Commissioner, if such referral would be  
43 binding upon the new motor vehicle dealer.

- 1 (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle  
2 parts or accessories in reasonable quantities relative to the new  
3 motor vehicle dealer's facilities and sales potential in the new  
4 motor vehicle dealer's ~~relevant market area, and area as~~  
5 determined in accordance with reasonably applied economic  
6 principles, or within a reasonable time, after receipt of an order  
7 from a dealer having a franchise for the retail sale of any new  
8 motor vehicle sold or distributed by the manufacturer or  
9 distributor, any new vehicle, parts or accessories to new vehicles as  
10 are covered by such franchise, and such vehicles, parts or  
11 accessories as are publicly advertised as being available or actually  
12 being delivered. The delivery to another dealer of a motor vehicle  
13 of the same model and similarly equipped as the vehicle ordered  
14 by a motor vehicle dealer who has not received delivery thereof,  
15 but who has placed his written order for the vehicle prior to the  
16 order of the dealer receiving the vehicle, shall be evidence of a  
17 delayed delivery of, or refusal to deliver, a new motor vehicle to a  
18 motor vehicle dealer within a reasonable time, without cause.  
19 Each manufacturer shall allocate its products in a manner that  
20 provides each of its franchised dealers in this State an adequate  
21 supply of vehicles by series, product line, and model to achieve the  
22 manufacturer's minimum sales requirements, planning volume, or  
23 sales objectives and that is fair and equitable to all of its franchised  
24 dealers in this State. Additionally, each manufacturer shall make  
25 available to each of its franchised dealers in this State a minimum  
26 of one of each vehicle series, model, or product line that the  
27 manufacturer advertises nationally as being available for purchase.  
28 In allocating its vehicles to its franchised dealers in this State, each  
29 manufacturer shall give equal weight to: (i) each dealer's past  
30 sales by series, model, or product line and (ii) the vehicle  
31 registrations by series, model, and product line within the dealer's  
32 assigned primary market area. A manufacturer shall not unfairly  
33 discriminate among its franchised dealers in this allocation process.  
34 This subsection is not violated, however, if such failure is caused  
35 by acts or causes beyond the control of the manufacturer,  
36 distributor, factory branch, or factory representative.
- 37 (15) To refuse to disclose to any new motor vehicle dealer, handling the  
38 same line make, the manner and mode of distribution of that line  
39 make within the State.
- 40 (16) To award money, goods, services, or any other benefit to any new  
41 motor vehicle dealership employee, either directly or indirectly,  
42 unless such benefit is promptly accounted for, and transmitted to,  
43 or approved by, the new motor vehicle dealer.

- 1 (17) To increase prices of new motor vehicles which the new motor  
2 vehicle dealer had ordered and which the manufacturer or  
3 distributor has accepted for immediate delivery for private retail  
4 consumers prior to the new motor vehicle dealer's receipt of the  
5 written official price increase notification. A sales contract signed  
6 by a private retail consumer shall constitute evidence of each such  
7 order provided that the vehicle is in fact delivered to that  
8 customer. Price differences applicable to new model or series shall  
9 not be considered a price increase or price decrease. Price changes  
10 caused by either: (i) the addition to a new motor vehicle of  
11 required or optional equipment; or (ii) revaluation of the United  
12 States dollar, in the case of foreign-make vehicles or components;  
13 or (iii) an increase in transportation charges due to increased rates  
14 imposed by carriers; or (iv) new tariffs or duties imposed by the  
15 United States of America or any other governmental authority,  
16 shall not be subject to the provisions of this subsection.
- 17 (18) To prevent or attempt to prevent a dealer from receiving fair and  
18 reasonable compensation for the value of the franchised business  
19 transferred in accordance with G.S. 20-305(4) above.
- 20 (19) To offer any refunds or other types of inducements to any person  
21 for the purchase of new motor vehicles of a certain line make to be  
22 sold to the State or any political subdivision thereof without  
23 making the same offer available upon request to all other new  
24 motor vehicle dealers in the same line make within the State.
- 25 (20) To release to any outside party, except under subpoena or as  
26 otherwise required by law or in an administrative, judicial or  
27 arbitration proceeding involving the manufacturer or new motor  
28 vehicle dealer, any confidential business, financial, or personal  
29 information which may be from time to time provided by the new  
30 motor vehicle dealer to the manufacturer, without the express  
31 written consent of the new motor vehicle dealer.
- 32 (21) To deny any new motor vehicle dealer the right of free association  
33 with any other new motor vehicle dealer for any lawful purpose.
- 34 (22) To unfairly discriminate among its new motor vehicle dealers with  
35 respect to warranty reimbursements or authority granted its new  
36 motor vehicle dealers to make warranty adjustments with retail  
37 customers.
- 38 (23) To engage in any predatory practice against or unfairly compete  
39 with a new motor vehicle dealer located in this State.
- 40 (24) To terminate any franchise solely because of the death or  
41 incapacity of an owner who is not listed in the franchise as one on  
42 whose expertise and abilities the manufacturer relied in the  
43 granting of the franchise.

- 1 (25) To require, coerce, or attempt to coerce a new motor vehicle  
2 dealer in this State to either establish or maintain exclusive  
3 facilities, personnel, or display space, ~~when such requirements, or~~  
4 ~~any of them, would be unreasonable in light of current economic~~  
5 ~~conditions and would not otherwise be justified by reasonable~~  
6 ~~business considerations.~~ space.
- 7 (26) To resort to or to use any false or misleading advertisement in the  
8 conducting of its business as a manufacturer or distributor in this  
9 State.
- 10 (27) To knowingly make, either directly or through any agent or  
11 employee, any material statement which is false or misleading ~~and~~  
12 or conceal any material facts which ~~induces~~ induce any new motor  
13 vehicle dealer to enter into any agreement or franchise or to take  
14 any action which is materially prejudicial to that new motor  
15 vehicle dealer or his business.
- 16 (28) To require, coerce, or attempt to coerce any new motor vehicle  
17 dealer to purchase or order any new motor vehicle as a  
18 precondition to purchasing, ordering, or receiving any other new  
19 motor vehicle or vehicles. Nothing herein shall prevent a  
20 manufacturer from requiring that a new motor vehicle dealer fairly  
21 represent and inventory the full line of new motor vehicles which  
22 are covered by the franchise agreement.
- 23 (29) To require, coerce, or attempt to coerce any new motor vehicle  
24 dealer to sell, transfer, or otherwise issue stock or other ownership  
25 interest in the dealership corporation to a general manager or any  
26 other person involved in the management of the dealership other  
27 than the dealer principal or dealer operator named in the  
28 franchise, unless the dealer principal or dealer operator is an  
29 absentee owner who is not involved in the operation of the  
30 dealership on a regular basis.
- 31 (30) To vary the price charged to any of its franchised new motor  
32 vehicle dealers located in this State for new motor vehicles based  
33 on the dealer's purchase of new facilities, supplies, computers,  
34 tools, equipment, or other merchandise from the manufacturer or  
35 any other person or entity designated, endorsed, or approved by  
36 the manufacturer, the dealer's relocation, remodeling, repair, or  
37 renovation of existing dealerships or construction of a new facility  
38 facility; the dealer's willingness or commitment to either establish  
39 or maintain exclusive facilities, personnel, or display space; the  
40 dealer's success in achieving certain scores or levels of customer  
41 satisfaction under a program or system for measuring customer  
42 satisfaction established or endorsed by the manufacturer; the  
43 dealer's willingness to provide loaner vehicles in whole or in part  
44 at the dealer's expense to customers who are having a vehicle

1 serviced at the dealership; or upon the dealer's participation in  
2 training programs or employment or association of one or more  
3 consultants which are sponsored, endorsed, or recommended by  
4 the ~~manufacturer.~~ manufacturer, the payment for which is in any  
5 part the responsibility of the dealer.

6 The price of the vehicle, for purposes of this subdivision shall  
7 include the manufacturer's use of rebates, credits, bonuses, or  
8 other consideration which has the effect of causing a variance in  
9 the price of new motor vehicles offered to its franchised dealers  
10 located in the State.

11 Notwithstanding the foregoing, nothing in this subdivision shall  
12 be deemed to preclude a manufacturer from establishing sales  
13 contests or promotions which provide or award dealers or  
14 consumers rebates or incentives.

15 Nothing contained in this subdivision shall prohibit a  
16 manufacturer from providing assistance or encouragement to a  
17 franchised dealer to remodel, renovate, recondition, or relocate the  
18 dealer's existing facilities, provided that this assistance,  
19 encouragement, or rewards are not determined on a per vehicle  
20 basis.

21 In the event that at the time of the ratification of this act a  
22 manufacturer is currently operating a program or has in effect a  
23 policy which would violate this subdivision after the effective date  
24 of this act, it shall be lawful for that program or policy to continue  
25 in effect as to the manufacturer's franchised dealers located in this  
26 State until December 31, 1999. Any Whether or not a program  
27 operated by a manufacturer complies with this paragraph, a  
28 manufacturer shall be required to pay or otherwise compensate any  
29 franchise dealer who has earned the right to receive payment or  
30 other compensation under a program as of ~~December 31, 1999,~~  
31 March 31, 2000, in accordance with the manufacturer's program or  
32 policy.

33 (31) Notwithstanding the terms of any contract, franchise, agreement,  
34 release, or waiver, to require that in any civil or administrative  
35 proceeding in which a new motor vehicle dealer asserts any claims,  
36 rights, or defenses arising under this Article or under the franchise,  
37 that the dealer or any nonprevailing party compensate the  
38 manufacturer or prevailing party for any court costs, attorneys'  
39 fees, or other expenses incurred in the litigation.

40 (32) To require that any of its franchised new motor vehicle dealers  
41 located in this State pay any extra fee, purchase unreasonable or  
42 unnecessary quantities of advertising displays or other materials, or  
43 remodel, renovate, or recondition the dealers' existing facilities in  
44 order to receive any particular model or series of vehicles

1 manufactured or distributed by the manufacturer for which the  
2 dealers have a valid franchise. Notwithstanding the foregoing,  
3 nothing contained in this subdivision shall be deemed to prohibit  
4 or prevent a manufacturer from requiring that its franchised  
5 dealers located in this State purchase special tools or equipment,  
6 stock reasonable quantities of certain parts, or participate in  
7 training programs which are reasonably necessary for those dealers  
8 to sell or service any model or series of vehicles.

9 (33) To fail to reimburse a dealer located in this State in full for the  
10 actual cost of providing a loaner vehicle to any customer who is  
11 having a vehicle serviced at the dealership if the provision of such  
12 a loaner vehicle is required by the manufacturer.

13 (34) To require, coerce, or attempt to coerce any new motor vehicle  
14 dealer in this State to participate monetarily in any training  
15 program whose subject matter is not expressly limited to specific  
16 information necessary to sell or service the models of vehicles the  
17 dealer is authorized to sell or service under the dealer's franchise  
18 with that manufacturer. Examples of training programs with  
19 respect to which a manufacturer is prohibited from requiring the  
20 dealer's monetary participation include, but are not limited to,  
21 those which purport to teach morale-boosting employee  
22 motivation, teamwork, or general principles of customer relations.  
23 A manufacturer is further prohibited from requiring the personal  
24 attendance of an owner or dealer principal of any dealership  
25 located in this State at any meeting or training program at which it  
26 is reasonably possible for another member of the dealer's  
27 management to attend and later relate the subject matter of the  
28 meeting or training program to the dealership's owners or  
29 principal operator.

30 (35) Notwithstanding the terms of any franchise, agreement, waiver, or  
31 novation, to limit the number of franchises of the same line make  
32 of vehicle that any motor vehicle dealer may own or operate  
33 within this State or attach any such restrictions or conditions on  
34 such ownership or operation without making the same limitations,  
35 conditions, and restrictions applicable to all of its other  
36 franchisees."

37 Section 3. G.S. 20-305.1(b) reads as rewritten:

38 "(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any  
39 motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail  
40 to perform any of its warranty obligations with respect to a motor vehicle, to fail to  
41 compensate its motor vehicle dealers licensed in this State for warranty parts other  
42 than parts used to repair the living facilities of recreational vehicles, at the prevailing  
43 retail rate according to the factors in subsection (a) of this section, or, in service in  
44 accordance with the schedule of compensation provided the dealer pursuant to



1 subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers  
2 licensed in this State against any judgment for damages or settlements agreed to by  
3 the manufacturer, including, but not limited to, court costs and reasonable attorneys'  
4 fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits  
5 including, but not limited to, strict liability, negligence, misrepresentation, express or  
6 implied warranty, or rescission or revocation of acceptance of the sale of a motor  
7 vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement  
8 relates to the alleged defective negligent manufacture, assembly or design of new  
9 motor vehicles, parts or accessories or other functions by the manufacturer, factory  
10 branch, distributor or distributor branch, beyond the control of the dealer. Any audit  
11 for warranty parts or service compensation shall only be for the 12-month period  
12 immediately following the date of the payment of the claim by the manufacturer,  
13 factory branch, distributor, or distributor branch. Any audit for sales incentives,  
14 service incentives, rebates, or other forms of incentive compensation shall only be for  
15 the ~~24-month~~ 12-month period immediately following the date of the payment of the  
16 claim by the manufacturer, factory branch, distributor, or distributor branch.  
17 Provided, however, these limitations shall not be effective in the case of fraudulent  
18 claims."

19 Section 3.1. G.S. 20-305.1 is amended by adding a new subsection to  
20 read:

21 "(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales  
22 incentives, service incentives, rebates, or other forms of incentive compensation,  
23 reduce the amount to be paid to the dealer, or charge a dealer back subsequent to  
24 the payment of the claim unless it can be shown that the claim was false or  
25 fraudulent or that the dealer failed to reasonably substantiate the claim either in  
26 accordance with the manufacturer's written procedures or by other reasonable  
27 means."

28 Section 4. G.S. 20-305.1(c) reads as rewritten:

29 "(c) In the event there is a dispute between the manufacturer, factory branch,  
30 distributor, or distributor branch, and the dealer with respect to any matter referred  
31 to in ~~subsections~~ subsection (a), (b), (b1), (b2), or (d) of this section, either party may  
32 petition the Commissioner in writing, within 30 days after either party has given  
33 written notice of the dispute to the other, for a hearing on the subject and the  
34 decision of the Commissioner shall be binding on the parties, subject to rights of  
35 judicial review and appeal as provided in Chapter 150B of the General Statutes;  
36 provided, however, that nothing contained herein shall give the Commissioner any  
37 authority as to the content of any manufacturer's or distributor's warranty. Upon the  
38 filing of a petition before the Commissioner under this subsection, any chargeback to  
39 or any payment required of a dealer by a manufacturer relating to warranty parts or  
40 service compensation, or to sales incentives, service incentives, rebates, or other forms  
41 of incentive compensation, shall be stayed during the pendency of the determination  
42 by the Commissioner."

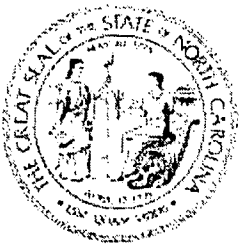
43 Section 5. G.S. 20-305.2 reads as rewritten:

44 "**§ 20-305.2. Unfair methods of competition.**

1 It is unlawful for any motor vehicle manufacturer, factory branch, distributor,  
2 distributor branch, or subsidiary thereof, to directly or indirectly through any  
3 subsidiary or affiliated entity, own, own any ownership interest in, operate, or control  
4 any motor vehicle dealership in a relevant market area of this State already served by  
5 a motor vehicle dealer under a franchise for the same line make from such  
6 manufacturer, factory branch, distributor, or distributor branch, or subsidiary, in this  
7 State, provided that this section shall not be construed to prohibit (i) the operation  
8 by a manufacturer, factory branch, distributor, distributor branch, or subsidiary  
9 thereof, of a dealership for a temporary period (not to exceed one year) during the  
10 transition from one owner or operator to another, or (ii) the ownership or control of  
11 a dealership by a manufacturer, factory branch, distributor, distributor branch, or  
12 subsidiary thereof, ~~during a period while such dealership is being sold under a bona~~  
13 ~~fide contract or purchase option to the operator of the dealership, while in a bona~~  
14 ~~fide relationship with any independent person, other than a manufacturer, factory~~  
15 ~~branch, distributor, distributor branch, or an agent or affiliate thereof, who has made~~  
16 ~~a significant investment that is subject to loss in the dealership and who can~~  
17 ~~reasonably expect to acquire full ownership of the dealership within a reasonable~~  
18 ~~period of time (not to exceed seven years) and on reasonable terms and conditions,~~  
19 or (iii) the ownership, operation or control of a dealership by a manufacturer, factory  
20 branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer,  
21 factory branch, distributor, distributor branch, or subsidiary has been engaged in the  
22 retail sale of motor vehicles through such dealership for a continuous period of three  
23 years prior to March 16, 1973, and if the Commissioner determines, after a hearing  
24 on the matter at the request of any party, that there is no independent dealer  
25 available in the relevant market area to own and operate the franchise in a manner  
26 consistent with the public interest, or (iv) the ownership, operation, or control of a  
27 dealership by a manufacturer, factory branch, distributor, distributor branch, or  
28 subsidiary thereof, if the Commissioner determines after a hearing on the matter at  
29 the request of any party, that there is no independent dealer available in the relevant  
30 market area to own and operate the franchise in a manner consistent with the public  
31 interest.

32 Provided, this section shall not apply to manufacturers or distributors of trailers or  
33 semitrailers."

34 Section 6. This act becomes effective October 1, 1999.



# SB 420: Clarify MV Dealers License Law

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** April 13, 1999  
**Version:** PCS for 1st Edition

**Introduced by:** Sen. Hoyle  
**Summary by:** Linwood Jones  
Committee Counsel

**SUMMARY:** *Senate Bill 420 makes numerous changes to the laws governing motor vehicle dealer franchises. These laws regulate the relationship between motor vehicle manufacturers and distributors and motor vehicle dealers.*

### BILL ANALYSIS:

**Section 1.** If a dealer, before appealing to the Commissioner of Motor Vehicles, elects to contest a policy, determination, or decision of the manufacturer through alternative dispute resolution, including mediation, arbitration, or through an appeals board or internal grievance procedure of the manufacturer, the time for appealing to the Commissioner does not begin to run until the dealer receives a written final decision from the alternative dispute resolution. The bill also states that nothing in the bill is to be construed as requiring the dealer to exhaust alternative dispute resolution remedies established or required by the manufacturer.

**Section 2** amends G.S. 20-305 to make the following changes:

- **Acceptance of equipped vehicle:** Makes it unlawful for a manufacturer, factory branch, or distributor to require or coerce a dealer into accepting a vehicle that is equipped in a manner other than as specified by the dealer. Current law already makes it unlawful to require or coerce the dealer into accepting a vehicle or parts or accessories that the dealer did not order (*see page 2, lines 7-12*).
- **Dealership changes/appeal to Commissioner on manufacturer's disapproval:** Current law allows a dealer to appeal to the Commissioner of Motor Vehicles when a manufacturer or distributor refuses to approve the dealer's transfer of the dealership or the franchise, a change in the dealership's management, or a relocation of the dealership. The Commissioner determines whether the manufacturer's decision was "unreasonable under the circumstances." The manufacturer or distributor bears the burden of proving that the proposed dealership change is unreasonable under the circumstances (and that its decision to deny the change was therefore not unreasonable).

The bill provides that if the issue on appeal is the transfer of ownership of a dealership, then the Commissioner will hear evidence only on the proposed transferee's fitness to own the dealership, based on good moral character and written, reasonable, uniform standards concerning financial ability. If the issue is a change in the dealership's executive management or principal operator, the Commissioner may hear evidence only on the new management's or operator's fitness to run the dealership, based on training, prior experience, past performance, and character. If the issue is a relocation or any other change, the Commissioner will use the existing standard of whether the change

is “unreasonable under the circumstances.” The manufacturer retains the burden of proof in these hearings before the Commissioner. The bill also prohibits the manufacturer from conditioning approval for a change in ownership or management or a relocation on the dealer acquiring or refraining from acquiring one or more line-makes of vehicles, separating or divesting one or more line-makes of vehicles, or maintaining exclusive facilities, personnel, or display space. In addition, approval of ownership and management changes can not be conditioned on the dealer agreeing to build a new facility or renovate an existing facility (*see pages 3-4*)

- **Dealer relocation:** The law currently allows dealers to protest when new or existing dealerships are proposed for their relevant market area. The proposed location of an existing dealership to within 10 miles of a dealer selling the same line-make is subject to protest. The bill retains this 10-mile limit but states that only the dealers *selling the same line-make* within this 10-mile limit have standing before the Commissioner to protest the proposed relocation. In addition, the current exemption from relocation protests for the relocation of an existing dealership within 2 miles of its current site is restricted to such dealers that have operated at their existing sites for 3 years or more (*see page 4, line 34 through page 5, line 12*).
- **Good cause for not relocating dealership:** When a dealer protests to the Commissioner another dealer’s proposed location or relocation into its market area (assuming the dealer has standing to protest), the Commissioner must determine whether there is good cause for not allowing the new dealer into the area. Currently, the Commissioner reviews the permanency of the investment by both dealers, population growth and new vehicle registrations, effect on vehicle purchasers in the area, whether it’s beneficial or injurious to the public to allow the new dealer, whether the dealer is providing adequate competition and customer care to purchasers of the line-make of the vehicles proposed to be sold by the new dealer, whether allowing the new dealer would increase competition over the long term in the public interest, and the effect of not allowing the new dealer to come into the area. Senate Bill 420 eliminates some of these factors, retaining only the following to be considered: permanency of investment, customer care, and the effect of denial of relocation on the new dealer. In addition, in reviewing customer care, the Commissioner must use for comparison purposes only similar-sized demographic markets in North Carolina (*see page 5, line 18 through page 6, line 9*).
- **Stay of Commissioner’s ruling:** A party can appeal the Commissioner’s ruling to the courts. The bill provides that if the Commissioner has issued an order allowing a dealership to be established, that order is automatically stayed during the appeal, assuming that the appellant makes a timely appeal (*see page 6, lines 17-24*).
- **Waiting period:** The bill provides that if the new dealership is challenged by an existing dealer and the Commissioner rejects the new dealership, the manufacturer or dealer seeking the new dealership must wait 5 years before seeking to establish the new dealership again within 10 miles of the proposed original site (*see page 6, line 43 through page 7, line 8*).
- **Termination of dealership; stay:** If a manufacturer terminates or refuses to renew a dealership’s franchise, the dealer may file a protest with the Commissioner for a decision whether there is good cause for the termination or nonrenewal. The bill provides that if the Commissioner decides there is good cause, the order is stayed pending appeal (assuming a timely appeal) so that the dealer can continue in business until the matter is finally resolved on appeal. The dealer can also sell or transfer

the franchise during the appeal in the same manner he could ordinarily sell or transfer it (*see page 8, lines 6-27*).

- **Notification of breach:** The current law recognizes that there is good cause for termination or nonrenewal of a dealership if the dealer has breached a material, reasonable provision of the franchise agreement, the manufacturer notified the dealer of the breach within 180 days, and the dealer did not show substantial progress within a reasonable period (at least 180 days) in addressing the problem. The bill lowers the 180-day notification requirement to 90 days – i.e., the manufacturer must notify the dealer of the breach within 90 days (*see page 8, line 37*).
- **Notification of termination:** The law requires manufacturers and distributors to give dealers advance notice of terminations and nonrenewals. The amount of notice varies from 15 days for the most serious problems (such as dealership bankruptcy, felony convictions, and loss of required licenses) to 180 days for termination of a product line by the manufacturer or distributor. (All other causes for termination or nonrenewal require a 90-day notice). The bill adds an additional requirement: notice must be given no more than 1 year after the manufacturer first acquired knowledge of the facts that constitute the grounds for nonrenewal or termination (except for sales performance and service performance)(*see page 10, lines 15-20*).
- **Manufacturer's repurchase of items:** When a manufacturer terminates or nonrenews a dealer franchise, the manufacturer is required to repurchase certain inventory from the dealer: new vehicles acquired within the past 18 months from the manufacturer, unused supplies and parts from the manufacturer, and special tools and equipment that were required to be purchased from the manufacturer or the manufacturer's approved sources. The bill adds "signs" to the list of items that the manufacturer is obligated to repurchase when it terminates or nonrenews the dealership franchise. The manufacturer is required to pay for the signs only if it required the dealer to purchase the signs from the manufacturer or the manufacturer's approved sources. The bill also requires the manufacturer to pay the transportation charges for shipping these items back to the manufacturer and prohibits the manufacturer from levying a restocking fee, handling charge, or similar surcharge for this purpose (*see page 11, lines 15-42*).
- **Dealership Facilities Assistance:** Manufacturers who nonrenew or terminate a dealership franchise for reasons other than dealer insolvency, fraud, criminal conduct, or license revocation must assist the dealer with rent or rental value. If the dealer leases the dealership facilities from someone other than the manufacturer, current law requires the manufacturer to pay the dealer an amount equal to the rent for the remainder of the lease or for *one* year, whichever is less. If the dealer owns the dealership facility, the manufacturer must pay the rental value of the facility for *one* year. Current law also imposes a requirement on dealers that they mitigate damages under the lease. The bill changes the law to provide for the following:
  - The dealer must be paid an amount equal to the rent on a leased facility for the remainder of the term or *three* years, whichever is less, and the dealer who owns a facility must be paid rental value for *three* years (*see page 12, lines 11 and 18*).
  - The dealer is not required to mitigate damages, but if does so (for example, by leasing the facility to a third party), he must pay over the net revenue therefrom to the manufacturer (up to the amount of facilities assistance received by the dealer)(*see page 12, line 19 through page 13, line 3*).

- If a dealer sells several manufacturers' vehicles at a single location, and only some of the manufacturers are terminating or nonrenewing, the amount those manufacturers must pay the dealership for facilities assistance is proportional to the amount of business the dealer does on those particular manufacturers' vehicles. This is measured by comparing the dealer's sales and leases plus parts and servicing for those vehicles for the past 3 years with the dealer's total sales, leasing, parts and servicing volume for all new vehicles during this period (*see page 13, lines 4-19*).
- The facilities assistance payments due from the manufacturer must be paid within 90 days of the effective date of the termination or nonrenewal of the dealership franchise (*see page 13, lines 20-23*).
- A dealer's termination or resignation is not deemed voluntary if it was done under a threat of nonrenewal or termination by the manufacturer (*see page 13, lines 28-32*).
- **Principal operator succession:** Current law allows a dealer to designate, through a will or other written instrument, a successor owner of the dealership and the franchise. If the manufacturer refuses to honor the designation, the dealer or the designated successor can appeal to the Commissioner, who will decide whether the manufacturer has shown good cause for rejecting the designated new owner. The bill makes clear that these protections exist not only for a designation of a new owner, but also for a designation of a new principal operator (*see page 13, line 33 through page 17, line 22*).
- **Added Accessories:** Current law prohibits manufacturers and distributors from requiring dealers to order or accept delivery of vehicles with special features, accessories or equipment that are not included in the list price of the vehicle. The bill provides that this prohibition also applies to features, accessories, or equipment added by the manufacturer or distributor at port or at any other time after the vehicle was completed at the factory (*see page 17, lines 23-32*).
- **Required equipment purchases:** Current law prohibits manufacturers and distributors from requiring or coercing dealers to buy unnecessary or unreasonable quantities of training materials or showroom or other display items. The bill extends this prohibition to purchases of computer equipment and special tools (*see page 17, line 33 through page 18, line 2*).
- **Exclusive facilities:** Current law allows dealers to invest in or own other lines of vehicles as long as the dealer maintains reasonable capital and facilities for its operations. The current law also says that the manufacturer or distributor cannot require the dealer to establish exclusive facilities, personnel, or display items if that requirement would be "*unreasonable in light of current economic conditions*" and would not be "*justifiable by reasonable business considerations*." The bill removes these two highlighted conditions. The result is that the manufacturer or distributor cannot require the dealer to establish exclusive facilities, personnel, or display space (*see page 18, lines 14-27 and page 21, lines 1-6*).
- **Dealer volume:** Manufacturers and distributors are required to deliver to a dealer (when it orders) a reasonable number of vehicles and parts (to the extent available) based on the dealer's facilities and sales potential in its market area. The bill adds that sales potential in the market area will be determined "*in accordance with reasonably applied economic principles*." In addition, language is added to require vehicles to be allocated in a manner that provides dealers an adequate supply of vehicles by series, product line and model in a fair manner and consistent with the manufacturer's

minimum sales requirements, planning volume, etc. Each manufacturer must make available to each dealer at least one of each such series, product line, or model that is nationally advertised. The manufacturer, in allocating vehicles, must give equal consideration to past sales by the dealer by series, model, or product line and vehicle registrations (*see page 19, lines 3-23*).

- **Concealment of material facts:** It is already unlawful for a manufacturer to make a materially false or misleading statement that induces the dealer to enter into a franchise agreement or that materially harms the dealer. The bill also makes it unlawful for the manufacturer to conceal material facts (*see page 21, lines 10-15*).
- **Manufacturer's price variations:** A manufacturer cannot vary the price it charges dealers for new vehicles based on whether the dealer buys new facilities, supplies, or other items from the manufacturer, builds a new facility or renovates an existing one, or participates in manufacturer-sponsored or approved training courses at dealer expense. The bill extends the list so that the manufacturer also cannot vary the vehicle price based on (1) the purchase of computers or any other items from the manufacturer or a person designated by the manufacturer; (2) willingness to establish exclusive facilities, personnel, or display space; (3) customer satisfaction scores computed by manufacturer-approved programs; (4) willingness to provide loaner vehicles, at dealer expense, to customers having their cars repaired. The December 31, 1999 date for certain types of program payments is extended to March 31, 2000 (*see page 21, lines 31 through page 22, line 32*).
- **Reimbursement for loaners:** This provision of the bill makes it unlawful for the manufacturer to not reimburse the dealer for providing a loaner vehicle to a customer whose vehicle is being serviced if the manufacturer requires a loaner vehicle to be made available (*see page 23, lines 9-12*).
- **Training programs:** This provision of the bill makes it unlawful for a manufacturer to require or coerce a dealer to help pay for training programs that are not limited to specific information that the dealership's employees or management need to sell or service the manufacturer's vehicles. Manufacturers are also prohibited from requiring the personal attendance of the owner or principal operator of the dealership at a training program if another capable managerial employee of the dealership can attend (*see page 23, line 13 through page 23, line 29*).
- **Number of dealerships:** A manufacturer cannot limit the number of franchises of the same line-make that a dealer may own unless it similarly limits all its franchisees (*page 23, lines 30-36*).

**Section 3** of the bill amends the law governing the time period for audits of warranty parts or service compensation and audits for sales incentives, service incentives, rebates, and other forms of incentive compensation. The audit period for the former is currently 12 months; the audit period for the latter is currently 24 months. Section 3 of the bill decreases the audit period for incentives from 24 to 12 months so that it is identical to the warranty audit period.

**Section 3.1** of the bill provides that a manufacturer cannot reduce or deny a dealer's claims for service, sales or similar incentive payments unless the claims were fraudulent or not substantiated in accordance with the manufacturer's reasonable procedures.

**Section 4** makes clear that subsection (b1) of G.S. 20-305.1, which relates to payment by the manufacturer for warranty work, and subsection (b2), which is added by Section 3.1 of the bill, are included in the list of subsections concerning warranty payments that are subject to the appeal of the Commissioner.

**Section 5** amends the law that regulates a factory-owned or controlled dealer when it seeks to locate in the relevant market area of an existing dealer selling the same vehicle line-make. Currently, such factory owned, operated, or controlled dealerships are not allowed except for (1) temporary transitional ownership (up to one year), (2) operation during the period that the dealership is being sold to the operator of the dealership, (3) certain factory dealerships grandfathered in prior to 1973, or (4) when the Commissioner has determined that there is no independent dealer available to operate and capable of operating a dealership in the area. Section 5 amends this law to state that the prohibition on factory dealerships applies throughout the State (which the last two existing exceptions tend to indicate is already the law) unless one of the four exceptions is met. Section 5 also amends the second exception – sale of a dealership to the operator – to provide that the exception applies to a factory dealership in which an independent entity has a significant investment subject to loss and that is reasonably expected to acquire full ownership of the dealership within a reasonable period of time (no more than 7 years) and on reasonable terms.

**Section 6** makes this act effective October 1, 1999.

**CHANGES BETWEEN THE BILL AND THE PROPOSED COMMITTEE SUBSTITUTE:**

- Page 4, line 32: The word “not” is deleted
- Page 5, line 37: The words “present and potential” are added before the word “owners”
- Page 12, line 33: The word “no” was changed to “an” (grammatical change)
- Page 19, lines 19-33: Four new sentences were added concerning the manufacturer’s obligations in allocating vehicles to dealers
- Page 22, lines 26-32: Rewrites last sentence of G.S. 20-305(30), including changing the December 31, 1999 date to March 31, 2000.
- Page 23, lines 30-36: Adds GS 20-305(35) to prohibit a manufacturer from limiting the number of franchises of the same line-make that a dealer can have unless that limit also applies to all other franchisees
- Page 24, lines 19-27: Adds Section 3.1 to the bill, which amends G.S. 20-305.1 to provide that a manufacturer cannot deny or reduce a dealer’s claim for service, sales or similar incentive payments or rebates unless the claim was fraudulent or not substantiated.
- Page 25, line 18: Specifies a reasonable period of time as no more than 7 years.
- Page 25: Section 6 was deleted as unnecessary because G.S. 20-205.2 already exempts trailers and semi-trailers from that section.



**Statement By RICHARD STAELIN**  
**Edward and Rose Donnell**  
**Professor of Business Administration**  
**Fuqua School of Business-Duke University**  
**Concerning**  
**S 419 AND S 420**

**Summary**

My overarching conclusion is that many of the proposed amendments of S419 and S420 will restrict the interactions between manufacturers and dealers and thereby stifle changes that would otherwise lead to better service and product selection and lower prices. All three imply increased consumer welfare. I specifically discuss this conclusion within in this context three issues, transfer right, exclusive dealerships and company stores.

Transfer rights are important because it is one of the ways that a manufacturer is able to influence the selection of its new channel partner. Both the dealer's and manufacturer's actions can strongly impact the customer's perceptions of a brand. These perceptions have great importance to both the manufacturer and the dealers since they affect the ease with which one can sell the brand. The easier it is to sell the product at a fixed price, the greater the brand's value (i.e., brand equity). Restricting the manufacturer from protecting this brand equity not only hurts the manufacturer, but also other dealers who sell this brand.

Manufacturers invest huge sums of money in advertising and other marketing actions with the goal of differentiating their products from their competitors. This differentiation provides customers with value since consumers like to have unique buying experiences. Restricting manufacturers from requiring exclusive facilities and personnel would greatly degrade the value of their investment in product differentiation. Consequently, these manufacturers would be less likely to compete on this attribute. This stifles competition and innovation and, thus, hurts the consumer.

It is a well acknowledged fact that company stores will lead to lower retail prices. Consequently, any rules or regulations that prohibit the existence of this channel system would adversely affect the consumer.

In summary, these three proposed amendments will stifle competition, lead to higher prices and in general leave the consumer worse off.

**Background**

I have been involved with the dealer/manufacturer interface for almost 30 years, as an expert witness and as an academic who studies and writes about the automobile industry. In that period of time, I have testified in numerous "dealer day in court" cases (mostly representing the dealer) at both the state and federal level, written and presented a number of scholarly papers on the

economic impact of different types of channel systems and lectured to automobile personnel on the value of maintaining good channel relationships with their dealers.

Any comment on the above referenced proposed amendments needs to be made in context. Over the last 15 years the production and distribution of automobiles has seen a tremendous transformation. Manufacturers have instituted major quality initiatives, both at the factory level and at the dealer level. For example we now find the manufacturer (and sometimes the dealer) conducting customer satisfaction surveys with the goal of providing the consumer with a better purchase experience. Engineering design changes have lead to improved quality level in terms of product reliability, the reduced need for maintenance and, in general, have increased the average life of a car. More recently, with the advent of the Internet, we have seen customers altering their purchase behavior. Current estimates indicate that 20 percent of new automobile purchasers use the Internet to gather information before making a purchase. Not only has this resulted in more competition across market areas, it has also allowed customers to more easily collect product and price information.

Given these rapid changes, it is imperative that the State does not impose any more restrictions on the dealer/manufacturer relationship. Instead, the State should look to deregulation and allow the channel system to freely evolve with the changing market forces. Only then will consumers be able to reap the rewards of competition via lower prices, better selection and higher product and service quality.

It is also important to point out that any proposed amendment should view the dealer/manufacturer channel system as a partnership. Although the individual channel members have conflicting goals at times, they also have much to gain by working together to make the channel system work efficiently. In most instances, these partners, if unfettered by rules and regulations, can develop a strategy that leave both members better off in the long run. In many ways, one can think of this relationship is like a marriage. There are times when one partner might believe that he/she would be better off if the other partner was required to do something different. However, if both partners modify their behavior somewhat the relationship is improved and both members reap the benefits. Trust and support are important dimensions of any good channel system. Said differently, it is hard to regulate a good partnership.

### **Transfer Rights**

Bill S419 and portions of S420 are concerned with the transfer of a dealership when a dealer wants to terminate his/her contract with the manufacturer. Dealerships have value for a number of reasons. First, each dealership has tangible assets, i.e., inventory, physical facilities, etc. Second, each dealership has value because it is able to attract a set of loyal customers who believe they get incremental value when dealing with that particular dealership. This incremental value is referred to as brand equity. Part of this brand equity is attributable to the manufacturer's actions, part to the dealers prior actions. It is for the latter reason that dealers should be fairly compensated when the business is transferred to another buyer since their actions lead, in part, to the current value of the business.

As currently written, subdivision 18 of 20-305 makes it unlawful for a manufacturer to prevent or attempt to prevent a dealer from receiving fair and reasonable compensation when the dealership is transferred to another person. However, the proposed bill S419 would prohibit a manufacturer from exercising any contractual right of first refusal. In addition, portions of S420 propose to limit the reasons that a manufacturer can object to a proposed transfer of ownership to such issues as poor character and lack of financial ability. No longer could a manufacturer object because the person lacks experience or had a poor past business record (e.g., poor customer service, etc.). Such restrictions have the potential of harming not only the manufacturer's brand equity but also other dealers' equity and ultimately the consumer. Let me be more specific.

Manufacturers have invested billions of dollars to develop consumer confidence in their brand name. Part of this confidence has to do with the dealer's interaction with the customers. Manufacturers need to have the ability to select or at least approve, their new channel partner since this new partner directly impacts the manufacturer's brand equity. Right of first refusal provides them with the opportunity to influence the identity of the new partner. So does the ability of being able to object to a person, or a transfer, if it does not fit in to their current distribution strategy.

Dealers are also affected when a dealership changes hands. Consumers tend to generalize from one dealer to another. If a dealer is less qualified, or if the transferred dealership is not in harmony with the current distribution strategy, then other surrounding dealers ultimately suffer. Finally, if a less qualified dealers is able to take possession of a dealership, the consumer is hurt via higher prices and poorer service.

In summary, the manufacturer needs to have the ability to approve of its new partner. This does not mean that the dealer has no rights. Note that once the manufacturer agrees to the new partner, the manufacturer is bound by the contract terms and the current rules and regulations associated with dealer interactions and termination. Moreover, current regulations require the manufacturer to fairly compensate the selling dealer for the value of his/her existing business. However, without the ability to influence the transfer of a dealership, the manufacturer is unable to protect and enhance the firm's brand equity. As stated earlier, this ultimately hurts the consumer.

### **Exclusive Dealership**

A portion of S420 deals with the issue of exclusivity. Current regulations prohibit the manufacturer from requiring exclusivity if this would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations. However in most instances, manufacturers now require their dealers to maintain exclusive facilities. The proposed changes would eliminate the manufacturer's ability to justify this requirement.

The proposed amendments are in direct contradiction with current practices for most franchised systems. Certainly we do not see fast food franchises selling competing burgers, or gas stations selling two brands of gas. This is because each franchise wants to be able to provide its

customers with a unique buying experience. Currently, automobile manufacturers ask their dealers to invest in separate outlets so that they can keep some measure of product differentiation. This differentiation allows their exclusive dealers to compete on price and on service with other competing brands. This competition, and the uniqueness of the different approaches, provides benefit to consumers.

Nothing in the current rules and regulations, or current contracts, prohibits a dealer from selling two or more competing cars. The only restriction is selling these competing cars out of the same facility and using the same personnel. This differentiation is at the heart of any manufacturers' strategy.

### Company Stores

Manufacturers are currently prohibited from owning, operating or controlling any dealership in a relevant market area already covered by a same line make dealer except under special circumstances. The proposed amendment would rule out these special circumstances, thereby creating an absolute prohibition on manufacturer owned dealerships.

As I and others have shown in published scholarly works (e.g., McGuire and Staelin, *Marketing Science*, 1983), prohibiting company owned stores would have the effect of raising prices and, thus, lowering consumer welfare. These analyses also show that it is often in the manufacturer's best interest to distribute its product through private third parties (i.e., a franchised system). However, whenever the manufacturer uses company stores to distribute its products, retail prices will drop and the quantity sold will increase. Such occurrences have direct positive value to consumers. Consequently, prohibiting company stores will hurt consumers.

VISITOR REGISTRATION SHEET

①

COMMERCE  
Name of Committee

4-13-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Wells Hall	NC Bar Association
ROBERT GLABER	NC Auto Dealers
SAM JOHNSON	ATTY
NORWOOD BRYAN	NCADA
H. Webb	"
Richard J. Vinegar	ATTY
Tommy H. Hartsell	NCADA
K.P. Moxley	IMFE
Dick Carlton	JMF
James G. No	NCADA
David M. Farris	NCADA
Wayne Brown	NC Auto Dealers
DAVID O'NEAL	NC Auto Dealers
Chris Humphrey	Electric Co-ops
George Reed	NC Council of Churches

VISITOR REGISTRATION SHEET

COMMERCE  
Name of Committee

4-13-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Joenny Henderson	CRMC
Harvey Leavitt	WADES BORO, NC
Tommy Williams	NCR Hunt Assoc
Rudby A. Hf	Rudby Assoc.
John Kuest	NCFPC
C. Porter	Bone & Assoc.
Art Ford	WLSR
Kolo Ammentrott	Senate
Edward Paul	Melvin + Powell
F.A. Casch	Ford Motor Co.
Mar Mandelitz	Peyton Wynne
Bernard Allen	SOB
Rory Howard	IGHS
Leon M. Kilham	Moores Van Alst
Steve Cleve	NC Med. Soc.

VISITOR REGISTRATION SHEET

3

Commerce  
Name of Committee

4/13/99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Harry Lapham Amey Jo Bain	NC Medical Society
Melissa Suarez	John Locke Foundation
[Signature]	"
[Signature]	Mon. Van Allen
David Collier	Saturn Retail Experience Center
Steve Bryan	Bryan Funeral Service Swan Quarter
David Simmons	ZDA, PA
FRAN PROSSER	NCR, PA
ANDY ELLEN	NCR, MA
LE Hartwell	NC Bar Association
Tim KENT	Am Inst. of Architects
Larry Heckner	Household Financial Group
McNeil Chestnut	Asst. AG
K Crosson	House Finance Clerk

VISITOR REGISTRATION SHEET

Commerce  
Name of Committee

4/13/99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Amy Hobbs	NCHMA
Edward Jones	Property and Casualty Assn. of NC
Richard Franklin	Dele Univ
Lambert Smith	SATURN RETAIL ENTERPRISES, INC.
John Whitley	Assn of International Auto Mfgs.
Henry Jones	Attorney - Raleigh
Zed Alley	ZDA PA
Jim Macdonald	alliance of automobile manufacturers
Paul Hovell	P.H. Hovell
Jayson	NC Beer & Wine
Bobby Black	Beverly: Assoc.
J Beverly	Worth Carolina
Lester Davis	NJC Auto Dealer
Bill Bann	NC BAR of Soc
Bill Scoborn	



VISITOR REGISTRATION SHEET

5

Commerce  
Name of Committee

4/13/99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Carl Gulch  
CPA

Allen & Pinnix  
7/2 Area

Chris [unclear]

NC Bus & [unclear]

Estherine Dries

Electricities

SENATE COMMERCE COMMITTEE  
11:00 A.M. – TUESDAY, APRIL 20, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, April 20, 1999. Twenty-one members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order and the following bills were considered by the Committee:

SB 939, AN ACT TO REVISE THE REQUIREMENTS OF BANK DIRECTORS, TO CONFORM CERTAIN NORTH CAROLINA BANKING LAWS TO FEDERAL BANKING REGULATIONS, AND TO REMOVE THE SUNSET PROVISION WITH REGARD TO DE NOVO INTERSTATE BRANCH BANKING. Senator Warren, the bill sponsor, said the legislation was supported by both large and small banks in North Carolina. Mr. McNeill Chestnut with the Attorney General's Office said the bill was requested by the Commissioner of Banks, and it makes several changes to the banking law applicable to State charter banks. (See Summary prepared by Committee Counsel for complete explanation.) Mr. Paul Stock with the N. C. Bankers' Association said the Association had no problem with the bill.

Senator Warren moved that Senate Bill 939 be given a favorable report. Motion carried.

SB 212, AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS. Senator Rand offered a Proposed Committee Substitute for the bill and moved its adoption. Motion carried. (Refer to Memorandum from Committee Counsel for explanation of the Committee Substitute.) Senator Rand said that the Committee Substitute was not a satisfactory compromise between all parties. However, after discussion Senator Ballance moved that the Committee Substitute for SB 212 be given a favorable report. Senator Dalton stated that the Committee Substitute needed to be amended but the consensus was for the Committee to pass it and make whatever changes are needed on the floor of the Senate. The motion for a favorable report carried.

SB 732, AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS TO ASSESS LICENSEES CERTAIN COSTS AND LIMITING THE OWNERSHIP OF CHIROPRACTIC PRACTICES TO PERSONS LICENSED AS CHIROPRACTORS. Senator Warren was asked to Chair the Committee while Senator Soles explained the bill. He said the legislation adds a new subsection to G.S. 90-154 which would allow the State Board of Chiropractic Examiners to assess a licensee found guilty in a contested case hearing the reasonable cost of the hearing if the

Board finds that the licensee's defense at the hearing was dilatory or not asserted in good faith. (See Memorandum from Committee Counsel for complete explanation.) Senator Purcell sent forward an amendment and moved its adoption. (Copy attached.) Motion carried. Senator Rucho moved that SB 732, as amended, be given a favorable report and that it be made into a Committee Substitute. Motion carried.

SB 790, AN ACT TO CLARIFY WHICH LENDERS MAY CHARGE CERTAIN FEES UNDER THE GENERAL CONTRACT LOAN PROVISION OF CHAPTER 24 OF THE GENERAL STATUTES. Senator Soles, the bill sponsor, said the legislation clarified that the loan origination and modification fees allowed by current statutes are available to institutional lenders only and are not to be used by unlicensed lenders to evade the restrictions of the Consumer Finance Act and the Check Cashing Act. (See attached Summary for additional information.) He said the legislation was requested by the Attorney General's Office and also the Commissioner of Banks. The N. C. Bankers' Association also approves of the legislation.

Senator Carpenter moved that SB 790 be given a favorable report. Motion carried.

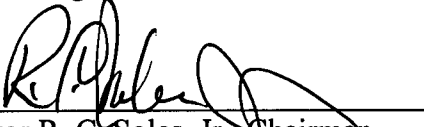
SB 796, AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO OWN REAL PROPERTY AND TO PURCHASE EQUIPMENT AND LIABILITY INSURANCE. Senator Hoyle, the bill sponsor, said the legislation simply allows the Board to own real estate and to purchase equipment and liability insurance. (See Memorandum from Committee Counsel for additional information.)

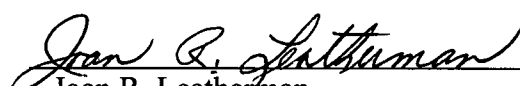
Senator Rand moved that SB 796 be given a favorable report. Motion carried.

SB 871, AN ACT TO AMEND THE LAW REGARDING THE OBLIGATION OF DECEDENTS' ESTATES FOR FUNERAL EXPENSES AND RELATED EXPENSES. Senator Reeves, the bill sponsor, explained the legislation and said it had the support of the Funeral Directors' Association. (See Memorandum from Committee Counsel for complete explanation.)

Senator Hoyle moved that SB 871 be given a favorable report. Motion carried.

There being no further business, the meeting adjourned at 11:50 a.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
Tuesday, April 20, 1999  
ROOM 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 212, MORTUARY SCIENCE CHANGES (Senator Rand)**

**SB 732, CHIROPRACTIC OWNERSHIP RESTRICTED (Senator Soles)**

**SB 790, CLARIFY CERTAIN CONTRACT LOAN FEES (Senator Soles)**

**SB 796, GENERAL CONTRACTORS PROPERTY (Senator Hoyle)**

**SB 871, DECEDENTS' ESTATES/FUNERAL EXPENSES (Senator Reeves)**

**SB 939, BANKING LAW REVISIONS (Senator Warren)**

**SB 968, WAIVER OF COMPETITIVE BIDDING MODIFIED (Senator L. Shaw)**

**ADJOURNMENT**

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
R. C. Soles, Jr., Chair**

Tuesday, April 20, 1999

R. C. SOLES, JR.,  
submits the following with recommendations as to passage:

**FAVORABLE**

S.B.	790	Clarify Certain Contract Loan Fees Sequential Referral: None Recommended Referral: None
S.B.	796	General Contractors Property Sequential Referral: None Recommended Referral: None
S.B.	871	Decedents' Estates/Funeral Expenses Sequential Referral: None Recommended Referral: None
S.B.	939	Banking Law Revisions Sequential Referral: None Recommended Referral: None

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

S.B.	660	Revised Limited Liability Company Act Draft Number: PCS1706 Sequential Referral: None Recommended Referral: None Long Title Amended: No
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TOTAL REPORTED: 5

Committee Clerk Comment:

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair, Chair**

Wednesday, April 21, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

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

S.B.     **212**           Mortuary Science Changes  
                          Draft Number:        PCS1712  
                          Sequential Referral:   None  
                          Recommended Referral: None  
                          Long Title Amended:  No

S.B.     **732**           Chiropractic Ownership Restricted  
                          Draft Number:        PCS7665  
                          Sequential Referral:   None  
                          Recommended Referral: None  
                          Long Title Amended:  No

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

FILED - SENATE

S

8989

APR 13 1999

SENATE DRS1664-LT105(4.6) PRINCIPAL CLERK

Short Title: Banking Law Revisions.

(Public)

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Sponsors: Senators Warren and Soles.

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO REVISE THE REQUIREMENTS OF BANK DIRECTORS, TO  
3 CONFORM CERTAIN NORTH CAROLINA BANKING LAWS TO FEDERAL  
4 BANKING REGULATIONS, AND TO REMOVE THE SUNSET PROVISION  
5 WITH REGARD TO DE NOVO INTERSTATE BRANCH BANKING.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 53-80 reads as rewritten:  
8 "§ 53-80. Qualifications of directors.  
9 Every director of a bank doing business under this Chapter shall be the owner and  
10 holder of shares of stock in the bank representing not less than one thousand dollars  
11 (\$1,000) book value as of the last business day of the calendar year immediately prior  
12 to the election of such director. For the purpose of this section, book value shall  
13 consist of common capital stock, unimpaired surplus, undivided profits, and reserves  
14 for contingencies if any such reserves are segregations of capital. Where directors are  
15 appointed during the interval between stockholders' meetings pursuant to the  
16 provisions of G.S. 53-67, such directors shall hold the required qualifying shares as of  
17 the time of their appointment. Notwithstanding the proviso at the end of this section,  
18 where the bank is a wholly owned subsidiary, the required qualifying shares shall be  
19 shares in the parent corporation, whether or not the bank was doing business before  
20 February 18, 1921. And every such director shall hold ~~such~~ the shares in ~~his~~ the  
21 director's own name unpledged and unencumbered in any way. Provided, however,  
22 shares of the bank or parent corporation stock held in an individual retirement  
23 account or other retirement account of a bank director, over which the director has  
24 investment authority, shall be considered qualifying shares for the purpose of this  
25 section. The office of any director at any time violating any of the provisions of this

1 section shall immediately become vacant, and the remaining directors shall declare  
2 ~~his that director's~~ office vacant and proceed to fill such vacancy forthwith. Not less  
3 than ~~three-fourths~~ one-half of the directors of every bank doing business under this  
4 Chapter shall be residents of the State of North Carolina: Provided, that as to banks  
5 doing business before February 18, 1921, the requirements as to amount of stock  
6 owned by a director shall not apply unless the Commissioner of Banks shall rule that  
7 ~~such the~~ director is not bona fide discharging ~~his the director's~~ duties."

8 Section 2. G.S. 53-91.2 reads as rewritten:

9 "**§ 53-91.2. Loans to executive officers.**

10 No bank may extend credit to any of its executive officers nor a firm or  
11 partnership of which such executive officer is a member, nor a company in which  
12 such executive officer owns a controlling interest, unless the extension of credit is  
13 made on substantially the same terms, including interest rates and collateral, as those  
14 prevailing at the time for comparable transactions by the bank with persons who are  
15 not employed by the bank, and provided further that the extension of credit does not  
16 involve more than the normal risk of repayment. This general prohibition shall not  
17 prevent an executive officer from obtaining loans on terms and conditions that are  
18 available to all employees of the bank. For the purposes of this section, the term  
19 "executive officer" shall mean an officer who has authority to participate in major  
20 policy-making functions of the bank. Provided further, the maximum amount of such  
21 loans shall be that as prescribed by applicable federal banking regulations."

22 Section 3. G.S. 53-224.14 reads as rewritten:

23 "**§ 53-224.14. Requirement of notice and other conditions.**

24 (a) An out-of-state bank desiring to establish and maintain a de novo branch or to  
25 acquire a branch in this State shall provide written notice of the proposed transaction  
26 to the Commissioner not later than the date on which the bank applies to the  
27 responsible federal bank supervisory agency for approval to establish or acquire the  
28 branch. The filing of such notice shall be accompanied by the filing fee prescribed by  
29 the Commissioner by regulation.

30 (b) The out-of-state bank shall comply with the applicable requirements of Article  
31 15 of Chapter 55 of the North Carolina General Statutes.

32 (c) ~~Prior to June 1, 1999, an~~ An out-of-state bank may establish and maintain a de  
33 novo branch or may establish and maintain a branch through acquisition of a branch  
34 if:

- 35 (1) In the case of a de novo branch, the laws of the home state of the  
36 out-of-state bank permit North Carolina banks to establish and  
37 maintain de novo branches in that state under substantially the  
38 same terms and conditions as herein set forth; and  
39 (2) In the case of a branch established through the acquisition of a  
40 branch, the laws of the home state of the out-of-state bank permit  
41 North Carolina banks to establish and maintain branches in that  
42 state through the acquisition of branches under substantially the  
43 same terms and conditions as herein set forth."

44 Section 4. This act is effective when it becomes law.





# SENATE BILL 939: Banking Law Revisions.

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** April 20, 1999  
**Version:** First Edition

**Introduced by:** Senators Warren and Soles  
**Summary by:** O. Walker Reagan,  
Committee Co-Counsel

**SUMMARY:** *Senate Bill 939 makes several changes to the banking law applicable to State charter banks, including allowing bank stock held in an IRA or other retirement account to count towards bank ownership required for a bank director, decreases the number of bank directors required to be North Carolina residents, allows bank loans to be made to a bank executive officer the same as to other bank employees, and to remove the sunset on the law which permits an out-of-state bank to establish a branch of the bank in North Carolina by the acquisition of a branch bank without first establishing a bank in the State.*

**CURRENT LAW:** Current law requires that each bank directors hold in his or her own name at least \$1000 in book value of a bank's stock, unpledged and unencumbered, in order to be qualified to serve on the bank's board of directors. Current law also requires that three-fourths of the bank directors be residents of the State. Current law only permits a bank to loan its own executive officers on the same terms and conditions that it makes loans to persons not employed by the bank. Current law allowing an out-of-state bank to establish a de novo branch bank (a branch bank with out a NC parent bank) in North Carolina through the acquisition of a branch bank expires June 1, 1999.

**BILL ANALYSIS:** Section 1 of the bill will allow the stock of a bank held by a bank director in an individual retirement account or other retirement account over which the director has investment authority to count towards the \$1000 of bank stock necessary to qualify as a director. This section would also lower the percentage of the bank board of directors required to be North Carolina residents from three-fourths to one-half.

Section 2 would provide that the restriction on banks making loans to their own executive officers not applicable to loans made on the same terms and conditions that are available to all employees of the bank.

Section 3 would repeal the June 1, 1999 sunset on permitting de novo branches of an out-of-state bank in North Carolina to be created by the acquisition of an existing branch bank in the State, thereby allowing this practice to become permanent.

**EFFECTIVE DATE:** This bill becomes effective when it becomes law.

S939-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

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SENATE BILL 212

Short Title: Mortuary Science Changes.

(Public)

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Sponsors: Senator Rand.

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Referred to: Commerce.

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March 2, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH  
3 CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL  
4 ASSOCIATIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143B-472.2 reads as rewritten:

7 "§ 143B-472.2. Duties of Board; meetings.

8 It shall be the duty of the North Carolina Board of Mortuary Science to supervise,  
9 pursuant to this Article, all burial associations authorized by this Article to operate in  
10 North Carolina, to determine that such associations are operated in conformity with  
11 this Article and the rules adopted pursuant to this Article; to ~~assist the Board of~~  
12 ~~Mortuary Science with prosecution of~~ prosecute violations of this Article or rules  
13 adopted pursuant thereto; and to protect the interest of members of mutual burial  
14 associations.

15 The North Carolina Board of Mortuary Science, after a public hearing, may  
16 promulgate reasonable rules and regulations for the enforcement of this Article and  
17 in order to carry out the intent thereof. The Board is authorized and directed to  
18 adopt specific rules to provide for the orderly transfer of a member's benefits in cash  
19 or merchandise and services from the funeral director sponsoring the member's  
20 association to the funeral establishment which furnishes a funeral service, or  
21 merchandise, or both, for the burial of the member, provided that any funeral  
22 establishment to which the member's benefits are transferred in accordance with such  
23 rules shall, if located in North Carolina, be a funeral establishment registered and  
24 permitted under the provisions of G.S. 90-210.25 or shall, if located in any other

1 state, territory or foreign country, be a funeral establishment recognized by and  
2 operating in conformity with the laws of such other state, territory or foreign country.  
3 One or more burial associations operating in North Carolina may merge into another  
4 burial association operating in North Carolina and two or more burial associations  
5 operating in North Carolina may consolidate into a new burial association provided  
6 that any such plan of merger or plan of consolidation shall be adopted and carried  
7 out in accordance with rules adopted by the Board pursuant to this Article.

8 All rules heretofore adopted by the North Carolina Mutual Burial Association  
9 Commission or the North Carolina Board of Mortuary Science in accordance with  
10 prior law and which have not been amended, rescinded, revoked or otherwise  
11 changed, or which have not been nullified or made inoperative or unenforceable  
12 because of any statute enacted after the adoption of any such rule, shall remain in full  
13 force and effect until amended, rescinded, revoked or otherwise changed by action of  
14 the North Carolina Board of Mortuary Science as set out above, or until nullified or  
15 made inoperative or unenforceable because of statutory enactment or court decision.

16 Members of the Board shall receive, when attending such regular or special  
17 meetings such per diem, expense allowance and travel allowance as are allowed other  
18 commissions and boards of the State. The legal adviser to the Board shall be entitled  
19 to actual expenses when attending regular or special meetings of the Board held other  
20 than in Raleigh. All expenses of the Board shall be paid from funds coming to the  
21 Board pursuant to this Article or appropriated for this purpose."

22 Section 2. Article 4 of G.S. 143B-472.3 reads as rewritten:

23 "Article 4. The annual meeting of the association shall be held at ..... (here  
24 insert the place, date and hour); each member shall have one vote at said annual  
25 meeting and 15 members of the association shall constitute a quorum. There shall be  
26 elected at the annual meeting of said association a board of directors of seven  
27 members, each of whom shall serve for a period of from one to five years as the  
28 membership may determine and until his or her successor shall have been elected  
29 and qualified. Any member of the board of directors who shall fail to maintain his or  
30 her membership, as provided in the rules and bylaws of said association, shall cease  
31 to be a member of the board of directors and a director shall be appointed by the  
32 president of said association for the unexpired term of such disqualified member.  
33 There shall be at least an annual meeting of the board of directors, and such meeting  
34 shall be held immediately following the annual meeting of the membership of the  
35 association. The directors of the association may, by a majority vote, hold other  
36 meetings of which notice shall be given to each member by mailing such notice five  
37 days before the meeting to be held. At the annual meetings of the directors of the  
38 association, the board of directors shall elect a president, a vice-president, and a  
39 secretary-treasurer. The president and vice-president shall be elected from among the  
40 directors, but the secretary-treasurer may be selected from the director membership  
41 or from the membership of the association, it being provided that it is not necessary  
42 that the secretary-treasurer shall be a member of the board of directors. Among other  
43 duties that the secretary-treasurer may perform, he shall be chargeable with keeping  
44 an accurate and faithful roll of the membership of this association at all times and he

1 shall be chargeable with the duty of faithfully preserving and faithfully applying all  
2 moneys coming into his hands by virtue of his said office. The president, vice-  
3 president and secretary-treasurer shall constitute a board of control who shall direct  
4 the affairs of the association in accordance with these Articles and bylaws of the  
5 association, and subject to such modification as may be made or authorized by an act  
6 of the General Assembly. The secretary-treasurer shall keep a record of all  
7 assessments made, dues collected and benefits paid. The books of the association,  
8 together with all records and bank accounts shall be at all times open to the  
9 inspection of the Board of Mortuary Science or its duly constituted auditors or  
10 representatives. It shall be the duty of the secretary or secretary-treasurer of each  
11 association to keep the books of the association posted up-to-date so that the financial  
12 standing of the association may be readily ascertained by the Board of Mortuary  
13 Science or any auditor or representative employed by it. ~~Upon the failure of any~~  
14 ~~secretary or secretary-treasurer to comply with this provision, it shall be the duty of~~  
15 ~~the Board of Mortuary Science to take charge of the books of the association and do~~  
16 ~~whatever work is necessary to bring the books up-to-date. The actual costs of said~~  
17 ~~work may be charged the burial association and shall be paid from the thirty percent~~  
18 ~~(30%) allowed by law for the operation of the burial association.~~

19 Whenever in the opinion of the Board of Mortuary Science, it is necessary to audit  
20 the books of any burial association more than once in any calendar year, the Board of  
21 Mortuary Science shall have authority to assess such burial association the actual cost  
22 of any audit in excess of one per calendar year, provided that no more than one audit  
23 may be deemed necessary unless a discrepancy exists at the last regular audit. Such  
24 cost shall be paid from the thirty percent (30%) allowed by law for the operation of  
25 the burial association.

26 Every burial association shall file with the Board of Mortuary Science an annual  
27 report of its financial condition on a form furnished to it by the Board of Mortuary  
28 Science. Such report shall be certified by an accountant who is certified in this State  
29 under Chapter 93 of the General Statutes. The burial association shall be responsible  
30 for paying the cost of the certification. The report shall be filed on or before  
31 February 15 of each calendar year and shall cover the complete financial condition of  
32 the burial association for the immediate preceding calendar year. The Board of  
33 Mortuary Science shall levy and collect a penalty of twenty-five dollars (\$25.00) for  
34 each day after February 15 that the report called for herein is not filed. The Board  
35 may, in its discretion, grant any reasonable extension of the above filing date without  
36 the penalty provided in this section. Such penalty shall be paid from the thirty  
37 percent (30%) allowed by law for the operation of the burial association. Any  
38 secretary or secretary-treasurer who fails to file such financial report on or before  
39 February 15 of each calendar year or on or before the last day of any period of  
40 extension for the filing of such report granted by the Board to the burial association  
41 of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each  
42 day after February 15, or the last day of any period of extension for the filing of the  
43 report granted by the Board to the burial association of such secretary or secretary-

1 treasurer, that said report is not filed by the secretary or secretary-treasurer of a  
2 burial association, shall constitute a separate offense."

3 Section 3. Article 10 of G.S. 143B-472.3 reads as rewritten:

4 "Article 10. It is understood and stipulated that the benefits provided for shall be  
5 payable only to a funeral establishment which provides a funeral service for a  
6 deceased member and which, if located in North Carolina, is a funeral establishment  
7 registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or which, if located in any  
8 other state, territory or foreign country, is a funeral establishment recognized by and  
9 operating in conformity with the laws of such other state, territory or foreign country.  
10 Upon the death of any member, it shall be the duty of the person or persons making  
11 the funeral arrangements for such deceased member to notify the secretary of the  
12 member's burial association of the death of such member. The person or persons  
13 making the funeral arrangements for such deceased member shall have 30 days from  
14 the date of the death of such member in which to make demand upon the burial  
15 association for the funeral benefits to which such member is entitled.

16 The benefits provided for are to be paid by the burial association to the funeral  
17 director providing such funeral and burial service either in cash or in merchandise  
18 and service as elected by the person or persons making the funeral arrangements for  
19 such deceased member. If the burial association shall fail, on demand, to provide the  
20 benefits to which the deceased member was entitled to the funeral establishment  
21 which provided the funeral service for the deceased member, then the benefits shall  
22 be paid in cash to the representative of the deceased member qualified under law to  
23 receive such benefits."

24 Section 4. Part 13 of Article 10 of Chapter 143B is amended by adding  
25 the following new section:

26 "§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial  
27 associations.

28 (a) Any insurance company which desires to purchase the assets of or to merge  
29 with a burial association as provided in G.S. 143B-472.28 shall submit to the Board of  
30 Mortuary Science and to the secretary of the association a written proposal  
31 containing the terms and conditions of the proposed purchase or merger. A proposal  
32 may be conditioned upon an increase in the assessments of an association in the  
33 manner set out in subsection (g) of this section. In such a case, the issues of purchase  
34 or merger and an increase in assessments may be considered at the same meeting of  
35 the association.

36 (b) Upon receipt of a written proposal:

37 (1) The Board shall issue an order directing the association to hold a  
38 meeting of the membership within 30 days following receipt of the  
39 order for the purpose of voting on the proposal.

40 (2) Within 10 days of receiving the order from the Board, the  
41 association shall give at least 10 days' written notice of the meeting  
42 to each of its members. The notice shall:

43 a. State the date, time, and place of the meeting.

44 b. State the purpose of the meeting.

1                   c.   Contain or have attached the proposal submitted by the  
2                           insurance company.

3                   d.   Contain a statement limiting the time that each member will  
4                           be permitted to speak to the proposal, if the association  
5                           deems it advisable.

6           (c) A representative of the insurance company shall be permitted to attend the  
7 meeting held by the association for the purposes of explaining the proposal and  
8 answering any questions from the members. The officers of the association may  
9 present their views concerning the proposal. Any member of the association who  
10 wishes to speak to the proposal shall be permitted to do so subject to any time  
11 limitation stated in the notice of the meeting.

12           (d) The secretary of the association shall record the name of every member who is  
13 present at the meeting and shall determine whether there is a quorum. The presence  
14 of 15 paid-up members or fifteen percent (15%) of the paid-up membership,  
15 whichever is less, shall constitute a quorum. Acceptance or rejection of the proposal  
16 shall be by majority vote of the members present and voting. Any paid-up member  
17 who is at least 18 years of age shall be permitted to vote. A parent or guardian of  
18 any member who is under 18 years of age may vote on behalf of his or her child or  
19 ward, but only one vote may be cast on behalf of that member.

20           (e) The secretary of the association shall certify the result of the vote and the  
21 presence of a quorum to the Board within five days following the meeting and shall  
22 include with the certification a copy of the notice of the meeting that was sent to the  
23 members of the association.

24           (f) The Board shall immediately review the certification, the notice, and any other  
25 records that may be necessary to determine the adequacy of notice, the presence of a  
26 quorum, and the validity of the vote. Upon determining that the meeting and vote  
27 were regular and held following proper notice and that a majority of a quorum of the  
28 paid-up members voted in favor of the proposal, the Board shall issue an order  
29 approving the purchase or merger and directing that the purchase or merger proceed  
30 in accordance with the proposal.

31           (g) Any burial association whose current assessments are not, or are unlikely to be  
32 within the next three years, adequate to reach or maintain a reserve of at least  
33 twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements  
34 of a proposal from an insurance company to acquire the assets of or to merge with  
35 the association may increase its assessments by an amount necessary to reach and  
36 maintain the reserve or to meet the proposal. The increase shall be approved by a  
37 vote of the members of the association at a regular meeting of the association or at a  
38 special meeting called for the purpose of increasing assessments.

39                   (1) Any officer or director of the association may call a special  
40 meeting for the purpose of increasing assessments, and the  
41 secretary shall call a special meeting for such purpose upon the  
42 request of at least ten percent (10%) of the members or upon  
43 receipt of a proposal from an insurance company that is  
44 conditioned upon an increase in assessments.

1           (2) Written notice setting out the date, time, place, and the purpose of  
2 the meeting shall be hand delivered or sent by first-class mail,  
3 postage prepaid, to the last known address of each member of the  
4 association at least 10 days in advance of the meeting.

5           (3) No vote may be had on the question of an increase in assessments  
6 unless a quorum of the paid-up members of the association is  
7 present at the meeting. A quorum shall be conclusively presumed  
8 if 15 paid-up members or fifteen percent (15%) of the paid-up  
9 membership of the association, whichever is less, is present at the  
10 meeting.

11           (4) The proposal to increase the assessments shall be approved by an  
12 affirmative vote of a simple majority of the paid-up members  
13 present and voting.

14           (5) The secretary of the association within five days following the  
15 meeting shall certify the result of the vote and the presence of a  
16 quorum to the Board in the manner and for the purposes set out in  
17 subsections (e) and (f) of this section.

18           (h) Every association shall submit to the Board on or before June 1, 2000, and  
19 thereafter as may be required by the Board, but not more frequently than once each  
20 calendar year, a written report of financial soundness prepared by a qualified actuary.  
21 The report shall indicate the adequacy of reserves and other items to pay current and  
22 future claims of deceased members and shall reflect a consideration of the following:

23           (1) The current number of members of the association.

24           (2) The age of the members.

25           (3) The sex of the members.

26           (4) The amount of the association's annual assessments.

27           (5) The amount of the association's current reserves.

28           (6) The projected amount of the association's reserves for each of the  
29 next three years.

30           (7) The net gain in membership of the association during the  
31 preceding three years.

32           (8) The projected net gain in membership of the association for each  
33 of the next three years.

34           (9) The association's current liability for benefits to its members.

35           (10) The association's projected net liability for benefits to its members  
36 for each of the next three years.

37           (i) Upon a written request from an association that has held a valid meeting and  
38 vote for voluntary dissolution in accordance with G.S. 143B-472.3, the Board shall  
39 issue an order of liquidation for that association. The Board shall issue an order of  
40 liquidation to every association that has not been acquired by or merged with an  
41 insurance company if the association is not financially sound on June 1, 2001, as  
42 shown by the actuary's report required in subsection (h) of this section. The Board's  
43 order may direct that all members in good standing be transferred to a financially  
44 sound association as well as all records, property, and unexpended balances of funds

1 of the association to be liquidated, if the financially sound association agrees in  
2 writing to accept the transfer. The order shall direct the association to complete the  
3 liquidation and to file a final report with the Board no later than December 31, 2001.  
4 If the transfer of members cannot be accomplished, the association, upon receipt of  
5 an order of liquidation, shall:

- 6 (1) Cease accepting new members.
- 7 (2) Collect all debts owed to the association and pay all debts owed by  
8 the association from monies on hand, including the reserve.
- 9 (3) Distribute any remaining monies on hand and in the reserve pro  
10 rata among those who were members of the association on the date  
11 the liquidation order was issued by the Board. Each member's  
12 distributive share shall be determined by dividing the amount of  
13 that member's benefit by the aggregate benefits of all members of  
14 the association and then multiplying the total amount of money  
15 available for distribution by the percentage so derived.  
16 Assessments owed by the members to the association at the time of  
17 distribution shall be taken into account and shall be offset against  
18 the members' distributive shares.
- 19 (4) Issue a certificate to members in an amount that equals the  
20 difference between the distributive share issued in subdivision (3)  
21 of this subsection and the full amount of the member's association  
22 benefit. Any certificate issued shall supersede and supplant any  
23 other certificate already issued by the association. The certificate  
24 shall be on a form prescribed by the Board and shall be prepared  
25 and distributed by the association at its expense.
- 26 (5) File a final report with the Board on or before December 31, 2001,  
27 which shall show all receipts and disbursements, including the  
28 amount distributed to each member, since the last annual report of  
29 the association was filed with the Board.

30 (j) A certificate issued under subsection (i) of this section may be used as a credit  
31 toward the cost of funeral services, facilities, and merchandise at any funeral  
32 establishment that agrees on forms prescribed by the Board to accept such  
33 certificates. A funeral establishment that agrees to accept certificates shall do so until  
34 the agreement with the Board expires. The Board shall maintain and distribute to  
35 the public a list of funeral establishments that will accept certificates.

36 (k) If after June 1, 2001, the Board determines, upon receipt of a written report  
37 submitted by an association under subsection (h) of this section, that an association is  
38 no longer financially sound, the Board shall issue an order of liquidation, and the  
39 association shall comply with such order in the manner prescribed in subsection (i) of  
40 this section.

41 (l) The Board shall immediately review the final report filed pursuant to  
42 subdivision (i)(5) of this section and shall notify the association whether the report  
43 has been accepted. All licenses issued to soliciting agents of the association pursuant  
44 to G.S. 143B-472.4 and the written authority to operate issued to the association



1 pursuant to G.S. 143B-472.6 are automatically canceled upon acceptance of the final  
2 report by the Board.

3 (m) No new association may be authorized, organized, or licensed on or after  
4 January 1, 2000, but associations existing on that date may merge or consolidate as  
5 provided in G.S. 143B-472.2 and G.S. 143B-472.28."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

S212-CSSK-003

PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL 212

THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Mortuary Science Changes.

(Public)

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Sponsors:

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Referred to:

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March 2, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH CAROLINA  
3 BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL ASSOCIATIONS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 143B-472.2 reads as rewritten:  
6 "§ 143B-472.2. Duties of Board; meetings.  
7 It shall be the duty of the North Carolina Board of Mortuary  
8 Science to supervise, pursuant to this Article, all burial  
9 associations authorized by this Article to operate in North  
10 Carolina, to determine that such associations are operated in  
11 conformity with this Article and the rules adopted pursuant to  
12 this Article; to ~~assist the Board of Mortuary Science with~~  
13 ~~prosecution of~~ prosecute violations of this Article or rules  
14 adopted pursuant thereto; and to protect the interest of members  
15 of mutual burial associations.  
16 The North Carolina Board of Mortuary Science, after a public  
17 hearing, may promulgate reasonable rules and regulations for the  
18 enforcement of this Article and in order to carry out the intent  
19 thereof. The Board is authorized and directed to adopt specific  
20 rules to provide for the orderly transfer of a member's benefits  
21 in cash or merchandise and services from the funeral director

1 sponsoring the member's association to the funeral establishment  
2 which furnishes a funeral service, or merchandise, or both, for  
3 the burial of the member, provided that any funeral establishment  
4 to which the member's benefits are transferred in accordance with  
5 such rules shall, if located in North Carolina, be a funeral  
6 establishment registered and permitted under the provisions of  
7 G.S. 90-210.25 or shall, if located in any other state, territory  
8 or foreign country, be a funeral establishment recognized by and  
9 operating in conformity with the laws of such other state,  
10 territory or foreign country. One or more burial associations  
11 operating in North Carolina may merge into another burial  
12 association operating in North Carolina and two or more burial  
13 associations operating in North Carolina may consolidate into a  
14 new burial association provided that any such plan of merger or  
15 plan of consolidation shall be adopted and carried out in  
16 accordance with rules adopted by the Board pursuant to this  
17 Article.

18 All rules heretofore adopted by the North Carolina Mutual  
19 Burial Association Commission or the North Carolina Board of  
20 Mortuary Science in accordance with prior law and which have not  
21 been amended, rescinded, revoked or otherwise changed, or which  
22 have not been nullified or made inoperative or unenforceable  
23 because of any statute enacted after the adoption of any such  
24 rule, shall remain in full force and effect until amended,  
25 rescinded, revoked or otherwise changed by action of the North  
26 Carolina Board of Mortuary Science as set out above, or until  
27 nullified or made inoperative or unenforceable because of  
28 statutory enactment or court decision.

29 Members of the Board shall receive, when attending such regular  
30 or special meetings such per diem, expense allowance and travel  
31 allowance as are allowed other commissions and boards of the  
32 State. The legal adviser to the Board shall be entitled to actual  
33 expenses when attending regular or special meetings of the Board  
34 held other than in Raleigh. All expenses of the Board shall be  
35 paid from funds coming to the Board pursuant to this Article or  
36 appropriated for this purpose."

37 Section 2. Article 4 of G.S. 143B-472.3 reads as  
38 rewritten:

39 "Article 4. The annual meeting of the association shall be held  
40 at ..... (here insert the place, date and hour); each  
41 member shall have one vote at said annual meeting and 15 members  
42 of the association shall constitute a quorum. There shall be  
43 elected at the annual meeting of said association a board of  
44 directors of seven members, each of whom shall serve for a period

1 of from one to five years as the membership may determine and  
2 until his or her successor shall have been elected and qualified.  
3 Any member of the board of directors who shall fail to maintain  
4 his or her membership, as provided in the rules and bylaws of  
5 said association, shall cease to be a member of the board of  
6 directors and a director shall be appointed by the president of  
7 said association for the unexpired term of such disqualified  
8 member. There shall be at least an annual meeting of the board of  
9 directors, and such meeting shall be held immediately following  
10 the annual meeting of the membership of the association. The  
11 directors of the association may, by a majority vote, hold other  
12 meetings of which notice shall be given to each member by mailing  
13 such notice five days before the meeting to be held. At the  
14 annual meetings of the directors of the association, the board of  
15 directors shall elect a president, a vice-president, and a  
16 secretary-treasurer. The president and vice-president shall be  
17 elected from among the directors, but the secretary-treasurer may  
18 be selected from the director membership or from the membership  
19 of the association, it being provided that it is not necessary  
20 that the secretary-treasurer shall be a member of the board of  
21 directors. Among other duties that the secretary-treasurer may  
22 perform, he shall be chargeable with keeping an accurate and  
23 faithful roll of the membership of this association at all times  
24 and he shall be chargeable with the duty of faithfully preserving  
25 and faithfully applying all moneys coming into his hands by  
26 virtue of his said office. The president, vice-president and  
27 secretary-treasurer shall constitute a board of control who shall  
28 direct the affairs of the association in accordance with these  
29 Articles and bylaws of the association, and subject to such  
30 modification as may be made or authorized by an act of the  
31 General Assembly. The secretary-treasurer shall keep a record of  
32 all assessments made, dues collected and benefits paid. The books  
33 of the association, together with all records and bank accounts  
34 shall be at all times open to the inspection of the Board of  
35 Mortuary Science or its duly constituted auditors or  
36 representatives. It shall be the duty of the secretary or  
37 secretary-treasurer of each association to keep the books of the  
38 association posted up-to-date so that the financial standing of  
39 the association may be readily ascertained by the Board of  
40 Mortuary Science or any auditor or representative employed by it.  
41 ~~Upon the failure of any secretary or secretary-treasurer to~~  
42 ~~comply with this provision, it shall be the duty of the Board of~~  
43 ~~Mortuary Science to take charge of the books of the association~~  
44 ~~and do whatever work is necessary to bring the books up-to-date.~~

~~1 The actual costs of said work may be charged the burial  
2 association and shall be paid from the thirty percent (30%)  
3 allowed by law for the operation of the burial association.~~

4 Whenever in the opinion of the Board of Mortuary Science, it is  
5 necessary to audit the books of any burial association more than  
6 once in any calendar year, the Board of Mortuary Science shall  
7 have authority to assess such burial association the actual cost  
8 of any audit in excess of one per calendar year, provided that no  
9 more than one audit may be deemed necessary unless a discrepancy  
10 exists at the last regular audit. Such cost shall be paid from  
11 the thirty percent (30%) allowed by law for the operation of the  
12 burial association.

13 Every burial association shall file with the Board of Mortuary  
14 Science an annual report of its financial condition on a form  
15 furnished to it by the Board of Mortuary Science. Such report  
16 shall be certified by an accountant who is certified in this  
17 State under Chapter 93 of the General Statutes. The burial  
18 association shall be responsible for paying the cost of the  
19 certification. The report shall be filed on or before February  
20 15 of each calendar year and shall cover the complete financial  
21 condition of the burial association for the immediate preceding  
22 calendar year. If the annual report of the financial condition  
23 of the burial association is deemed insufficient by the Board,  
24 then the Board may, at its own expense, initiate a new financial  
25 audit. Board of Mortuary Science shall levy and collect a  
26 penalty of twenty-five dollars (\$25.00) for each day after  
27 February 15 that the report called for herein is not filed. The  
28 Board may, in its discretion, grant any reasonable extension of  
29 the above filing date without the penalty provided in this  
30 section. Such penalty shall be paid from the thirty percent (30%)  
31 allowed by law for the operation of the burial association. Any  
32 secretary or secretary-treasurer who fails to file such financial  
33 report on or before February 15 of each calendar year or on or  
34 before the last day of any period of extension for the filing of  
35 such report granted by the Board to the burial association of  
36 such secretary or secretary-treasurer shall be guilty of a Class  
37 3 misdemeanor. Each day after February 15, or the last day of any  
38 period of extension for the filing of the report granted by the  
39 Board to the burial association of such secretary or secretary-  
40 treasurer, that said report is not filed by the secretary or  
41 secretary-treasurer of a burial association, shall constitute a  
42 separate offense."

43 Section 3. Article 10 of G.S. 143B-472.3 reads as  
44 rewritten:

1 "Article 10. It is understood and stipulated that the benefits  
2 provided for shall be payable only to a funeral establishment  
3 which provides a funeral service for a deceased member and which,  
4 if located in North Carolina, is a funeral establishment  
5 registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or  
6 which, if located in any other state, territory or foreign  
7 country, is a funeral establishment recognized by and operating  
8 in conformity with the laws of such other state, territory or  
9 foreign country. Upon the death of any member, it shall be the  
10 duty of the person or persons making the funeral arrangements for  
11 such deceased member to notify the secretary of the member's  
12 burial association of the death of such member. The person or  
13 persons making the funeral arrangements for such deceased member  
14 shall have 30 days from the date of the death of such member in  
15 which to make demand upon the burial association for the funeral  
16 benefits to which such member is entitled.

17 The benefits provided for are to be paid by the burial  
18 association to the funeral director providing such funeral and  
19 burial service either in cash or in merchandise and service as  
20 elected by the person or persons making the funeral arrangements  
21 for such deceased member. If the burial association shall fail,  
22 on demand, to provide the benefits to which the deceased member  
23 was entitled to the funeral establishment which provided the  
24 funeral service for the deceased member, then the benefits shall  
25 be paid in cash to the representative of the deceased member  
26 qualified under law to receive such benefits."

27 Section 4. Part 13 of Article 10 of Chapter 143B is  
28 amended by adding the following new section:

29 "§ 143B-472.29. Acquisition, merger, dissolution, and  
30 liquidation of mutual burial associations.

31 (a) Any insurance company which desires to purchase the assets  
32 of or to merge with a burial association as provided in G.S.  
33 143B-472.28 shall submit to the Board of Mortuary Science and to  
34 the secretary of the association a written proposal containing  
35 the terms and conditions of the proposed purchase or merger. A  
36 proposal may be conditioned upon an increase in the assessments  
37 of an association in the manner set out in subsection (g) of this  
38 section. In such a case, the issues of purchase or merger and an  
39 increase in assessments may be considered at the same meeting of  
40 the association.

41 (b) Upon receipt of a written proposal:

42 (1) The Board shall issue an order directing the  
43 association to hold a meeting of the membership

1                   within 30 days following receipt of the order for  
2                   the purpose of voting on the proposal.

3           (2)       Within 10 days of receiving the order from the  
4                   Board, the association shall give at least 10 days'  
5                   written notice of the meeting to each of its  
6                   members. The notice shall:

7                   a. State the date, time, and place of the  
8                   meeting.

9                   b. State the purpose of the meeting.

10                  c. Contain or have attached the proposal  
11                  submitted by the insurance company.

12                  d. Contain a statement limiting the time that  
13                  each member will be permitted to speak to the  
14                  proposal, if the association deems it  
15                  advisable.

16       (c)       A representative of the insurance company shall be  
17       permitted to attend the meeting held by the association for the  
18       purposes of explaining the proposal and answering any questions  
19       from the members. The officers of the association may present  
20       their views concerning the proposal. Any member of the  
21       association who wishes to speak to the proposal shall be  
22       permitted to do so subject to any time limitation stated in the  
23       notice of the meeting.

24       (d)       The secretary of the association shall record the name of  
25       every member who is present at the meeting and shall determine  
26       whether there is a quorum. The presence of 15 members or ten  
27       percent (10%) of the membership, whichever is greater, shall  
28       constitute a quorum. Acceptance or rejection of the proposal  
29       shall be by majority vote of the members present and voting. Any  
30       member who is at least 18 years of age shall be permitted to  
31       vote. A parent or guardian of any member who is under 18 years  
32       of age may vote on behalf of his or her child or ward, but only  
33       one vote may be cast on behalf of that member.

34       (e)       The secretary of the association shall certify the result  
35       of the vote and the presence of a quorum to the Board within five  
36       days following the meeting and shall include with the  
37       certification a copy of the notice of the meeting that was sent  
38       to the members of the association.

39       (f)       The Board shall immediately review the certification, the  
40       notice, and any other records that may be necessary to determine  
41       the adequacy of notice, the presence of a quorum, and the  
42       validity of the vote. Upon determining that the meeting and vote  
43       were regular and held following proper notice and that a majority  
44       of a quorum of the members voted in favor of the proposal, the

1 Board shall issue an order approving the purchase or merger and  
2 directing that the purchase or merger proceed in accordance with  
3 the proposal.

4 (g) Any burial association whose current assessments are not,  
5 or are unlikely to be within the next three years, adequate to  
6 reach or maintain a reserve of at least twenty-one dollars  
7 (\$21.00) per member or are inadequate to meet the requirements of  
8 a proposal from an insurance company to acquire the assets of or  
9 to merge with the association may increase its assessments by an  
10 amount necessary to reach and maintain the reserve or to meet the  
11 proposal. The increase shall be approved by a vote of the members  
12 of the association at a regular meeting of the association or at  
13 a special meeting called for the purpose of increasing  
14 assessments.

15 (1) Any officer or director of the association may call  
16 a special meeting for the purpose of increasing  
17 assessments, and the secretary shall call a special  
18 meeting for such purpose upon the request of at  
19 least ten percent (10%) of the members or upon  
20 receipt of a proposal from an insurance company  
21 that is conditioned upon an increase in  
22 assessments.

23 (2) Written notice setting out the date, time, place,  
24 and the purpose of the meeting shall be hand  
25 delivered or sent by first-class mail, postage  
26 prepaid, to the last known address of each member  
27 of the association at least 10 days in advance of  
28 the meeting.

29 (3) No vote may be had on the question of an increase  
30 in assessments unless a quorum of the members of  
31 the association is present at the meeting. A  
32 quorum shall be conclusively presumed if 15 members  
33 or ten percent (10%) of the membership of the  
34 association, whichever is greater, is present at  
35 the meeting.

36 (4) The proposal to increase the assessments shall be  
37 approved by an affirmative vote of a majority of  
38 the members present and voting.

39 (5) The secretary of the association within five days  
40 following the meeting shall certify the result of  
41 the vote and the presence of a quorum to the Board  
42 in the manner and for the purposes set out in  
43 subsections (e) and (f) of this section.



1 (h) Every association shall submit to the Board on or before  
2 June 1, 2001, a written report of financial soundness prepared by  
3 a qualified actuary. If the annual report prepared, pursuant to  
4 G.S. 143B-472.3, of an association's financial condition shows a  
5 decline in reserves per member for two consecutive years, then  
6 the Board may require a written report of financial soundness  
7 prepared by a qualified actuary annually thereafter. The report  
8 of financial soundness shall indicate the adequacy of reserves  
9 and other items to pay current and future claims of deceased  
10 members and shall include the following:

- 11 (1) The current number of members of the association.
- 12 (2) The age of the members.
- 13 (3) The amount of the association's annual assessments.
- 14 (4) The amount of the association's current reserves.
- 15 (5) The projected amount of the association's reserves  
16 for each of the next three years.
- 17 (6) The net gain in membership of the association  
18 during the preceding three years.
- 19 (7) The projected net gain in membership of the  
20 association for each of the next three years.
- 21 (8) The association's current liability for benefits to  
22 its members.
- 23 (9) The association's projected net liability for  
24 benefits to its members for each of the next three  
25 years.

26 (i) Upon a written request from an association that has held a  
27 valid meeting and voted for voluntary dissolution in accordance  
28 with G.S. 143B-472.3, the Board shall issue an order of  
29 liquidation for that association.

30 (j) If, after June 1, 2003 and upon receipt of a written report  
31 of financial soundness submitted by the association under  
32 subsection (h), the Board determines that a burial association is  
33 no longer financially sound, the Board shall issue an order of  
34 liquidation and the burial association shall comply with the  
35 order in a manner prescribed in subsection (k) of this section.

36 (k) Upon receipt of a request for voluntary dissolution under  
37 subsection (i) or upon an order of dissolution under subsection  
38 (j), the Board shall issue an order of liquidation. The Board's  
39 order may direct that the agreements for members' benefits be  
40 transferred to a financially sound mutual burial association, as  
41 well as all records, property, and unexpended balances of funds  
42 of the association to be liquidated, if the financially sound  
43 mutual burial association agrees in writing to accept the  
44 transfer. The Board's order shall direct the burial association

1 to complete the liquidation and to file a final report with the  
2 Board no later than December 31 of the year of the liquidation.  
3 Upon receipt of the order of liquidation, the burial association  
4 shall:

- 5           (1) Cease accepting new members.  
6           (2) Collect all debts owed to the association and pay  
7           all debts owed by the association from monies on  
8           hand, including the reserve.  
9           (3) Distribute pro rata any remaining monies on hand  
10           and in the reserve among those who were members of  
11           the association and whose transfer could not be  
12           accomplished on the date that the liquidation order  
13           was issued by the Board. Each member's distributive  
14           share shall be determined by dividing the amount of  
15           the member's benefit by the aggregate benefits of  
16           all members of the association and then multiplying  
17           the total amount of money available for  
18           distribution by the percentage so derived.  
19           Assessments owed by the members to the association  
20           at the time of distribution shall be taken into  
21           account and shall be offset against the members'  
22           distributive shares.  
23           (4) Issue a certificate to members in an amount that  
24           equals the difference between the distributive  
25           share issued in subdivision (3) of this subsection  
26           and the full amount of the member's association  
27           benefit. Any certificate issued shall supersede  
28           and supplant any other certificate already issued  
29           by the association. The certificate shall be on a  
30           form prescribed by the Board and shall be prepared  
31           and distributed by the association at its expense.  
32           (5) File a final report with the Board on or before  
33           December 31 in the year in which the order of  
34           liquidation was issued. This report shall show all  
35           receipts and disbursements, including the amount  
36           distributed to each member, since the last annual  
37           report of the association was filed with the Board.  
38           (1) A certificate issued under subsection (k) of this section  
39           may be used as a credit toward the cost of funeral services,  
40           facilities, and merchandise at any funeral establishment that  
41           agrees on forms prescribed by the Board to accept such  
42           certificates. A funeral establishment that agrees to accept  
43           certificates shall do so until the agreement with the Board

1 expires. The Board shall maintain and distribute to the public a  
2 list of funeral establishments that will accept certificates.

3 (m) Upon receipt of the final report of dissolution by the  
4 association, which is required by subsection (k) of this section,  
5 the Board shall immediately review the final report and shall  
6 notify the association whether the report is complete and has  
7 been accepted. Upon acceptance of the final report by the Board,  
8 all licenses issued to soliciting agents of the association  
9 pursuant to G.S. 143B-472.6 are automatically cancelled.

10 (n) No new association may be authorized, organized, or  
11 licensed on or after January 1, 2000, but associations existing  
12 on that date may merge or consolidate as provided in G.S. 143B-  
13 472.2 and G.S. 143B-472.28."

14 Section 5. G.S. 90-210.25A reads as rewritten:

15 "§ 90-210.25A. Minimum burial depth.

16 When final disposition of a human body entails interment, the  
17 top of the uppermost part of the burial vault or other encasement  
18 shall be a minimum of 18 inches below the ground surface. This  
19 section does not apply to burials where no part of the burial  
20 vault or other encasement containing the body is touching the  
21 ground. to:

22 (1) Burials where no part of the burial vault or other  
23 encasement containing the body is touching the  
24 ground.

25 (2) Burials where the land is located in a family owned  
26 cemetery that was established by deed recorded  
27 prior to January 1, 1989, and the individual to be  
28 buried is to be buried in a surface burial vault in  
29 a manner similar to that of the individual's  
30 deceased spouse who was buried prior to January 1,  
31 1981."

32 Section 6. This act is effective when it becomes law.



# SENATE BILL 212: Mortuary Science Changes.

## BILL ANALYSIS

**Committee:** Commerce Committee  
**Date:** April 20, 1999  
**Version:** Committee Substitute  
S212-CSSK-003

**Introduced by:** Senator Rand  
**Summary by:** Esther Manheimer  
Committee Counsel

**SUMMARY:** Senate Bill 212 would require burial associations to comply with certain financial accounting requirements. Additionally, SB 212 establishes procedures for insurance companies to purchase the assets of or merge with burial associations. The bill provides conditions whereby an association may increase their assessments and the procedures the associations must follow to effect such an increase. SB 212 also requires associations to submit a report of financial soundness and mandates when an association is subject to an order of liquidation by the Board of Mortuary Science. Finally, the bill would allow surface burial vaults under certain circumstances

### BILL ANALYSIS:

**Section 1.** Includes technical changes to G.S. 143B-472.2 that are necessary due to the 1987 abolition of the North Carolina Mutual Burial Association Commission.

**Section 2.** Repeals the portion of G.S. 143B-472.3 that imposes a duty on the Board of Mortuary Science (the Board) to take charge of the books of any burial association that fails to keep their books up-to-date. G.S. 143B-472.3 is amended to require that the annual report of a burial association's financial condition be certified by a certified accountant. The burial association must pay for the cost of the certification. If the annual report of the financial condition is deemed insufficient by the Board, the Board may, at its own expense, initiate a new financial audit.

**Section 3.** Makes a technical change to 143B-472.3.

#### Asset Purchase or Merger.

**Section 4.** Part 13 of Article 10 of Chapter 143B is amended by adding a new section (G.S. 143B-472.29). Under current law, insurance companies may purchase the assets of or merge with burial associations (G.S. 143B-472.28). The proposed new section, G.S. 143B-472.29, provides guidelines for such an asset purchase or merger. The guidelines include:

- Insurance companies desiring to purchase the assets of or merge with a burial association must submit to the Board of Mortuary Science and to the secretary of the burial association a written proposal of the proposed purchase or merger.

# SENATE BILL 212

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- The association must meet regarding the proposal and a representative of the insurance company shall be permitted to explain the proposal at this meeting.
- The Board shall review the procedures of the meeting (which are specified in this section of the bill), and, in the event that a purchase or merger was approved at the association's meeting, shall issue an order approving of the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

## Increase in Assessments.

An association may increase its assessments if the association's current assessments are unlikely to be, within the next three years,:

- Adequate to reach or maintain a reserve of at least \$21.00 per member, or
- Adequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association.

The bill provides requirements for the association to meet regarding an assessment increase.

## Written Report of Financial Soundness.

By June 1, 2001, every association must submit to the Board a written report of financial soundness prepared by an actuary. **If the financial condition report (prepared by a CPA) shows a decline in reserves per member for two consecutive years, then the Board may require and financial soundness report prepared by an actuary annually thereafter.** The financial soundness report shall include information regarding the association's membership, amount of assessments, reserves, and liabilities.

## Liquidation and Dissolution of an Association.

By June 1, 2003, the Board must issue an order of liquidation for every association that is not financially sound. Financial soundness will be based on the actuary's report. Additionally, the Board will also issue an order of liquidation where an association has voted for voluntary dissolution.

*The liquidation order may include:*

- The Board may direct that the agreements for members' benefits, as well as the association's records, property, and unexpended balances of funds to be liquidated be transferred to a financially sound association with the financially sound association's approval.
- The liquidations must be complete and a final report filed with the Board no later than December 31 of the year of liquidation.

# SENATE BILL 212

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- Upon receipt of the order of liquidation, the association must follow various requirements including the issuance of a certificate to members. The certificate can be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees to accept such certificates.

## No New Associations.

No new associations may be authorized, organized, or licensed on or after January 1, 2000, but associations existing on that date may merge or consolidate.

## Surface Burial Vaults Allowed under Certain Circumstances.

**Section 5.** Amends G.S. 90-210.25A. Under current law, deceased persons not buried in a mausoleum must be buried 18 inches below the ground surface. This section would allow an individual to be buried in a surface burial vault where the land to be used for the burial is located in a family owned cemetery that was established by deed recorded prior to January 1, 1989, and the individual to be buried is to be buried in a surface burial vault in a manner similar to that of the individual's deceased spouse who was buried prior to January 1, 1981.

**This act is effective when it becomes law.**

## Joan Leatherman (Sen. Soles)

---

**From:** Dean Wilkerson [wilkersonsw@yahoo.com]  
**Sent:** Friday, April 16, 1999 12:32 PM  
**To:** Sen. Ed Warren  
Sen. Frank Ballance; Sen. Robert Carpenter; Sen. Charles Carter; Sen. Walter Dalton; Sen. James Forrester; Sen. David Hoyle; Sen. John Kerr; Sen. Howard Lee; Sen. Ken Moore; Sen. William Purcell; Sen. Eric Reeves; Sen. Bob Rucho; Sen. Larry Shaw; Sen. R.C. Soles; Sen. John Carrington; Sen. Stephen Metcalf  
**Subject:** SB 212

Re: SB 212

From: Dean Wilkerson, Pilot-Wilkerson Mutual Burial Association  
Tel. 252-752-2101 Fax 252-748-7974

Thank you for allowing me to provide input to you concerning SB 212 through my comments at the March 30 Commerce Committee Meeting and through subsequent emails and faxes. As you know there was no discussion on this bill at the April 6 committee meeting. The following week, April 13, some amendments were introduced, but there was no discussion and any vote was delayed until April 18.

The amendments deal with a burial association that is going to continue in an active operation; billing premiums, paying claims and filing reports. It is my opinion that these amendments will allow a burial association to operate while still insuring that the members of the association are protected as to their future benefits.

Conspicuously missing from this legislation is any mention of the Bank Proposal which would allow a burial association the option to have a bank hold the reserve funds, pay interest on the reserve, and pay out pro rata shares of the reserve as death claims are filed. This was a vital part of the proposed legislation that came out of the public hearings in which burial association operators were involved in during September, 1997 and February, 1998. No one at the State Board of Mortuary Science can cite the reason why the Bank Proposal was eliminated.

This bill will never have my backing until the Bank Proposal is either included as part of the legislation or it is detailed as to why the Bank Proposal can not work. It is my opinion that the majority of the burial association operators still reject the legislation (even with the amendments) and apparently the North Carolina Funeral Directors Association has taken a stand in opposition to SB 212.

I have heard some talk that the bill will be "pulled" and not voted on and that some type of study committee be formed to provide burial association legislation that will have the support of the burial association operators and the funeral industry.

In the event the bill does come up for a vote, I urge you to contact your constituents for their opinions.

Thank you.

**Groce** FUNERAL HOME

LAKE JULIAN  
72 LONG SHOALS ROAD  
ARDEN, NC 28704-9784

828/ 687-3530



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FAX No. (828) 687-9851

DATE: 4-19-99

MESSAGE TO: SEN. R. C. SOLES, JR  
SENATE COMMERCE  
COMMITTEE CHAIRMAN

REGARDING: SENATE BILL #212

TOTAL PAGES INCLUDING COVER SHEET: 2

MESSAGE FROM: W. H. GROCE, JR

If you did not receive all pages, please call (828) 687-3530 or toll free (888) 874-3535





To: Sen. R.C. Soles, Chairman, Senate Commerce Committee

From: Willis H. Groce, Jr.  
Secretary-Treasurer of Groce Mutual Funeral Association  
Asheville, NC  
(828) 687-3530 (828) 687 9851 (FAX)

Re: Senate Bill #212  
"Mortuary Science Changes"

Dear Senator Soles,

I believe your committee was previously informed that the North Carolina Funeral Directors Association (NCFDA) was remaining neutral concerning Senate Bill #212. NCFDA is now opposed to #212 and opposed to any Committee Substitute. They are in favor of an industry study committee which will work with the State Board of Mortuary Science to propose some future legislation.

I, again, ask that Senate Bill #212 be allowed to die in committee. Any amendments proposed by the Board of Mortuary Science do not have the endorsement of NCFDA or Burial Association Operators.

Please feel free to call if you have any further questions. Thank you for your efforts.

Sincerely,

Willis H. Groce, Jr.

---

**West Asheville**  
1401 Patton Avenue  
Asheville, NC 28806-1793  
828/ 252-3535

**Lake Julian**  
72 Long Shoals Road  
Arden, NC 28704-9784  
828/ 687-3530

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 732

Short Title: Chiropractic Ownership Restricted.

(Public)

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Sponsors: Senator Soles.

---

Referred to: Commerce.

---

April 1, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF  
3 CHIROPRACTIC EXAMINERS TO ASSESS LICENSEES CERTAIN COSTS  
4 AND LIMITING THE OWNERSHIP OF CHIROPRACTIC PRACTICES TO  
5 PERSONS LICENSED AS CHIROPRACTORS.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 90-154 is amended by adding a new subsection to read:  
8 "(c) If a licensee is found guilty in a contested case arising under subsection (b) of  
9 this section, the Board may assess the licensee the reasonable cost of the hearing held  
10 to make such a determination if the Board finds that the licensee's defense at the  
11 hearing was dilatory or not asserted in good faith."  
12 Section 2. Article 8 of Chapter 90 of the General Statutes is amended by  
13 adding a new section to read:  
14 **"§ 90-157.3. Ownership of chiropractic practices limited.**  
15 (a) Each partner in a partnership that is engaged in the practice of chiropractic  
16 shall be licensed under this Article.  
17 (b) Each general partner in a limited partnership that is engaged in the practice of  
18 chiropractic and each limited partner who takes part in the control of the practice  
19 shall be licensed under this Article.  
20 (c) The provisions of Chapter 55B of the General Statutes shall apply to all  
21 business corporations organized under Chapter 55 of the General Statutes and  
22 engaged in the practice of chiropractic.

1 (d) A chiropractic physician may form a professional corporation or limited  
2 liability company with another health care provider who is licensed under Chapter 90  
3 of the General Statutes."

4 Section 3. Section 1 of this act is effective when it becomes law. Section  
5 2 of this act becomes effective January 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. \_\_\_\_\_

DATE \_\_\_\_\_

S. B. No. 732

Amendment No. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.) Purcell

Sen.)

1 moves to amend the bill on page 2, lines 1-3

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines.

4 \_\_\_\_\_

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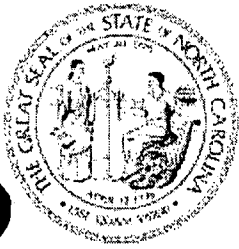
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SIGNED William R Purcell

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



# SENATE BILL 732: Chiropractic Ownership Restricted

## BILL ANALYSIS

**Committee:** Commerce Committee  
**Date:** April 13, 1999  
**Version:** First Edition

**Introduced by:** Senator Soles  
**Summary by:** Esther Manheimer  
Committee Counsel

## BILL ANALYSIS:

### Licensee Found Guilty Must Pay Reasonable Cost of Hearing.

**Section 1.** Amends G.S. 90-154 by adding a new subsection. G.S. 90-154 is the section that pertains to grounds for professional discipline. The proposed subsection would allow the State Board of Chiropractic Examiners to assess a licensee found guilty in a contested case hearing the reasonable cost of the hearing if the Board finds that the licensee's defense at the hearing was (1) dilatory (intended to cause delay) or (2) not asserted in good faith.

### Certain Persons to be Licensed, Professional Corporation Act to Apply, Chiropractic Physicians to form Professional Corporations with other Licensed Health Care Providers.

**Section 2.** Amends Article 8 of Chapter 90 by adding a new section. This section would require that the following persons obtain a license authorizing them to practice chiropractic in North Carolina:

1. Each partner in a partnership that is engaged in the practice of chiropractic.
2. Each general partner in a limited partnership that is engaged in the practice of chiropractic and each limited partner who takes part in the control of the practice.

In addition, this section would require the Professional Corporation Act to apply to corporations that are formed under the Business Corporation Act and engage in the practice of chiropractic. Finally, this section would allow a chiropractic physician to form a professional corporation or limited liability company with another licensed health care provider.

**Section 1 of this act is effective when it becomes law. Section 2 becomes effective January 1, 2000.**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 790

Short Title: Clarify Certain Contract Loan Fees.

(Public)

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Sponsors: Senator Soles.

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Referred to: Commerce.

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April 7, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY WHICH LENDERS MAY CHARGE CERTAIN FEES  
3 UNDER THE GENERAL CONTRACT LOAN PROVISION OF CHAPTER 24  
4 OF THE GENERAL STATUTES.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 24-1.1 reads as rewritten:  
7 "**§ 24-1.1. Contract rates and fees.**  
8 (a) Except as otherwise provided in this Chapter or other applicable law, the  
9 parties to a loan, purchase money loan, advance, commitment for a loan or  
10 forbearance other than a credit card, open-end, or similar loan may contract in  
11 writing for the payment of interest not in excess of:  
12 (1) Where the principal amount is twenty-five thousand dollars  
13 (\$25,000) or less, the rate set under subsection (c) of this section;  
14 or  
15 (2) Any rate agreed upon by the parties where the principal amount is  
16 more than twenty-five thousand dollars (\$25,000).  
17 (b) As used in this section, interest shall not be deemed in excess of the rates  
18 provided where interest is computed monthly on the outstanding principal balance  
19 and is collected not more than 31 days in advance of its due date. Nothing in this  
20 section shall be construed to authorize the charging of interest on committed funds  
21 prior to the disbursement of said funds.  
22 (c) On the fifteenth day of each month, the Commissioner of Banks shall  
23 announce and publish the maximum rate of interest permitted by subdivision (1) of  
24 subsection (a) of this section on that date. Such rate shall be the latest published

1 noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the  
2 fifteenth day of the month plus six percent (6%), rounded upward or downward, as  
3 the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent  
4 (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of  
5 1%), the Commissioner shall round downward to the lower one-half of one percent  
6 (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the  
7 term of loans made under this section during the following calendar month when the  
8 parties to such loans have agreed that the rate of interest to be charged by the lender  
9 and paid by the borrower shall not vary or be adjusted during the term of the loan.  
10 The parties to a loan made under this section may agree to a rate of interest which  
11 shall vary or be adjusted during the term of the loan in which case the maximum rate  
12 of interest permitted on such loans during a month during the term of the loan shall  
13 be the greater of the rate announced by the Commissioner in (i) the preceding  
14 calendar month or (ii) the calendar month preceding that in which the rate is varied  
15 or adjusted.

16 (d) Any lender bank or savings institution organized under the law of North  
17 Carolina or of the United States may charge a party to a loan or extension of credit  
18 governed by this section a fee for the modification, renewal, extension, or amendment  
19 of any terms of the loan or extension of credit, such fee not to exceed the greater of  
20 one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the  
21 modification, renewal, extension, or amendment of terms, or fifty dollars (\$50.00).

22 (e) Any lender bank or savings institution organized under the law of North  
23 Carolina or of the United States may charge a party to a loan or extension of credit  
24 not secured by real property governed by this section an origination fee not to exceed  
25 the greater of one-quarter of one percent (1/4 of 1%) of the outstanding balance or  
26 fifty dollars (\$50.00).

27 (f) This section shall not be construed to limit fees on loans or extensions of credit  
28 in excess of three hundred thousand dollars (\$300,000)."

29 Section 2. This act becomes effective October 1, 1999.

**Summary of SB 790**  
**Short Title: Clarify Certain Loan Contract Fees**

SB 790 clarifies that the loan origination and modification fees allowed by G.S. § 24-1.1(d) and (e) are available to institutional lenders only and are not to be used by unlicensed lenders to evade the restrictions of the Consumer Finance Act and the Check Cashing Act.

G.S. § 24.1.1(d) and (e) were added to usury laws of North Carolina in the 1991 session in order to encourage banks to make smaller loans and to allow banks to offset the cost of setting up or modifying the terms of these loans. Subsection (d) authorizes a loan modification, renewal, extension or amendment fee in the amount of 1/4 of 1% of the loan balance, or \$50, whichever is greater; and subsection (e) authorizes an origination fee for loans not secured by real estate in the amount of 1/4 of 1% of the outstanding balance, or \$50, whichever is greater.

In the last year, certain unlicensed nonbank lenders have been offering small loans in the range of \$100 to \$300 which are repayable in 30 days and which are secured by possession of the borrower's motor vehicle title -- a practice known as "title pawning" or "title lending." The customer is charged a \$50 origination fee on the loan in addition to the maximum rate of interest of 16%. The loans may be renewed or "rolled over" at the end of the repayment period for yet another \$50 charge. A copy of an actual contract for a title loan of \$100 with an origination fee of \$50 and a disclosed annual percentage rate of 624% is attached.

SB 790 clarifies that the loan fees authorized in G.S. § 24-1.1(d) and (e) are intended for standard loan transactions entered into by banking institutions operating under state or federal law. This bill will close an unintended loophole that unlicensed lenders can exploit to evade our consumer finance laws and to impose oppressive rates and terms on North Carolina borrowers.

We urge your favorable consideration of the bill.

L. McNeil Chestnut  
Assistant Attorney General  
Counsel to the Commissioner of Banks

Philip A. Lehman  
Assistant Attorney General  
Consumer Protection Section



# DISCLOSURE STATEMENT, NOTE, AND SECURITY AGREEMENT

BORROWER (Called "you" or "your") [REDACTED]		ADDRESS: [REDACTED]	LENDER (Called "we" or "us") CAROLINA TITLE LOANS, INC. 1056 PATTON AVENUE ASHEVILLE, NC 28806	
CO-BORROWER: [REDACTED]		[REDACTED] Asheville NC 28806		
DATE OF LOAN: 12/4/98	ACCOUNT #: 10750	LOAN AMOUNT:	100.00	
		ORIGINATION FEE:	50.00	
		TOTAL AMOUNT FINANCED:	150.00	
		INTEREST 16% PER YEAR:	2.00	
		AMOUNT PAID TO YOU:	100.00	
<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate 6.24 %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you. \$ 52.00	<b>Amount Financed</b> The amount of credit provided to you or on your behalf. \$ 150.00	<b>Total of Payments</b> The amount you will have paid after you have made all payments as scheduled. \$ 152.00	
<b>PAYMENT SCHEDULE</b> - Payments are payable weekly as follows:				
1st Pmt. Date 12/14 at \$ 38.00	2nd Pmt. Date 12/21 at \$ 38.00	3rd Pmt. Date 12/28 at \$ 38.00	4th Pmt. Date 1/4 at \$ 38.00	
<b>PREPAYMENT:</b> If you pay off early, you will not have to pay a penalty. You will not be entitled to a rebate of the prepaid finance charge.				
<b>SECURITY:</b> You are giving a security interest in your motor vehicle as described below.				
See below for additional information about non-payment, default, any required repayment of your indebtedness in full before the scheduled date, and security interests.				

**THIS LOAN IS FOR 30 DAYS OR LESS AND MAY NOT BE RENEWED.**

The finance charge shown above is an estimated amount based on the assumption that the loan will be repaid according to the terms of the loan.

The Principal Balance is the sum of the Amount Financed stated above plus an origination fee of \$50.00.

**AGREED RATE OF INTEREST:** Interest will be charged and collected at the rate of 16% per year.

**REPAYMENT:** Borrower(s) promises to pay to the above named Lender the principal balance, together with interest on the amount financed at the Agreed Rate of Interest stated above in consecutive weekly payments beginning on the first payment date stated above and continuing on the same day of each week until the last payment date stated above. Each payment shall be applied first to interest to date of actual payment and remainder to principal. Borrower(s) may pay this loan in whole or in part prior to its maturity. No portion of the origination fee will be refunded.

**SECURITY FOR THIS LOAN:** Borrower(s) hereby grants to Lender a security interest in property described below. This security interest is subject to the provisions in the sections concerning Insurance and Repossession below.

**MOTOR VEHICLE:** YEAR 85 MAKE Chevy MODEL Spectrum  
VIN # [REDACTED] TITLE # [REDACTED]

**FAILURE TO PAY:** You will be in default if you fail to pay any payment or part of a payment on time or if you do not follow any of the terms of this agreement. If you default, we have the right to declare the entire balance of this agreement immediately due and payable. We can also repossess the automobile.

**RETURNED CHECK FEE:** Borrower(s) will be charged a \$25.00 fee for any check returned by a bank because of insufficient funds or because no account existed at the bank.

**INSURANCE:** The Borrower(s) will provide insurance against loss of or damage to the property as the Lender may reasonably require.

**LATE CHARGES:** If we receive any payment 15 days or more after the due date, you will be charged an additional 4% late fee of the payment.

Borrower(s) acknowledges receipt of a completely filled-in copy of this loan agreement as required by law.

[Signature]  
(CAROLINA TITLE LOANS, INC. - AGENT)

[Signature]  
(BORROWER)

\_\_\_\_\_  
(BORROWER)

**CAROLINA TITLE LOAN, INC.**  
**1056 PATTON AVE.**  
**ASHEVILLE, NC 28806** (3)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 796

Short Title: General Contractors Property.

(Public)

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Sponsors: Senator Hoyle.

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Referred to: Commerce.

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April 12, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL  
3 CONTRACTORS TO OWN REAL PROPERTY AND TO PURCHASE  
4 EQUIPMENT AND LIABILITY INSURANCE.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 1 of Chapter 87 of the General Statutes is amended by  
7 adding a new section to read:

8 "§ 87-9.1. Ownership of real property; equipment; liability insurance.

9 (a) The Board shall have the power to acquire, hold, rent, encumber, alienate,  
10 and otherwise deal with real property in the same manner as a private person or  
11 corporation, subject only to approval of the Governor and the Council of State as to  
12 the acquisition, rental, encumbering, leasing, and sale of real property. Collateral  
13 pledged by the Board for an encumbrance is limited to the assets, income, and  
14 revenues of the Board.

15 (b) The Board may purchase or rent equipment and supplies and purchase  
16 liability insurance or other insurance to cover the activities of the Board, its  
17 operations, or its employees."

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



# SB 796: General Contractors Property

## BILL ANALYSIS

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**Committee:** Senate Commerce  
**Date:** April 20, 1999  
**Version:** 1st

**Introduced by:** Sen. Hoyle  
**Summary by:** Linwood Jones  
Committee Counsel

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Senate Bill 796 authorizes the State Licensing Board for General Contractors to do the following:

- Purchase or rent equipment and supplies
- Purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees
- Acquire and encumber real property, subject to the approval of the Governor and the Council of State. If the Board encumbers the property, the only collateral it can pledge is its own assets, income, and revenues. At least three other licensing boards (Medical Board, Board of CPA Examiners, and the State Bar) already have this authority.

This bill would take effect when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 871

Short Title: Decedents' Estates/Funeral Expenses.

(Public)

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Sponsors: Senator Reeves.

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Referred to: Commerce.

---

April 13, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING THE OBLIGATION OF  
3 DECEDENTS' ESTATES FOR FUNERAL EXPENSES AND RELATED  
4 EXPENSES.

5 The General Assembly of North Carolina enacts:

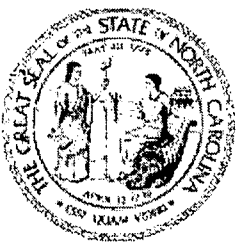
6 Section 1. G.S. 28A-19-8 reads as rewritten:

7 "**§ 28A-19-8. Funeral expenses of decedent.**

8 Any person authorized under G.S. 130A-420 to dispose of a decedent's body may  
9 bind a decedent's estate for funeral expenses and related charges, including interest  
10 and finance charges, in accordance with this section, including the execution and  
11 delivery on behalf of the estate any agreements, promissory notes, and other  
12 instruments relating to the estate. Whether or not a personal representative of the  
13 estate has been appointed at the time the expenses are incurred, funeral ~~Funeral~~  
14 expenses of a decedent decedent, together with interest or finance charges if financed  
15 by the funeral establishment or a third-party creditor, shall be considered as an  
16 obligation of the estate of the decedent and the decedent's estate shall be primarily  
17 liable therefor, for those expenses to the funeral establishment that provided the  
18 funeral service, to any third-party creditor that finances the payment of those  
19 expenses, or to any other person described in this section who has paid such  
20 expenses.

21 ~~(b) The provisions of this section shall not affect the application of G.S. 28A-19-6.~~  
22 G.S. 28A-19-6 or G.S. 130A-420."

23 Section 2. This act becomes effective October 1, 1999.



# SB 871: Decedent's Estates/Funeral Expenses

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** April 20, 1999  
**Version:** 1st

**Introduced by:** Sen. Reeves  
**Summary by:** Linwood Jones  
Committee Counsel

Current law states that the funeral expenses of a decedent are an obligation of the decedent's estate, and the decedent's estate is primarily liable for those expenses.

Senate Bill 871 amends this law to provide the following:

- That any person authorized by law to dispose of a decedent's body can bind the decedent's estate for funeral expenses and related charges, including the execution and delivery on behalf of the estate of any agreements, promissory notes, and other instruments relating to the estate. The following are authorized by law (GS 130A-420) to determine how to dispose of a decedent's body, in the following order of priority:
  - By a person acting in the manner specified in the decedent's will, health care power of attorney, preneed funeral contract, cremation authorization form, or other witnessed written instrument.
  - The surviving spouse
  - A majority of the surviving children
  - The surviving parents
  - A majority of the surviving siblings
  - A majority of the persons in the classes of next degree of kinship (as determined by intestacy laws)
  - A person who has exhibited special care for the decedent and is willing and able to make decisions about the disposition.
- That funeral expenses for which the estate is primarily liable include interest or finance charges on those expenses that were financed by a funeral establishment or third party creditor.
- That the estate is obligated for payment of the expenses to the funeral establishment, the third party creditor, or to any other person authorized to dispose of the body who incurred such expenses.
- That the estate can be bound for the payment of funeral expenses regardless of whether the personal representative of the estate has been appointed at the time the expenses are incurred.

The current law provides that funeral expenses of up to \$2,500 are second on the list of priorities for claims against the estate (coming after the payment of the estate administration expenses). The bill does not change this provision of the law.

The act would take effect October 1, 1999.

VISITOR REGISTRATION SHEET

①

Name of Committee

COMMERCE

4-20-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

LUCIUS PULLEN	ATTORNEY
Kyle Dimerhous	Secre
Andrew Ritter	NCRMS
HARVEY LEAVITT	Funeral Director
JACK NICHOLS	Allen & Pinnix
FRAN RESON	NCRMA
HENRI McClees	McClees Consulting INC
Paul Stock	NC Bankers Assn.
[Signature]	NCA DA
Mr. Bob Stravel	NCCA
Christine M. Caron	NCCA
Deane Kiskander	NCCA
Don Hume	Sund Arch
David Summings	ZDA, PA
[Signature]	Fed City Bank
Alida Gregory	Poyner & Spruill

VISITOR REGISTRATION SHEET

Name of Committee

Commerce

4-20-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

MARK O. SELPH	NC BOARD FOR GENERAL CONTRACTORS
Alan Mule	Banly & Donnell
Mark Brown	Capital Group
Otis Carter	Carter & Assoc.
Mike Mann	SSI
Donna Canale	NICPSA
YLM Bode	NETA
Josh Hagan	Hydrodyne
Bill WRE	DEEP RIVER Hydro
Steve Cook	Small Hydro
Jon Carr	Talen Price
Larry Stegall	NCPDA
Joyce Baker	
Mark [unclear]	
[Signature]	NC Permit Assoc



SENATE COMMERCE COMMITTEE  
MINUTES  
APRIL 22, 1999

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Thursday, April 22, 1999. Twenty-two members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order and the following bills were considered by the committee.

**SJR 975 – A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF SAMUEL JAMES ERVIN, IV MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.**

Sen. Soles said that the confirmation of Samuel James Ervin, IV to the North Carolina Utilities Commission was for an eight year term beginning July 1, 1999 and expiring July 1, 2007. A bill summary was handed out to the committee which included Mr. Ervin's resume and Form 2 from the Board of Ethics (copy attached). Mr. Ervin then made a few remarks about his background. Sen. Moore moved to give the SJR a favorable report. Motion carried.

**SB 420 – AN ACT TO CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.**

A proposed committee substitute was sent forth and Sen. Hoyle moved that it be adopted, motion carried. Sen. Hoyle, bill sponsor, then explained the committee substitute to the committee. Lynwood Jones, Committee Counsel, presented the committee with a summary of this bill (copy attached). Mr. John Wately, Association of North Carolina Automobile Manufacturers spoke in opposition to the bill. He stated that they had some problems with the transfer provisions; pricing incentives and with the issue of exclusivity. He also stated that there are some issues in this bill that will cause litigation.

Mr. John Bodie, Lobbyist representing General Motors, spoke in opposition to this bill. He presented the committee with a handout showing how the dealers received cars in different areas (copy attached). Mr. Bodie said he thought this bill needed more attention by members of the committee.

Sen. Rucho made a motion to give the proposed committee substitute for SB 420 a favorable report. Motion carried.

SB 419 – AN ACT TO CLARIFY MOTOR VEHICLE DEALER TRANSFER RIGHTS.

Sen. Hoyle, sponsor, explained this bill to the committee. Sen. Soles then recognized Mr. Harold Wells, Whiteville Motor Vehicle Dealer, who was visiting with us today. Sen. Plyler made a motion to give the bill a favorable report. Motion carried.

SB 941- AN ACT TO UPDATE THE MANUFACTURED HOUSING BOARD STATUTES, TO PROVIDE FOR CONTINUING EDUCATION FOR LICENSEES, TO IMPROVE THE BUYER CANCELLATION LAW, AND TO UPDATE THE LAW ON MANUFACTURED HOME STANDARDS TO COMPLY WITH FEDERAL LAWS AND REGULATIONS.

Sen. Warren, sponsor, explained this bill to the committee. Sen. Warren offered an amendment and moved its adoption. Motion carried.

Mr. Daschiel Propes, Chief Deputy, N. C. Department of Insurance, assisted in answering questions from the committee.

Mr. Frank Gray, representing Manufactured Housing Association, said the association fully supported this bill.

Sen. Rand moved to give the bill a favorable report. Motion carried.

SB 933 – AN ACT PERTAINING TO THE RIGHTS OF ADULT CARE HOME RESIDENTS WITH RESPECT TO TRANSFER OR DISCHARGE FROM THE FACILITY.

Sen. Dalton made a motion that the Chairman move this bill to the Health Committee. Motion carried.

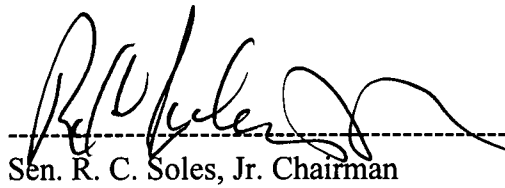
SB 993 – AN ACT TO PERMIT MANAGED CARE INSUREDS, ENROLLEES AND HEALTH CARE PROVIDERS TO RECOVER FROM COLLATERAL SOURCES.

Sen. Odom, sponsor, explained this bill to the committee. There was much discussion and questions by members of the committee. Sen. Odom suggested the bill be taken up at a later date.

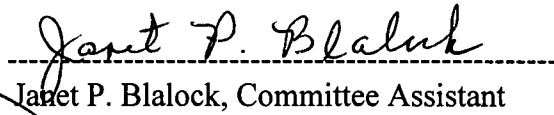
**SB 1008 – AN ACT TO EXTEND THE TIME FOR THE NORTH CAROLINA UTILITIES COMMISSION TO ADOPT FINAL RULES REGARDING UNIVERSAL SERVICE.**

Sen. Hoyle, sponsor, said that this bill was requested by the North Carolina Utilities Commission and he explained it to the committee. Sen. Rand moved to give the bill a favorable report. Motion carried.

Meeting adjourned at 12:35 p.m.



Sen. R. C. Soles, Jr. Chairman



Janet P. Blalock, Committee Assistant

VISITOR REGISTRATION SHEET

4

Commerce  
Name of Committee

4-22-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
R. A. CUCCHI	FORD MOTOR CO.
Phil Teifer	Atty Gen. Office
Suzanne Merrill	DITTS
Frank May	N.C. Man. Housing
Chris Sinclair	NC Man. Housing
Tommy Worth	Cardinal Health Corp
John O'Connell	AT&T
Phil Lehman	NC AGO
Slobodan Melosovic	Young Car of Belgrade
Lee Iococca	Concerned Citizen
Ann Case	NCRMA
J P. King	AAA

3

VISITOR REGISTRATION SHEET

Commerce  
Name of Committee

4-22-89  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Eatherine Dairs	Electricities of NC
Tim KENT	American Inst. of Architects / N.C.
Shelby M Woodard	HASTINGS FORD, Greenville NC
B. D. [Signature]	Hastings Ford, Greenville N.C.
[Signature]	D + S. Automobile Lenoir County NC
Phyllis Jeffrey Culbreth	Div of Automotive, Lenoir County
[Signature]	Morris Van Allen
Bobby JENKINS	Don Jenkins + Son Ford Mercury, Inc.
Linda Burke	DARRY L BURKE Chev. Pont. Buick
Darryl Burke	DARRY L BURKE Chev. Pont. Buick
Helen Lyman	Mechlenburg Co.
Katherine Miller	Harry Kaplan
Don [Signature]	Smith [Signature]
Alida Gregory	Dryer i Spuill
[Signature]	Poyner + Spuill
[Signature]	Robert i [Signature]

VISITOR REGISTRATION SHEET

①

COMMERCIAL

Name of Committee

4-21-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Jason Cheek	CAP - Sen. Page
Patricia Young	FOR
ROBERT GLAZER	NCA DA
NEWBORN BRYAN	NEADA
SAM JOHNSON	ATTY
Tommy Harnes	LORRY
Bonnie Hunter	N.C. Auto Dealer
Sunny Johnson	North Carolina Auto Dealers
V L McBride	NCA
Michael Clin	Adm Lake Foundation
LARRY J. Greshagan	North Carolina Auto Dealers
H H Webb	" " "
Jill Al-hafez	PO Box 12276 RTP, NC 27709 Region J Ombudsman Triangle J Council of Govts
Dick Hatch	AARP
Kristie Russ	Region J Ombudsman Triangle J Council of Govts PO Box 12276 RTP, NC 27709

VISITOR REGISTRATION SHEET

2

Commerce  
Name of Committee

4-22-88  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

<u>William M. Summer</u>	<u>NC Auto Dealers Assoc</u>
<u>DAVID O'NEAL</u>	<u>NCADA</u>
<u>TOM BURTON</u>	<u>N.C. Auto Dealer</u>
<u>DAVID FARRIS</u>	<u>NCADA</u>
<u>WADE TYNER</u>	<u>NCADA</u>
<u>Paul Deck</u>	<u>NCADA</u>
<u>JIM SPARKS</u>	<u>NCADA</u>
<u>Robert S. Gilliam</u>	<u>Public Staff - NCUC</u>
<u>DAVID BRIAN</u>	<u>NCADA</u>
<u>Royce Reynolds</u>	<u>NCADA</u>
<u>Morgan Mann</u>	<u>NCADA</u>
<u>J. Bewley</u>	<u>Bewley and Assoc.</u>
<u>Wayne Thomas</u>	<u>NCADA</u>
<u>Lance Barber</u>	<u>NCADA</u>
<u>BILL BROWN</u>	<u>NCADA</u>

NORTH CAROLINA GENERAL ASSEMBLY  
SENATE

COMMERCE COMMITTEE REPORT  
Sen. R. C. Soles, Jr., Chair

Thursday, April 22, 1999

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

**FAVORABLE**

S.B.	419	Clarify MV Dealer Transfer Rights	
		Sequential Referral:	none
		Recommended Referral:	none
S.B.	941	Manufactured Homes Law Changes	
		Sequential Referral:	Finance
		Recommended Referral:	none
S.J.R.	975	Confirming Samuel James Ervin, IV	
		Sequential Referral:	none
		Recommended Referral:	none
S.B.	1008	Extend Univ. Service Deadline	
		Sequential Referral:	none
		Recommended Referral:	none

TOTAL REPORTED: 4

Committee Clerk Comment:



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE JOINT RESOLUTION 975

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Sponsors: Senator Soles.

---

Referred to: Commerce.

---

April 15, 1999

1 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE  
2 APPOINTMENT OF SAMUEL JAMES ERVIN, IV MADE BY THE  
3 GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES  
4 COMMISSION.

5           Whereas, under the provisions of G.S. 62-10, appointments made by the  
6 Governor to membership on the North Carolina Utilities Commission are subject to  
7 confirmation by the General Assembly by joint resolution; and

8           Whereas, the Governor has submitted to the presiding officers of the  
9 House of Representatives and the Senate, the name of his appointee to serve a full  
10 term on the North Carolina Utilities Commission; Now, therefore,

11 Be it resolved by the Senate, the House of Representatives concurring:

12           Section 1. The appointment of Samuel James Ervin, IV to the North  
13 Carolina Utilities Commission for a term beginning on July 1, 1999, and expiring on  
14 July 1, 2007, is confirmed.

15           Section 2. This resolution is effective upon ratification.



# SJR 975: Confirmation of Appointment of Samuel James Ervin, IV to Utilities Commission

**Committee:** Senate Commerce Committee  
**Date:** April 22, 1999  
**Version:**

**Introduced by:** Senator Soles  
**Summary by:** Steven Rose  
Committee Counsel for Public Utilities

Mr. Ervin has been appointed by the Governor to an eight year term on the Utilities Commission. SJR 975 confirms that appointment as required by G.S. 62-10. The term begins July 1, 1999 and expires July 1, 2007. The resolution is effective upon ratification

The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight year terms. Commissioners are appointed by the Governor and must be confirmed by the General Assembly by Joint Resolution.

A Utilities Commissioner is presently paid a salary of \$97,389. This is about the same as a Superior Court Judge. There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years. Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment.

During service on the Commission, a Commissioner may not engage in any other employment, business, profession or vocation. During the term of office the Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies which the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well

# SJR 975

Page 2

as a judge in all contested matters relating to public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies from utility to utility, and there are limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, use of natural gas expansion funds, the provision of new utility services, and the adjudication of complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction varies from utility to utility and is affected in some cases by federal law.

SJR975-SMRL-001

## Samuel James Ervin, IV

### Employment

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.  
Post Office Drawer 1269  
Morganton, North Carolina 28680-1269  
828/437-4220  
Fax: 828/438-4517

### Residence

517 Lenoir Street  
Morganton, North Carolina 28655  
828/433-0163

### Education

J.D., cum laude, 1981. Harvard Law School, Harvard University, Cambridge, Massachusetts.

A.B., History, magna cum laude, 1978. Davidson College, Davidson, North Carolina.

Graduate, 1974. Freedom High School, Morganton, North Carolina.

### Educational Honors

Phi Beta Kappa  
Phi Eta Sigma  
National Merit Scholar  
Joseph Moore McConnell Scholar - 1974-1977  
Lunsford Richardson Scholar - 1977-1978  
North Carolina Fellow

### Employment History

Licensed to practice law in 1981. Admitted to practice before the North Carolina state courts, the United States District Courts for the Eastern, Middle, and Western Districts of North Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

Practice currently involves civil and criminal litigation in the state and federal courts, as well as a considerable amount of utility regulation work before the North Carolina Utilities Commission and frequent appearances before state appellate courts.

### Employment History (continued)

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.  
Morganton, North Carolina

Stockholder:	1985 – Present
Associate:	1981 – 1985

### Professional Memberships

Burke County Bar Association  
North Carolina State Bar  
North Carolina Bar Association

American Trial Lawyers Association  
American Bar Association  
North Carolina Academy of Trial Lawyers

### Boards of Directors

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.  
Center for Death Penalty Litigation  
Lawyers Mutual Liability Insurance Company of North Carolina, Inc.

### Professional Activities

Member, North Carolina Bar Association Administration of Justice Task Force – 1996-Present

Member, North Carolina Bar Association Task Force on the Quality and Value of Legal Services – 1992-1993

Member, Long-Range Solutions Subcommittee of the All-Bar Death Penalty Representation Committee – 1993

Member, Advisory Board, North Carolina Death Penalty Resource Center – 1991- 1995

## Publications

"False Arrest, Abuse of Process, Malicious Prosecution, and Assault"

Presented at the 1989 Intentional Torts Seminar sponsored by the Civil Litigation Section of the North Carolina Bar Association.

"Proof of Damages - The Plaintiff's Case"

Presented at the 1989 Personal Injury Damages Seminar sponsored by Wake Forest University School of Law.

"Dealing with Damages - The Plaintiff's Case" Co-authored with Robert B. Byrd.

Presented by Robert B. Byrd at the 1986 Personal Injury Damages Seminar sponsored by Wake Forest University School of Law.

## Personal Information

Born in Morganton, North Carolina, on November 18, 1955

Parents: Honorable Sam J. Ervin, III, and Elisabeth C. Ervin

Married Mary Temple Ervin on March 15, 1986

Stepchildren: Davin Patrick Coutu, born on November 2, 1978  
Kelly Stephen Coutu, born on August 19, 1981

Children: Samuel James Ervin, V, born on November 28, 1987  
Michael Worth Ervin, born on April 19, 1991

## Religious and Civic Activities

Member, First Presbyterian Church, Morganton, North Carolina  
Active Deacon, 1982-1984; 1987-1989  
Active Elder, 1989-1992, 1998-

Director, Burke County United Way, 1985-1990

Director, Presbyterian Learning Center - 1993-1996



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APR 21 1999

RESEARCH DIVISION

NORTH CAROLINA BOARD OF ETHICS

116 WEST JONES STREET  
RALEIGH 27603-8003  
(919) 733-5103

GEORGE F. BASON  
CHAIRMAN

June 16, 1998

The Honorable James B. Hunt, Jr.  
Governor of North Carolina  
Raleigh, North Carolina

Regarding: Evaluation of Statement of Economic Interest filed by  
Samuel James Ervin, IV, NC Utilities Commission

Dear Governor Hunt:

In accordance with Section 4 of Executive Order Number 127, we have completed our evaluation of Mr. Ervin's statement of economic interest.

**We did not find an actual conflict of interest or the potential for conflict of interest. This evaluation is given providing he follows his explanation of how he proposes to resolve conflicts of interest as stated in his statement of economic interest.**

Mr. Ervin indicated that he will sell all stock he owns in companies regulated by the Utilities Commission or which appear before the Utilities Commission prior to taking office. He will leave his law firm and resign from all boards of directors on which he is now serving (except the elder position with his church) upon confirmation by the General Assembly. He will comply with all provisions of the Code of Judicial Conduct, including those portions dealing with the hearing of cases involving former clients, while in office.

Upon appointment we will send a copy of this evaluation letter to the Chairman of the Commission for information purposes.

Sincerely,

*George F. Bason*

George F. Bason  
Chairman

cc: Mr. Ervin  
Chairman of the Commission

August 28, 1997, substituted "15" for "10" throughout subdivision (23)a.2.; and deleted language beginning "or nonprofit water membership" and ending "governing board of the corporation" following "telephone membership corporation" in subdivision (23)d.

Session Laws 1998-128, ss. 1-3, effective September 4, 1998, inserted "other

than a carrier by rail" following "person" in subdivisions (6) and (22); deleted "train" preceding "bus" in subdivision (6); deleted "or railways" following "bus" in subdivision (23)a.3.; in subdivision (23)a.4. deleted "railways or" preceding "motor vehicles" and substituted "carriers by rail" for "except"; and made punctuation changes.

#### CASE NOTES

**In determining the scope of the Commission's authority,** the emphasis should be placed on the public utility function rather than a literal reading of the statutory definition of "public utility," and the statutory definition should not be read so narrowly as to preclude commission's jurisdiction over a function which is required to provide adequate service to the subscribers. *State ex rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co.*, 326 N.C. 522, 391 S.E.2d 487 (1990).

**Sewage Treatment System is Public Utility.** — The operation of a sewage treatment system for compensation is a public utility within the meaning of the Public Utilities Act. *Ocean Glen Townhouse Condominium Owners Ass'n Phase I v. State ex rel. N.C. Utils. Comm'n*, 126 N.C. App. 495, 486 S.E.2d 223 (1997).

**Sand-pit Company Not a "Public**

**Utility."** — Sand-pit company which did not own or operate any trucks to haul its sand was not a "public utility" as defined by this section. *Gordon v. Garner*, 127 N.C. App. 649, 493 S.E.2d 58 (1997).

**As to what constitutes a contract carrier, etc.** —

A company which offers white-water rafting excursions is not a common carrier, because any "transportation" was merely incidental to primary purpose of outdoor adventure, camaraderie, excitement and thrills. *Beavers v. Federal Ins. Co.*, 113 N.C. App. 254, 437 S.E.2d 881, cert. denied, 336 N.C. 602, 447 S.E.2d 384 (1994).

Cited in *In re Lower Cape Fear Water & Sewer Auth.*, 329 N.C. 675, 407 S.E.2d 155 (1991); *State ex rel. Utils. Comm'n v. Mountain Elec. Coop.*, 108 N.C. App. 263, 423 S.E.2d 516 (1992); *State ex rel. Utils. Comm'n v. Empire Power Co.*, 112 N.C. App. 265, 435 S.E.2d 553 (1993).

#### OPINIONS OF ATTORNEY GENERAL

**The Department of Correction, as a State agency, is not a public utility and is not subject to the fee requirements of § 62-302.** See Opinion of Attor-

ney General to LaVee Hamer, General Counsel, North Carolina Department of Correction, — N.C.A.G. — (October 17, 1994).

#### ARTICLE 2.

#### *Organization of Utilities Commission.*

**§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.**

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein



provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner and that of the commissioner designated as chairman shall be set by the General Assembly in the

d Speaker of the House jointly  
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 of the same year for  
 ly. Regardless of the way in  
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uant to either subsection (a)  
 General Assembly is not in  
 d urgent by the Governor, the  
 l serve on an interim basis  
 Assembly.

and that of the commissioner  
 the General Assembly in the

Current Operations Appropriations Act. In lieu of merit and other  
 increment raises paid to regular State employees, each commis-  
 sioner, including the commissioner designated as chairman, shall  
 receive as longevity pay an amount equal to four and eight-tenths  
 percent (4.8%) of the annual salary set forth in the Current  
 Operations Appropriations Act payable monthly after five years of  
 service, and nine and six-tenths percent (9.6%) after 10 years of  
 service. "Service" means service as a member of the Utilities  
 Commission.

(i) The standards of judicial conduct provided for judges in Article  
 30 Chapter 7A of the General Statutes shall apply to members of the  
 Commission. Members of the Commission shall be liable to impeach-  
 ment for the causes and in the manner provided for judges of the  
 General Court of Justice in Chapter 123 of the General Statutes.  
 Members of the Commission shall not engage in any other employ-  
 ment, business, profession, or vocation while in office.

(j) Members of the Commission shall be reimbursed for travel and  
 subsistence expenses at the rates allowed to State officers and  
 employees by G.S. 138-6(a). (1941, c. 97, s. 2; 1949, c. 1009, s. 1;  
 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c.  
 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2; 1983 (Reg. Sess., 1984), c.  
 1116, s. 91; 1989, c. 781, s. 41.2; 1993 (Reg. Sess., 1994), c. 769, s.  
 7.4(b); 1996, 2nd Ex. Sess., c. 18, s. 28.2(b); 1997-443, s. 33.5.)

**Editor's Note.** — Session Laws 1993  
 (Reg. Sess., 1994), c. 769, s. 2 provides:  
 "This act shall be known as 'The Current  
 Operations and Capital Improvements  
 Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994),  
 c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 358, s. 2, as  
 amended by Session Laws 1995, c. 437, s.  
 1, and by Session Laws 1995, c. 467, s. 1,  
 provides that the salaries established by  
 Session Laws 1993, c. 769, s. 7.4, shall  
 remain until July 28, 1995, at the level  
 set by or under that section as of June  
 30, 1995; and that no State employee or  
 officer may prior to July 28, 1995, receive  
 a merit increase or annual increment.

Session Laws 1996, Second Extra Ses-  
 sion, c. 18, s. 1.1. provides: "This act shall  
 be known as the Current Operations  
 Appropriations Act of 1996."

Session Laws 1996, Second Extra Ses-  
 sion, c. 18, s. 29.6, is a severability  
 clause.

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

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

**Effect of Amendments.** — The 1997  
 amendment, effective July 1, 1997, re-  
 wrote the first sentence of subsection (h).

**§ 62-15. Office of executive director; public staff,  
 structure and function.**

(a) There is established in the Commission the office of executive  
 director, whose salary shall be the same as that fixed for members of  
 the Commission. The executive director shall be appointed by the  
 Governor subject to confirmation by the General Assembly by joint  
 resolution. The name of the executive director appointed by the  
 Governor shall be submitted to the General Assembly on or before  
 May 1 of the year in which the term of his office begins. The term of  
 office for the executive director shall be six years, and the initial  
 term shall begin July 1, 1977. The executive director may be  
 removed from office by the Governor in the event of his incapacity to  
 serve; and the executive director shall be removed from office by the  
 Governor upon the affirmative recommendation of a majority of the  
 Commission, after consultation with the Joint Legislative Utility

e of the additional commissioners provided in G.S. 62-10(b). shall continue to serve until his qualified but such holdover shall if such succeeding term. y four years thereafter, one of the ted by the Governor to serve as the succeeding four years and until and qualifies. Upon death or resigned as chairman, the Governor om the remaining commissioners nafter provided to fill the vacancy

y, resignation or vacancy for any commissioner prior to the expiration of his successor shall be submitted weeks after the vacancy arises to mation by the General Assembly. submit the name of the successor, peaker of the House jointly shall o the General Assembly within six Regardless of the way in which omitted, confirmation of commissioner to the adjournment of the then Assembly. s pursuant to either subsection (a) the General Assembly is not deemed urgent by the Governor, ted and serve on an interim basis neral Assembly. sioner shall be the same as that s of the superior court except that chairman shall receive one thousand per annum. In lieu of merit and gular State employees, each commissioner designated as chairman, amount equal to four and eight-al salary set forth in the Current yable monthly after five years of percent (9.6%) after 10 years of as a member of the Utilities Com-

duct provided for judges in Article Statutes shall apply to members he Commission shall be liable to n the manner provided for judges Chapter 123 of the General Stat- n shall not engage in any other s, or vocation while in office. a shall be reimbursed for travel ates allowed to State officers and 1, c. 97, s. 2; 1949, c. 1009, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 13, s. 2; 1983 (Reg. Sess., 1984), c. :.)

~~Effect of Amendments. — The 1989 amendment, effective August 12, 1989, substituted "by joint resolution" for "in joint session" in the first sentence of subsection (a).  
 referred to the Department of Commerce (now the Department of Economic Community Development) by former § 143A-174.~~

~~State Government Reorganization. — The Utilities Commission was trans-~~

CASE NOTES

~~Applied in State ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 21 N.C. App. 251, 204 S.E.2d 181 (1974).~~

§ 62-11. Oath of office.

Each utilities commissioner before entering upon the duties of his office shall file with the Secretary of State his oath of office to support the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina, and to well and truly perform the duties of his said office as utilities commissioner, and that he is not the agent or attorney of any public utility, or an employee thereof, and that he has no interest in any public utility. (1933, c. 134, s. 5; 1935, c. 280; 1939, c. 404; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-12. Organization of Commission; adoption of rules and regulations therefor.

To facilitate the work of the Commission and for administrative purposes, the chairman of the Commission, with the consent and approval of the Commission, may organize the work of the Commission in several hearing divisions and operating departments and may designate a member of the Commission as the head of any division or divisions and assign to members of the Commission various duties in connection therewith. Subject to the provisions of the State Personnel Act (Article 2 of Chapter 143 of the General Statutes), the Commission shall prepare and adopt rules and regulations governing the personnel, departments or divisions and all internal affairs and business of the Commission. (1941, c. 97, s. 3; 1949, c. 1009, s. 2; 1957, c. 1062, s. 1; 1963, c. 1165, s. 1.)

~~Editor's Note. — Article 2, Chapter 143, referred to in this section, was repealed by Session Laws 1965, c. 640, s. 1. For present provisions as to State Personnel System, see §§ 126-1 through 126-12.~~

§ 62-13. Chairman to direct Commission.

- (a) The chairman shall be the chief executive and administrative officer of the Commission.
- (b) The chairman shall determine whether matters pending before the Commission shall be considered or heard initially by the full Commission, a panel of three commissioners, a hearing commissioner, or a hearing examiner. Subject to the rules of the Commission, the chairman shall assign members of the Commission to proceedings and shall assign members to preside at proceedings before the full Commission or a panel of three commissioners.

NORTH CAROLINA BOARD OF ETHICS  
116 WEST JONES STREET  
RALEIGH 27603-8003  
(919) 733-2780 FAX (919) 733-2785

6/16/98

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER 127 AS  
AMENDED BY EXECUTIVE ORDER NUMBER 131 BY GOVERNOR JAMES B. HUNT JR.

MAIL FORM TO – BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603  
OR INTEROFFICE MAIL TO THE ADMINISTRATION BUILDING, ROOM 2009Q  
COURIER 51-01-00 FOR ASSISTANCE, CALL MILLIE DONAVANT, 919-733-2780

Name of Person Filing Samuel James Ervin, IV  
Name of Spouse Mary Temple Ervin  
Home Address 517 Lenoir Street  
Morganton, North Carolina 28655  
Home Telephone 828-433-0163

STATE GOVERNMENT EMPLOYEES

Agency, Division \_\_\_\_\_  
Position \_\_\_\_\_  
Address (Include Building & Courier) \_\_\_\_\_  
Telephone Number \_\_\_\_\_

APPOINTEES TO BOARDS, COMMISSIONS, OR COUNCILS

Your Employer, Bvrd. Bvrd. Ervin, Whisnant, McMahon & Ervin, P.A.  
Your Position Title, Attorney  
Business Activity of Your Employer Law firm engaged in the general practice of law  
Your Office Address Post Office Drawer 1269  
Morganton, North Carolina 28680-1269  
Your Telephone Number 828-437-4220  
Name of Board on which you are serving nominated for appointment to the North Carolina Utilities Commission

Are you, or your employer, licensed or regulated by the Board on which you are serving, or have business relationships with the same area of State Government with which you are associated?  
 Yes  No If so, please explain \_\_\_\_\_

USE ATTACHMENTS IF NEEDED

1. List all parcels of real estate located in North Carolina in which you, or your spouse, have an ownership interest valued more than \$10,000. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel. Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

My wife and I own a house and lot which we use as our principal residence located at 517 Lenoir Street, Morganton, North Carolina, as tenants by the entireties. In addition, my wife and I own a 4/18ths interest in a vacant lot located behind our residence which has a total value in excess of \$10,000 as tenants by the entireties; the other owners of interests in the property are Sam J. Ervin, III; Laura Ervin Smith; Leslie Ervin Hansler; Hugh Tate Ervin, Jr.; John W. Ervin, Jr.; Dorothy Ervin; Dorman I. Hall, Jr.; Joseph E. Hall; Sarah Hall; Laura Hall; James K. Hall, III; and Justin M. Hall, all of whom are tenants in common with me and my wife.

I do not currently lease or rent any real property to any agency of state government. The Utilities has jurisdiction over certain types of utility service which are or could be provided at the locations at which I own real property; except in this respect, my service on the Utilities Commission should not affect these tracts of real property.

2. Identify personal property sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

My wife and I have not sold any personal property to or bought personal property from the State within the past two years. My wife and I do not currently lease or rent any personal property to the State.

3. List the name of each publicly-owned company in which the value of securities held by you or your spouse exceeds \$10,000. You may attach a list from your broker.

I own shares in First Union and Sonoco Products which may exceed \$10,000.00 in value. Although I own shares in a number of other publicly-held companies, none of my interests in any particular company exceed the \$10,000 threshold.

4. List the name and business activity of each non-publicly-owned company or business entity in which the value of securities or other equity interests held by you or your spouse exceeds \$10,000, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

I have an ownership interest in the law firm of Bvrd, Bvrd, Ervin, Whisnant, McMahon & Ervin, P.A., in which I have practiced law since 1981.

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With respect to the entities listed, should any of the entities own securities or equity interests exceeding \$10,000 in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

My law firm is a guaranty capitalholder in Lawyers Mutual Liability Insurance Company of North Carolina, lawyer-owned professional liability insurer which operates in North Carolina. I am not certain of the value of this interest. In addition, my law firm operates a retirement plan in which it holds interests in numerous publicly-held companies; although I do not understand this question to require a listing or description of such entities; I will be happy to provide such a statement.

Are you, your spouse, or any of the entities listed licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

I am a licensed attorney and have practiced before the Utilities Commission on behalf of what is now SGL Carbon, the Carolina Utility Customers Association, Inc., and other clients on a regular basis since 1981.

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5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

- (1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or
- (2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity should be listed.

I currently own stock in a number of companies regulated to a greater or lesser extent to the Utilities Commission, including AT&T, BellSouth, Duke Energy, and Sprint; I intend to sell these securities prior to taking office. I am a licensed attorney practicing with the firm of Bvrd, Bvrd, Ervin, Whisnant, McMahon & Ervin, P.A., and have represented the Carolina Utility Customers Association, Inc., an organization of industrial utility customers, and some of its member companies, such as SGL Carbon and National Spinning, before the Utilities Commission; I will resign from my law firm, cease practicing law, and follow the Code of Judicial Conduct in cases which come before the Utilities Commission involving these entities.

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6. List all directorships on all boards on which you are serving. Please explain any situations which could appear to be a conflict of interest with your official duties.

Director - Lawvers Mutual Liability Insurance Company of North Carolina, Inc.; Director - Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.; Director - Center for Death Penalty Litigation, Inc.; Elder - First Presbyterian Church of Morganton, North Carolina. I do not believe any of these relationships involves a conflict of interest with my duties as a member of the Utilities Commission; however, I plan to resign from the first three boards prior to taking office.

7. Are you an elected official at the local government level? If so, please explain.

No.

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the names and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest exceeding \$10,000.

Not applicable.

9. List assets with a valuation of at least \$10,000 each held by you or your spouse which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

My wife and I own interests with a value in excess of \$10,000 in the Amcap Fund, the Colonial Fund A, the Growth Fund of America, the Twentieth Century International Growth Fund, the Twentieth Century Ultra Fund, and the Washington Mutual Investors Fund. In addition, my wife and I have one or more checking and savings accounts at NationsBank which may, at various times, have a value in excess of \$10,000. My wife and I own a United States Treasury bond worth in excess of \$10,000. I am insured under a number of life insurance policies, including ones issued by EVLICO, Chubb Life, and one purchased through my law firm. Finally, I own a professional library of law books, a collection of antique law books, and an IRA at First Citizens, each of which has a value which may exceed \$10,000.00.

*Retiree*

*wife - retirement account w/ Burke County.*

10. List liabilities with a valuation of at least \$10,000 each for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

Neither my wife nor I owe amounts of at least \$10,000 for anything except the mortgage under which we purchased our personal residence.

11. List sources of income for you and your spouse where \$10,000 or more was received from each source as shown. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

I earned at least \$10,000.00 working as an attorney for Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., during 1997. My wife earned in excess of \$10,000.00 during 1997 while employed by Frve Regional Medical Center and the Burke County Department of Health as a nurse. Although we had other sources of income in 1997, neither of us received at least \$10,000.00 from any other single source of income.

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

Although I am subject to regulation as an attorney by the North Carolina State Bar and my wife is subject to regulation as a nurse by the Board of Nursing, neither of these sources of income is controlled by the Utilities Commission.

12. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of \$10,000 from any of the following categories of legal representation:

- Admiralty     Taxation     Decedent's estates     Corporation law     Real property
- Negligence (representing plaintiffs)     Negligence (representing defendants)
- Criminal law     Labor law     Insurance law     Administrative law
- Utilities regulation or representation of regulated utilities     Representation of local governments

My law firm does not maintain records which permit me to answer this question precisely; for that reason, I have checked all areas in which my firm has done significant work at any time in recent years.

13. If the information has not been included in the previous questions, list all non-publicly owned businesses you have been associated with during the past five years as an employee, officer, director, partner, or owner. For each business listed, state your association, and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of the business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

I referee soccer games for schools and other organizations as an independent proprietor and have done so for the past three years. The Utilities Commission has no direct connection with this business.



List your associations with civic organizations if the organizations receive grants or other funding from State Government. Include the type of funding and the name of the State Agency from which the funds is received.

I am currently a member of the Board of Directors of the Center for Death Penalty Litigation, which receives a grant from the North Carolina State Bar.

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14. List all gifts received with a value exceeding \$200 during the twelve months preceding the date of this statement from sources other than your spouse or relatives.

None.

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List all gifts received with a value exceeding \$100 from any source having business with or regulated by the State.

None.

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15. Within the preceding five years have you or your spouse filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceeding under the various laws of the various states of these United States? Within the preceding five years have you or your spouse owned 5% or more of any corporation that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States? Within the preceding five years have you or your spouse been a general partner in any partnership or owned 5% of any corporation which was a general partner in any partnership that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States. If so, provide a brief summary of facts and circumstances regarding each listed bankruptcy.

No.

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16. Having read Executive Order Number 127, as amended by Executive Order 131, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

The only conflicts of interest of which I am aware are discussed above. I plan to sell all stock I own in companies regulated by the Utilities Commission or which appear before the Utilities Commission prior to taking office. I will leave my law firm and resign from all boards of directors on which I am now serving (except the session at my church) upon confirmation by the General Assembly. I will comply with all provisions of the Code of Judicial Conduct, including those portions dealing with the hearing of cases involving former clients, while in office.

### VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments, and to the best of my knowledge and belief it is true, correct, and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

6/12/98

Date

[Handwritten Signature]

Signature of Person Filing

STATE OF NORTH CAROLINA  
COUNTY OF Burke

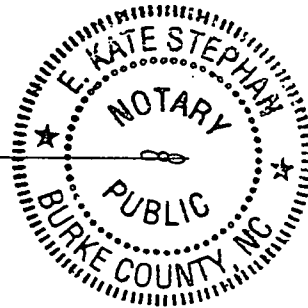
Subscribed and sworn to before me this the 12th day of June, 1998.

My Commission Expires:

1/10/2003

E. Kate Stephan

Notary Public



*Samuel James Ervin, IV*  
*517 Lenoir Street*  
*Morganton, North Carolina 28655*  
*828/433-0163*

October 7, 1998

Millie Donavant  
North Carolina Board of Ethics  
116 West Jones Street  
Raleigh, North Carolina 27603-8003

Dear Ms. Donavant:

This is to confirm our recent telephone conversation, in which I indicated to you that I needed to make a correction to the ethics information which I submitted in connection with my pending nomination for membership on the North Carolina Utilities Commission. At that time, you indicated that I could make any necessary amendments by simply sending you a letter containing the relevant corrected or supplemental information.

The first question posed in the ethics questionnaire inquired as to whether either my spouse or I owned any interest in any parcel of real property located in North Carolina which was valued at over \$10,000. I have recently learned to my surprise that my mother-in-law, Daisy Pennington Temple, actually titled the tract of real property upon which her residence is situated in Davie County, North Carolina, and may have titled an adjoining tract, both of which are located in the vicinity of 118 Roberson Road in Mocksville, North Carolina, to herself and her daughters as tenants in common when she obtained the property in 1977. As far as I have been able to ascertain, the owners of interest in this property are Daisy Pennington Temple, Mary Temple Ervin, and Joy Temple Howerton. Except for the fact that the Utilities Commission has jurisdiction over certain types of utility services which are or could be provided at this location, my service on the Utilities Commission should not be affected by my wife's interest in these tracts of real property.

The sixth question on the ethics questionnaire inquired of the extent to which I serve as a director on any board of directors. I inadvertently omitted any reference to the fact that I am a member of the Board of Directors of the Sam J. Ervin, Jr., Library, which is a charitable organization affiliated with Western Piedmont Community College which is responsible for overseeing the operation of the Sam J. Ervin, Jr., Library at Western Piedmont and the related annual seminar. I simply forgot that I was a member of this board at the time that I completed the initial ethics form and apologize for this omission. I do not believe that this relationship involves a conflict of interest with my duties as a member of the Utilities Commission and do not plan to resign from this board upon taking office.

I trust that this information will be adequate for you to make the necessary ethics determination. If you have any questions, please do not hesitate to let me know.

Sincerely,



Sam J. Ervin, IV

SJE/eks

NORTH CAROLINA BOARD OF ETHICS  
116 WEST JONES STREET  
RALEIGH, NC 27603-8003  
919/733-2780  
Fax: 919/733-2785

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST  
FOR EXECUTIVE ORDER NUMBER 127, AS AMENDED BY EXECUTIVE ORDER 131  
BY GOVERNOR JAMES B. HUNT, JR.

MAIL FORM TO: BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603 OR  
INTEROFFICE MAIL TO THE ADMINISTRATION BUILDING, ROOM 2009Q COURIER 51-01-00  
FOR ASSISTANCE, CALL MILLIE DONAVANT OR MAUREEN ATTA, 919/733-2780278

Executive Order 127 requires that the Statement of Economic Interest be updated annually by May 15<sup>th</sup>.  
New information must be reported and information no longer applicable must be deleted.

IF YOU DO NOT HAVE ANY CHANGES TO REPORT, please sign, date, and have this page notarized by a  
notary public. Upon completion, please return this signed, dated and notarized page ONLY to the above  
address.

IF YOU DO HAVE CHANGES TO REPORT, please disregard this cover sheet and make the applicable  
change to the Statement of Economic Interest form. Please sign, date, and have the form notarized before  
returning it to the Board of Ethics at the above address.

Name of Person Filing: Samuel James Ervin, IV.  
Name of Board Appointed to: North Carolina Utilities Commission  
OR  
Name of State Agency Employed by:

VERIFICATION

I hereby do certify that I have read this form, and to the best of my knowledge and belief have no additional  
information to disclose that was not disclosed in my previously filed Statement of Economic Interest, except as  
shown on the attached pages. I hereby do certify that I have not transferred, and will not transfer, any asset, interest  
or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

04-20-99  
Date

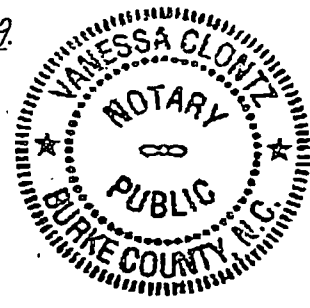
Samuel James Ervin, IV.  
Signature of Person Filing

STATE OF NORTH CAROLINA  
COUNTY OF Burke

Subscribed and sworn before me this the 20 day of April, 1999.

My Commission Expires:  
08/08/2000

Vanessa Clontz  
Notary Public



6. List all directorships on all boards on which you are serving. Please explain any situations which could appear to be a conflict of interest with your official duties.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Are you an elected official at the local government level? If so, please explain.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest exceeding \$10,000.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. List assets with a valuation of at least \$10,000 each held by you or your spouse which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

I stated in the disclosure form that I filed in 1998 that I was insured by a policy of life insurance procured by my law firm. I have recently learned that there are four such policies instead of one. The Twentieth Century International Growth and Twentieth Century Ultra mutual funds are now known as American Century. Except as thus modified, the previous response is correct to the best of my knowledge.

10. List liabilities with a valuation of at least \$10,000 each for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. List the name and business activity of each non-publicly-owned company or business entity in which the value of securities or other equity interests held by you or your spouse exceeds \$10,000, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With respect to the entities listed, should any of the entities own securities or equity interests exceeding \$10,000 in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you, your spouse, or any of the entities listed licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

I do not currently represent any person or business before the Utilities Commission, although I have represented a number of clients before the Utilities Commission in the past as was previously disclosed.

\_\_\_\_\_  
\_\_\_\_\_

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

(1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or

(2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

I do not currently represent any person or business before the Utilities Commission, although I have in the past represented a number of clients before the Utilities Commission as was previously disclosed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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1

SENATE BILL 420

Short Title: Clarify MV Dealers Licensing Law.

(Public)

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Sponsors: Senators Hoyle; Allran, Ballantine, Carpenter, Carter, Cochrane, Dalton, Dannelly, Forrester, Foxx, Garwood, Gulley, Hagan, Horton, Kerr, Lee, Martin of Pitt, Metcalf, Miller, Moore, Odom, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Robinson, Rucho, Shaw of Cumberland, Soles, Warren, and Wellons.

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Referred to: Commerce.

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March 18, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE DEALERS AND MANUFACTURERS LICENSING  
3 LAW.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 20-301 is amended by adding a new subsection that  
6 reads:

7 "(f) In the event that a dealer, who is permitted or required to file a notice,  
8 protest, or petition before the Commissioner within a certain period of time in order  
9 to adjudicate, enforce, or protect rights afforded the dealer under this Article,  
10 voluntarily elects to appeal a policy, determination, or decision of the manufacturer  
11 through an appeals board or internal grievance procedure of the manufacturer, or to  
12 participate in or refer the matter to mediation, arbitration, or other alternative  
13 dispute resolution procedure or process established or endorsed by the manufacturer,  
14 the applicable period of time for the dealer to file the notice, protest, or petition  
15 before the Commissioner under this Article shall not commence until the  
16 manufacturer's appeal board or internal grievance procedure, mediation, arbitration,  
17 or appeals process of the manufacturer has been completed and the dealer has  
18 received notice in writing of the final decision or result of the procedure or process.  
19 Nothing, however, contained in this subsection shall be deemed to require that any  
20 dealer exhaust any internal grievance or other alternative dispute process required or

1 established by the manufacturer before seeking redress from the Commissioner as  
2 provided in this Article."

3 Section 2. G.S. 20-305 reads as rewritten:

4 "**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**  
5 **franchise; preventing transfer of ownership; granting additional franchises;**  
6 **terminating franchises without good cause; preventing family succession.**

7 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor  
8 branch, or any field representative, officer, agent, or any representative whatsoever of  
9 any of them:

- 10 (1) To require, coerce, or attempt to coerce any dealer to accept  
11 delivery of any motor vehicle or vehicles, parts or accessories  
12 therefor, or any other commodities, which shall not have been  
13 ordered by ~~such dealer~~, that dealer, or to accept delivery of any  
14 motor vehicle or vehicles which have been equipped in a manner  
15 other than as specified by the dealer.
- 16 (2) To require, coerce, or attempt to coerce any dealer to enter into  
17 any agreement with such manufacturer, factory branch, distributor,  
18 or distributor branch, or representative thereof, or do any other act  
19 unfair to such dealer, by threatening to cancel any franchise  
20 existing between such manufacturer, factory branch, distributor,  
21 distributor branch, or representative thereof, and such dealer;
- 22 (3) Unfairly without due regard to the equities of the dealer, and  
23 without just provocation, to cancel the franchise of such dealer;
- 24 (4) Notwithstanding the terms of any franchise agreement, to prevent  
25 or refuse to approve the sale or transfer of the ownership of a  
26 dealership by the sale of the business, stock transfer, or otherwise,  
27 or the transfer, sale or assignment of a dealer franchise, or a  
28 change in the executive management or principal operator of the  
29 dealership, or relocation of the dealership to another site within  
30 the dealership's relevant market area, if the Commissioner has  
31 determined, if requested in writing by the dealer within 30 days  
32 after receipt of an objection to the proposed transfer, sale,  
33 assignment, relocation, or change, and after a hearing on the  
34 matter, that the failure to permit or honor the transfer, sale,  
35 assignment, relocation, or change is unreasonable under the  
36 circumstances. No franchise may be transferred, sold, assigned,  
37 relocated, or the executive management or principal operators  
38 changed, unless the franchisor has been given at least 30 days'  
39 prior written notice as to the identity, financial ability, and  
40 qualifications of the proposed transferee, the identity and  
41 qualifications of the persons proposed to be involved in executive  
42 management or as principal operators, and the location and site  
43 plans of any proposed relocation. The franchisor shall send the  
44 dealership notice of objection, by registered or certified mail,



1 return receipt requested, to the proposed transfer, sale, assignment,  
2 relocation, or change within 30 days after receipt of notice from  
3 the dealer, as provided in this section. Failure by the franchisor to  
4 send notice of objection within 30 days shall constitute waiver by  
5 the franchisor of any right to object to the proposed transfer, sale,  
6 assignment, relocation, or change. ~~The manufacturer or distributor~~  
7 ~~has the burden of proving that the proposed transfer, sale,~~  
8 ~~assignment, relocation, or change is unreasonable under the~~  
9 ~~circumstances.~~ With respect to a proposed transfer of ownership,  
10 sale, or assignment, the sole issue for determination by the  
11 Commissioner and the sole issue upon which the Commissioner  
12 shall hear or consider evidence is whether, by reason of poor  
13 character or lack of financial ability, the proposed transferee is  
14 unfit to own the dealership. For purposes of this subdivision, the  
15 refusal by the manufacturer to accept a proposed transferee who is  
16 of good moral character and who otherwise meets the written,  
17 reasonable, and uniformly applied financial requirements, if any,  
18 required by the manufacturer of owners of its franchised  
19 automobile dealerships is presumed to demonstrate the  
20 manufacturer's failure to prove that the proposed transferee is unfit  
21 to own the dealership. With respect to a proposed change in the  
22 executive management or principal operator of the dealership, the  
23 sole issue for determination by the Commissioner and the sole  
24 issue on which the Commissioner shall hear or consider evidence  
25 shall be whether, by reason of lack of training, lack of prior  
26 experience, poor past performance, or poor character, the  
27 proposed candidate for a position within the executive  
28 management or as principal operator of the dealership is unfit for  
29 the position. For purposes of this subdivision, the refusal by the  
30 manufacturer to accept a proposed candidate for executive  
31 management or as principal operator who is of good moral  
32 character and who otherwise meets the written, reasonable, and  
33 uniformly applied standards or qualifications, if any, of the  
34 manufacturer relating to the business experience and prior  
35 performance of executive management required by the  
36 manufacturers of its dealers is presumed to demonstrate the  
37 manufacturer's failure to prove the proposed candidate for  
38 executive management or as principal operator is unfit to serve the  
39 the capacity. With respect to a proposed relocation or other  
40 proposed change, the issue for determination by the Commissioner  
41 is whether the proposed relocation or other change is unreasonable  
42 under the circumstances. For purposes of this subdivision, the  
43 refusal by the manufacturer to agree to a proposed relocation  
44 which meets the written, reasonable, and uniformly applied

1 standards or criteria, if any, of the manufacturer relating to dealer  
2 relocations is presumed to demonstrate that the manufacturer's  
3 failure to prove the proposed relocation is unreasonable under the  
4 circumstances. The manufacturer shall have the burden of proof  
5 before the Commissioner under this subdivision. It is unlawful for  
6 a manufacturer to in any way condition its approval of a proposed  
7 transfer, sale, assignment, change in the dealer's executive  
8 management or principal operator on the existing or proposed  
9 dealer's willingness to construct a new facility, renovate the  
10 existing facility, acquire or refrain from acquiring one or more  
11 line-makes of vehicles, separate or divest one or more line-makes  
12 of vehicle, or establish or maintain exclusive facilities, personnel,  
13 or display space. It is unlawful for a manufacturer to, in any way,  
14 condition its approval of a proposed relocation on the existing or  
15 proposed dealer's willingness to acquire or refrain from acquiring  
16 one or more line-makes of vehicles, separate or divest one or more  
17 line-makes of vehicle, or establish or maintain exclusive facilities,  
18 personnel, or display space.

19 (5) To enter into a franchise establishing an additional new motor  
20 vehicle dealer or relocating an existing new motor vehicle dealer  
21 into a relevant market area where the same line make is then  
22 represented without first notifying in writing the Commissioner and  
23 each new motor vehicle dealer in that line make in the relevant  
24 market area of the intention to establish an additional dealer or to  
25 relocate an existing dealer within or into that market area. Within  
26 30 days of receiving such notice or within 30 days after the end of  
27 any appeal procedure provided by the manufacturer, any new  
28 motor vehicle dealer may file with the Commissioner a protest to  
29 the establishing or relocating of the new motor vehicle dealer.  
30 When a protest is filed, the Commissioner shall promptly inform  
31 the manufacturer that a timely protest has been filed, and that the  
32 manufacturer shall not establish or relocate the proposed new  
33 motor vehicle dealer until the Commissioner has held a ~~hearing,~~  
34 ~~nor thereafter, if the Commissioner~~ hearing and has determined  
35 that there is good cause for not permitting the addition or  
36 relocation of such new motor vehicle dealer.

37 a. This section does not apply:

- 38 1. To the relocation of an existing new motor vehicle  
39 dealer within that dealer's relevant market area,  
40 provided that the relocation not be at a site within 10  
41 miles of a licensed new motor vehicle dealer for the  
42 same line make of motor ~~vehicle;~~ vehicle. If this sub-  
43 subdivision is applicable, only dealers trading in the  
44 same line-make of vehicle that are located within the

- 1                                    10-mile radius shall be entitled to notice from the  
2                                    manufacturer and have the protest rights afforded  
3                                    under this section; or  
4                                    2. If the proposed additional new motor vehicle dealer  
5                                    is to be established at or within two miles of a  
6                                    location at which a former licensed new motor  
7                                    vehicle dealer for the same line make of new motor  
8                                    vehicle had ceased operating within the previous two  
9                                    years;  
10                                   3. To the relocation of an existing new motor vehicle  
11                                   dealer within two miles of the existing site of the new  
12                                   motor vehicle ~~dealership; dealership~~ if the franchise  
13                                   has been operating on a regular basis from the  
14                                   existing site for a minimum of three years  
15                                   immediately preceding the relocation; or  
16                                   4. To the relocation of an existing new motor vehicle  
17                                   dealer if the proposed site of the relocated new motor  
18                                   vehicle dealership is further away from all other new  
19                                   motor vehicle dealers of the same line make in that  
20                                   relevant market area.  
21                                   b. In determining whether good cause has been established for  
22                                   not entering into or relocating an additional new motor  
23                                   vehicle dealer for the same line make, the Commissioner  
24                                   shall take into consideration the existing circumstances,  
25                                   including, but not limited to:  
26                                   1. The ~~permanency of the investment of both the~~  
27                                   ~~existing and proposed additional new motor vehicle~~  
28                                   ~~dealers; dealer;~~ dealer;  
29                                   2. ~~Growth or decline in population, density of~~  
30                                   ~~population, and new car registrations in the relevant~~  
31                                   ~~market area;~~  
32                                   3. ~~Effect on the consuming public in the relevant market~~  
33                                   ~~area;~~  
34                                   4. ~~Whether it is injurious or beneficial to the public~~  
35                                   ~~welfare for an additional new motor vehicle dealer to~~  
36                                   ~~be established;~~  
37                                   5. 2. Whether the new motor vehicle dealers of the same  
38                                   line make in that ~~relevant~~ market area are providing  
39                                   adequate ~~competition and convenient~~ customer care  
40                                   for the owners of motor vehicles of the same line  
41                                   make in the market area which shall include the  
42                                   adequacy of motor vehicle sales and service facilities,  
43                                   equipment, supply of motor vehicle parts, and  
44                                   qualified service ~~personnel; personnel.~~ For purposes



1           renotification, a new hearing, and a new determination as  
2           provided in this section. If the Commissioner fails to  
3           determine that good cause exists for permitting the proposed  
4           additional or relocated motor vehicle dealership, the  
5           manufacturer seeking the proposed additional dealership or  
6           dealer seeking to relocate may not again provide notice of  
7           its intention or otherwise attempt to establish an additional  
8           dealership or relocate to any location within 10 miles of the  
9           site of the original proposed additional dealership or  
10           relocation site for a minimum of five years from the date of  
11           the Commissioner's determination.

12           g. (See editor's note for applicability) For purposes of this  
13           subdivision, the addition, creation, or operation of a  
14           "satellite" or other facility, not physically part of or  
15           contiguous to an existing licensed new motor vehicle dealer,  
16           whether or not owned or operated by a person or other  
17           entity holding a franchise as defined by G.S. 20-286(8a), at  
18           which warranty service work authorized or reimbursed by a  
19           manufacturer is performed or at which new motor vehicles  
20           are offered for sale to the public, shall be considered an  
21           additional new motor vehicle dealer requiring a showing of  
22           good cause, prior notification to existing new motor vehicle  
23           dealers of the same line make of vehicle within the relevant  
24           market area by the manufacturer and the opportunity for a  
25           hearing before the Commissioner as provided in this  
26           subdivision.

27           (6) Notwithstanding the terms, provisions or conditions of any  
28           franchise or notwithstanding the terms or provisions of any waiver,  
29           to terminate, cancel or fail to renew any franchise with a licensed  
30           new motor vehicle dealer unless the manufacturer has satisfied the  
31           notice requirements of subparagraph c. and the Commissioner has  
32           determined, if requested in writing by the dealer within the time  
33           period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and  
34           after a hearing on the matter, that there is good cause for the  
35           termination, cancellation, or nonrenewal of the franchise and that  
36           the manufacturer has acted in good faith as defined in this act  
37           regarding the termination, cancellation or nonrenewal. When such  
38           a petition is made to the Commissioner by a dealer for  
39           determination as to the existence of good cause and good faith for  
40           the termination, cancellation or nonrenewal of a franchise, the  
41           Commissioner shall promptly inform the manufacturer that a  
42           timely petition has been filed, and the franchise in question shall  
43           continue in effect pending the Commissioner's decision. The  
44           Commissioner shall try to conduct the hearing and render a final

1 determination within 180 days after a petition has been filed. If the  
2 termination, cancellation or nonrenewal is pursuant to G.S. 20-  
3 305(6)c1III then the Commissioner shall give the proceeding  
4 priority consideration and shall try to render his final  
5 determination no later than 90 days after the petition has been  
6 filed. Any parties to a hearing by the Commissioner under this  
7 section shall have a right of review of the decision in a court of  
8 competent jurisdiction pursuant to Chapter 150B of the General  
9 Statutes. Any determination of the Commissioner under this  
10 section finding that good cause exists for the nonrenewal,  
11 cancellation, or termination of any franchise shall automatically be  
12 stayed during any period that the affected dealer shall have the  
13 right to judicial review or appeal of the determination before the  
14 superior court or any other appellate court and during the  
15 pendency of any appeal. Furthermore, unless and until the  
16 termination, cancellation, or nonrenewal of a dealer's franchise  
17 shall finally become effective, in light of any stay or any order of  
18 the commissioner determining that good cause exists for the  
19 termination, cancellation, or nonrenewal of a dealer's franchise as  
20 provided in this paragraph, a dealer who receives a notice of  
21 termination, cancellation, or nonrenewal from a manufacturer as  
22 provided in this subdivision shall continue to have the same rights  
23 to assign, sell, or transfer the franchise to a third party under the  
24 franchise and as permitted under G.S. 20-305(4) as if notice of the  
25 termination had not been given by the manufacturer. Any  
26 franchise under notice or threat of termination, cancellation, or  
27 nonrenewal by the manufacturer which is duly transferred in  
28 accordance with G.S. 20-305(4) shall not be subject to termination  
29 by reason of failure of performance or breaches of the franchise on  
30 the part of the transferor.

31 a. Notwithstanding the terms, provisions or conditions of any  
32 franchise or the terms or provisions of any waiver, good  
33 cause shall exist for the purposes of a termination,  
34 cancellation or nonrenewal when:

35 1. There is a failure by the new motor vehicle dealer to  
36 comply with a provision of the franchise which  
37 provision is both reasonable and of material  
38 significance to the franchise relationship provided  
39 that the dealer has been notified in writing of the  
40 failure within ~~180~~ 90 days after the manufacturer first  
41 acquired knowledge of such failure;

42 2. If the failure by the new motor vehicle dealer relates  
43 to the performance of the new motor vehicle dealer  
44 in sales or service, then good cause shall be defined

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as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

- I. The notification stated that notice was provided of failure of performance pursuant to this section;
  - II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and
  - III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.
- b. The manufacturer shall have the burden of proof under this section.
- c. Notification of Termination, Cancellation and Nonrenewal.
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1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:
    - I. In the manner described in G.S. 20-305(6)c2 below; and
    - II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or
    - III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:
      - A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

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- B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
  - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
  - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
- IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.
- V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than 1 year after the manufacturer first acquired knowledge of the basic facts comprising the failure.
2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
- I. A statement of intention to terminate, cancel or not to renew the franchise;
  - II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and
  - III. The date on which the termination, cancellation or nonrenewal takes effect.
3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.
- d. Payments. --
1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor,



1 pursuant to this section, the new motor vehicle dealer  
2 shall be allowed fair and reasonable compensation by  
3 the manufacturer for the:

- 4 I. New motor vehicle inventory that has been  
5 acquired from the manufacturer within 18  
6 months, at a price not to exceed the original  
7 manufacturer's price to the dealer, and which  
8 has not been altered or damaged, and which  
9 has not been driven more than 200 miles, and  
10 for which no certificate of title has been issued;  
11 II. Unused, undamaged and unsold supplies and  
12 parts purchased from the manufacturer, at a  
13 price not to exceed the original manufacturer's  
14 price to the dealer, provided such supplies and  
15 parts are currently offered for sale by the  
16 manufacturer or distributor in its current parts  
17 catalogs and are in salable condition;  
18 III. ~~Equipment~~ Equipment, signs, and furnishings  
19 that have not been altered or damaged and that  
20 have been required by the manufacturer or  
21 distributor to be purchased by the new motor  
22 vehicle dealer from the manufacturer or  
23 distributor, or their approved sources; and  
24 IV. Special tools that have not been altered or  
25 damaged and that have been required by the  
26 manufacturer or distributor to be purchased by  
27 the new motor vehicle dealer from the  
28 manufacturer or distributor, or their approved  
29 sources within five years immediately  
30 preceding the termination, nonrenewal or  
31 cancellation of the franchise.

- 32 2. Fair and reasonable compensation for the above shall  
33 be paid by the manufacturer within 90 days of the  
34 effective date of termination, cancellation or  
35 nonrenewal, provided the new motor vehicle dealer  
36 has offered to convey clear title ~~to the inventory and~~  
37 ~~has conveyed title~~ and possession of the same to the  
38 manufacturer. The manufacturer shall be obligated to  
39 pay or reimburse the dealer for any transportation  
40 charges associated with the manufacturer's repurchase  
41 obligations under this sub-subparagraph. The  
42 manufacturer may not charge the dealer any  
43 handling, restocking, or other similar costs or fees

1 associated with items repurchased by the  
2 manufacturer under this sub-subparagraph.

3 e. Dealership Facilities Assistance upon Termination,  
4 Cancellation or Nonrenewal. --

5 In the event of the termination, cancellation or  
6 nonrenewal by the manufacturer or distributor under this  
7 section, except termination, cancellation or nonrenewal for  
8 insolvency, license revocation, conviction of a crime  
9 involving moral turpitude, or fraud by a dealer-owner:

10 1. Subject to paragraph 3, if the new motor vehicle  
11 dealer is leasing the dealership facilities from a lessor  
12 other than the manufacturer, the manufacturer shall  
13 pay the new motor vehicle dealer a sum equivalent to  
14 the rent for the unexpired term of the lease or ~~one~~  
15 three year's rent, whichever is less, or such longer  
16 term as is provided in the franchise agreement  
17 between the dealer and manufacturer; or

18 2. Subject to paragraph 3, if the new motor vehicle  
19 dealer owns the dealership facilities, the manufacturer  
20 shall pay the new motor vehicle dealer a sum  
21 equivalent to the reasonable rental value of the  
22 dealership facilities for ~~one year~~ three years.

23 3. ~~Provided nothing in this paragraph e. shall relieve a~~  
24 ~~lessee or owner, as the case may be, from the~~  
25 ~~obligation to mitigate damages under the lease, nor~~  
26 ~~prevent a manufacturer from occupying and using the~~  
27 ~~dealership facilities while paying rent under~~  
28 ~~subsections 1 and 2, nor prevent a manufacturer from~~  
29 ~~obligations by negotiating a lease termination, a~~  
30 ~~sublease or a new lease. Any amounts recovered by~~  
31 ~~the lessee or owner resulting from mitigation of~~  
32 ~~damages shall be deducted from the amount due from~~  
33 ~~the manufacturer.~~

34 In order to be entitled to facilities assistance from the  
35 manufacturer, as provided in this paragraph e., no  
36 dealer, owner, or lessee, as the case may be, shall  
37 have no obligation to mitigate damages under the  
38 lease; provided, however, that to the extent that a  
39 dealer, owner, or lessee does elect to voluntarily  
40 mitigate damages, the dealer shall be obligated to pay  
41 the manufacturer the net revenue received from such  
42 mitigation up to the total amount of facilities  
43 assistance which the dealer has received from the  
44 manufacturer pursuant to sub-subdivisions 1. and 2.

1 To the extent and for such uses and purposes as may  
2 be consistent with the terms of the lease, a  
3 manufacturer who pays facilities assistance to a dealer  
4 under this paragraph e. shall be entitled to occupy  
5 and use the dealership facilities during the years for  
6 which the manufacturer shall have paid rent under  
7 sub-subdivisions 1. and 2.

8 4. In the event the termination relates to fewer than all  
9 of the franchises operated by the dealer at a single  
10 location, the amount of facilities assistance which the  
11 manufacturer is required to pay the dealer under this  
12 sub-subdivision shall be based on the proportion of  
13 gross revenue received from the sale and lease of new  
14 vehicles by the dealer and from the dealer's parts and  
15 service operations during the three years immediately  
16 preceding the effective date of the termination (or  
17 any shorter period that the dealer may have held  
18 these franchises) of the line-makes being terminated,  
19 in relation to the gross revenue received from the sale  
20 and lease of all line-makes of new vehicles by the  
21 dealer and from the total of the dealer's and parts  
22 and service operations from this location during the  
23 same three-year period.

24 5. The compensation required for facilities assistance  
25 under this paragraph e. shall be paid by the  
26 manufacturer within 90 days of the effective date of  
27 termination, cancellation, or nonrenewal.

28 f. The provisions of ~~paragraphs~~ sub-subdivisions d. and e.  
29 above shall not be applicable when the termination,  
30 nonrenewal or cancellation of the franchise agreement is the  
31 result of the voluntary act of the dealer.

32 Notwithstanding the terms of any contract or agreement,  
33 any dealer's termination or resignation shall not be deemed  
34 to be voluntary if that termination or resignation occurred  
35 under the manufacturer's threat of nonrenewal, cancellation,  
36 or termination of the franchise.

37 (7) Notwithstanding the terms of any contract or agreement, to prevent  
38 or refuse to honor the succession to a dealership, including the  
39 franchise, by a motor vehicle dealer's designated successor as  
40 provided for under this subsection.

41 a. Any owner of a new motor vehicle dealership may appoint  
42 by will, or any other written instrument, a designated  
43 successor to succeed in the respective ownership interest or  
44 interest as principal operator of the said owner in the new

1 motor vehicle dealership, including the franchise, upon the  
2 death or incapacity of the ~~owner~~ owner or principal  
3 operator. In order for succession to the position of principal  
4 operator to occur by operation of law in accordance with  
5 sub-subdivision c. below, the owner's choice of a successor  
6 must be approved by the dealer, in accordance with the  
7 dealer's bylaws, if applicable, either prior or subsequent to  
8 the death or incapacity of the existing principal operator.

9 b. Any objections by a manufacturer or distributor to an  
10 owner's appointment of a designated successor shall be  
11 asserted in accordance with the following procedure:

12 1. Within 30 days after receiving written notice of the  
13 identity of the owner's designated successor and  
14 general information as to the financial ability and  
15 qualifications of the designated successor, the  
16 franchisor shall send the owner and designated  
17 successor notice of objection, by registered or  
18 certified mail, return receipt requested, to the  
19 appointment of the designated successor. The notice  
20 of objection shall state in detail all facts which  
21 constitute the basis for the contention on the part of  
22 the manufacturer or distributor that good cause, as  
23 defined in this sub-subdivision below, exists for  
24 rejection of the designated successor. Failure by the  
25 franchisor to send notice of objection within 30 days  
26 and otherwise as provided in this sub-subdivision  
27 shall constitute waiver by the franchisor of any right  
28 to object to the appointment of the designated  
29 successor.

30 2. Any time within 30 days of receipt of the  
31 manufacturer's notice of objection the owner or the  
32 designated successor may file a request in writing  
33 with the Commissioner that the Commissioner hold  
34 an evidentiary hearing and determine whether good  
35 cause exists for rejection of the designated successor.  
36 When such a request is filed, the Commissioner shall  
37 promptly inform the affected manufacturer or  
38 distributor that a timely request has been filed.

39 3. The Commissioner shall endeavor to hold the  
40 evidentiary hearing required under this sub-  
41 subdivision and render a determination within 180  
42 days after receipt of the written request from the  
43 owner or designated successor. In determining  
44 whether good cause exists for rejection of the owner's

- 1 appointed designated successor, the manufacturer or  
2 distributor has the burden of proving that the  
3 designated successor is a person who is not of good  
4 moral character or does not meet the franchisor's  
5 existing written and reasonable standards and,  
6 considering the volume of sales and service of the  
7 new motor vehicle dealer, uniformly applied  
8 minimum business experience standards in the market  
9 area.
- 10 4. Any parties to a hearing by the Commissioner  
11 concerning whether good cause exists for the  
12 rejection of the dealer's designated successor shall  
13 have a right of review of the decision in a court of  
14 competent jurisdiction pursuant to Chapter 150B of  
15 the General Statutes.
- 16 5. Nothing in this sub-subdivision shall preclude a  
17 manufacturer or distributor from, upon its receipt of  
18 written notice from ~~a dealer~~ an owner of the identity  
19 of the ~~dealer's~~ owner's designated successor, requiring  
20 that the designated successor promptly provide  
21 personal and financial data that is reasonably  
22 necessary to determine the financial ability and  
23 qualifications of the designated successor; provided,  
24 however, that such a request for additional  
25 information shall not delay any of the time periods or  
26 constraints contained herein.
- 27 6. In the event death or incapacity of the owner or  
28 principal operator occurs prior to the time a  
29 manufacturer or distributor receives notice of the  
30 owner's appointment of a designated successor or  
31 before the Commissioner has rendered a  
32 determination as provided above, the existing  
33 franchise shall remain in effect and the designated  
34 successor shall be deemed to have succeeded to all of  
35 the owner's or principal operator's rights and  
36 obligations in the dealership and under the franchise  
37 until a determination is made by the Commissioner or  
38 the rights of the parties have otherwise become fixed  
39 in accordance with this sub-subdivision.
- 40 c. Except as otherwise provided in sub-subdivision d. of this  
41 subdivision, any designated successor of a deceased or  
42 incapacitated owner or principal operator of a new motor  
43 vehicle dealership appointed by such owner in substantial  
44 compliance with this section shall, by operation of law,

1 succeed at the time of such death or incapacity to all of the  
2 ~~ownership~~ rights and obligations of the owner or principal  
3 operator in the new motor vehicle dealership and under the  
4 existing franchise.

- 5 d. Within 60 days after the death or incapacity of the ~~owner,~~  
6 owner or principal operator, a designated successor  
7 appointed in substantial compliance with this section shall  
8 give the affected manufacturer or distributor written notice  
9 of his or her succession to the ~~ownership~~ position of owner  
10 or principal operator of the new motor vehicle dealership;  
11 provided, however, that the failure of the designated  
12 successor to give the manufacturer or distributor written  
13 notice as provided above within 60 days of the ~~owner's~~  
14 death or incapacity of the owner or principal operator shall  
15 not result in the waiver or termination of the designated  
16 successor's right to succeed to the ownership of the new  
17 motor vehicle dealership unless the manufacturer or  
18 distributor gives written notice of this provision to either the  
19 designated successor or the deceased or incapacitated  
20 owner's executor, administrator, guardian or other fiduciary  
21 by certified or registered mail, return receipt requested, and  
22 said written notice grants not less than 30 days time within  
23 which the designated successor may give the notice required  
24 hereunder, provided the designated successor or the  
25 deceased or incapacitated owner's executor, administrator,  
26 guardian or other fiduciary has given the manufacturer  
27 reasonable notice of death or incapacity. Within 30 days of  
28 receipt of the notice by the manufacturer or distributor from  
29 the designated successor provided in this paragraph, the  
30 manufacturer or distributor may request that the designated  
31 successor complete the application forms generally utilized  
32 by the manufacturer or distributor to review the designated  
33 successor's qualifications to establish a successor dealership.  
34 Within 30 days of receipt of the completed forms, the  
35 manufacturer or distributor shall send a letter by certified or  
36 registered mail, return receipt requested, advising the  
37 designated successor of facts and circumstances which have  
38 changed since the manufacturer's or distributor's original  
39 approval of the designated successor, and which have caused  
40 the manufacturer or distributor to object to the designated  
41 successor. Upon receipt of such notice, the designated  
42 successor may either designate an alternative successor or  
43 may file a request for evidentiary hearing in accordance  
44 with the procedures provided in sub-subdivisions b. 2.-5. of

- 1 this subdivision. In any such hearing, the manufacturer or  
2 distributor shall be limited to facts and circumstances which  
3 did not exist at the time the designated successor was  
4 originally approved or evidence which was originally  
5 requested to be produced by the designated successor at the  
6 time of the original request and was ~~either not produced or~~  
7 ~~the material which was produced was incorrect. fraudulent.~~  
8 e. The designated successor shall agree to be bound by all  
9 terms and conditions of the franchise in effect between the  
10 manufacturer or distributor and the owner at the time of the  
11 owner's or principal operator's death or incapacity, if so  
12 requested in writing by the manufacturer or distributor  
13 subsequent to the owner's or principal operator's death or  
14 incapacity.  
15 f. This section does not preclude an owner of a new motor  
16 vehicle dealership from designating any person as his or her  
17 successor by written instrument filed with the manufacturer  
18 or distributor, and, in the event there is an inconsistency  
19 between the successor named in such written instrument and  
20 the designated successor otherwise appointed by the owner  
21 consistent with the provisions of this section, and that  
22 written instrument has not been revoked by the owner of  
23 the new motor vehicle dealership in writing to the  
24 manufacturer or distributor, then the written instrument  
25 filed with the manufacturer or distributor shall govern as to  
26 the appointment of the successor.  
27 (8) To require, coerce, or attempt to coerce any new motor vehicle  
28 dealer in this State to order or accept delivery of any new motor  
29 vehicle with special features, options, accessories or equipment  
30 which are either:  
31 a. ~~not~~ Not included in the list price of ~~such~~ those motor  
32 vehicles as publicly advertised by the manufacturer or  
33 ~~distributor. distributor; or~~  
34 b. Added by the manufacturer or distributor at port or at any  
35 other time subsequent to the time assembly of the vehicle  
36 has been completed at the manufacturer's factory.  
37 (9) To require, coerce, or attempt to coerce any new motor vehicle  
38 dealer in this State to participate monetarily in an advertising  
39 campaign or contest, or to purchase unnecessary or unreasonable  
40 quantities of any promotional materials, training materials, ~~training~~  
41 ~~programs~~, showroom or other display ~~decorations or materials~~  
42 decorations, materials, computer equipment or programs, or special  
43 tools at the expense of the new motor vehicle dealer, provided that  
44 nothing in this subsection shall preclude a manufacturer or

1 distributor from including an unitemized uniform charge in the  
2 base price of the new motor vehicle charged to the dealer where  
3 such charge is attributable to advertising costs incurred or to be  
4 incurred by the manufacturer or distributor in the ordinary courses  
5 of its business.

6 (10) To require, coerce, or attempt to coerce any new motor vehicle  
7 dealer in this State to change the capital structure of the new  
8 motor vehicle dealer or the means by or through which the new  
9 motor vehicle dealer finances the operation of the dealership  
10 provided that the new motor vehicle dealer at all times meets any  
11 reasonable capital standards determined by the manufacturer in  
12 accordance with uniformly applied criteria; and also provided that  
13 no change in the capital structure shall cause a change in the  
14 principal management or have the effect of a sale of the franchise  
15 without the consent of the manufacturer or distributor, provided  
16 that said consent shall not be unreasonably withheld.

17 (11) To require, coerce, or attempt to coerce any new motor vehicle  
18 dealer in this State to refrain from participation in the management  
19 of, investment in, or the acquisition of any other line of new motor  
20 vehicle or related products; Provided, however, that this subsection  
21 does not apply unless the new motor vehicle dealer maintains a  
22 reasonable line of credit for each make or line of new motor  
23 vehicle, and the new motor vehicle dealer remains in compliance  
24 with any reasonable capital standards and facilities requirements of  
25 the manufacturer. The reasonable facilities requirements shall not  
26 include any requirement that a new motor vehicle dealer establish  
27 or maintain exclusive facilities, personnel, or display space, ~~when  
28 such requirements, or any of them, would be unreasonable in light  
29 of current economic conditions and would not otherwise be  
30 justified by reasonable business considerations.~~ space.

31 (12) To require, coerce, or attempt to coerce any new motor vehicle  
32 dealer in this State to change location of the dealership, or to make  
33 any substantial alterations to the dealership premises or facilities,  
34 when to do so would be unreasonable, or without written  
35 assurance of a sufficient supply of new motor vehicles so as to  
36 justify such an expansion, in light of the current market and  
37 economic conditions.

38 (13) To require, coerce, or attempt to coerce any new motor vehicle  
39 dealer in this State to prospectively assent to a release, assignment,  
40 novation, waiver or estoppel which would relieve any person from  
41 liability to be imposed by this law or to require any controversy  
42 between a new motor vehicle dealer and a manufacturer,  
43 distributor, or representative, to be referred to any person other  
44 than the duly constituted courts of the State or the United States of



- 1 America, or to the Commissioner, if such referral would be  
2 binding upon the new motor vehicle dealer.
- 3 (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle  
4 parts or accessories in reasonable quantities relative to the new  
5 motor vehicle dealer's facilities and sales potential in the new  
6 motor vehicle dealer's ~~relevant market area, and area as~~  
7 determined in accordance with reasonably applied economic  
8 principles, or within a reasonable time, after receipt of an order  
9 from a dealer having a franchise for the retail sale of any new  
10 motor vehicle sold or distributed by the manufacturer or  
11 distributor, any new vehicle, parts or accessories to new vehicles as  
12 are covered by such franchise, and such vehicles, parts or  
13 accessories as are publicly advertised as being available or actually  
14 being delivered. The delivery to another dealer of a motor vehicle  
15 of the same model and similarly equipped as the vehicle ordered  
16 by a motor vehicle dealer who has not received delivery thereof,  
17 but who has placed his written order for the vehicle prior to the  
18 order of the dealer receiving the vehicle, shall be evidence of a  
19 delayed delivery of, or refusal to deliver, a new motor vehicle to a  
20 motor vehicle dealer within a reasonable time, without cause. This  
21 subsection is not violated, however, if such failure is caused by acts  
22 or causes beyond the control of the manufacturer, distributor,  
23 factory branch, or factory representative.
- 24 (15) To refuse to disclose to any new motor vehicle dealer, handling the  
25 same line make, the manner and mode of distribution of that line  
26 make within the State.
- 27 (16) To award money, goods, services, or any other benefit to any new  
28 motor vehicle dealership employee, either directly or indirectly,  
29 unless such benefit is promptly accounted for, and transmitted to,  
30 or approved by, the new motor vehicle dealer.
- 31 (17) To increase prices of new motor vehicles which the new motor  
32 vehicle dealer had ordered and which the manufacturer or  
33 distributor has accepted for immediate delivery for private retail  
34 consumers prior to the new motor vehicle dealer's receipt of the  
35 written official price increase notification. A sales contract signed  
36 by a private retail consumer shall constitute evidence of each such  
37 order provided that the vehicle is in fact delivered to that  
38 customer. Price differences applicable to new model or series shall  
39 not be considered a price increase or price decrease. Price changes  
40 caused by either: (i) the addition to a new motor vehicle of  
41 required or optional equipment; or (ii) revaluation of the United  
42 States dollar, in the case of foreign-make vehicles or components;  
43 or (iii) an increase in transportation charges due to increased rates  
44 imposed by carriers; or (iv) new tariffs or duties imposed by the

- 1 United States of America or any other governmental authority,  
2 shall not be subject to the provisions of this subsection.
- 3 (18) To prevent or attempt to prevent a dealer from receiving fair and  
4 reasonable compensation for the value of the franchised business  
5 transferred in accordance with G.S. 20-305(4) above.
- 6 (19) To offer any refunds or other types of inducements to any person  
7 for the purchase of new motor vehicles of a certain line make to be  
8 sold to the State or any political subdivision thereof without  
9 making the same offer available upon request to all other new  
10 motor vehicle dealers in the same line make within the State.
- 11 (20) To release to any outside party, except under subpoena or as  
12 otherwise required by law or in an administrative, judicial or  
13 arbitration proceeding involving the manufacturer or new motor  
14 vehicle dealer, any confidential business, financial, or personal  
15 information which may be from time to time provided by the new  
16 motor vehicle dealer to the manufacturer, without the express  
17 written consent of the new motor vehicle dealer.
- 18 (21) To deny any new motor vehicle dealer the right of free association  
19 with any other new motor vehicle dealer for any lawful purpose.
- 20 (22) To unfairly discriminate among its new motor vehicle dealers with  
21 respect to warranty reimbursements or authority granted its new  
22 motor vehicle dealers to make warranty adjustments with retail  
23 customers.
- 24 (23) To engage in any predatory practice against or unfairly compete  
25 with a new motor vehicle dealer located in this State.
- 26 (24) To terminate any franchise solely because of the death or  
27 incapacity of an owner who is not listed in the franchise as one on  
28 whose expertise and abilities the manufacturer relied in the  
29 granting of the franchise.
- 30 (25) To require, coerce, or attempt to coerce a new motor vehicle  
31 dealer in this State to either establish or maintain exclusive  
32 facilities, personnel, or display space, ~~when such requirements, or~~  
33 ~~any of them, would be unreasonable in light of current economic~~  
34 ~~conditions and would not otherwise be justified by reasonable~~  
35 ~~business considerations.~~ space.
- 36 (26) To resort to or to use any false or misleading advertisement in the  
37 conducting of its business as a manufacturer or distributor in this  
38 State.
- 39 (27) To knowingly make, either directly or through any agent or  
40 employee, any material statement which is false or misleading ~~and~~  
41 or conceal any material facts which induces induce any new motor  
42 vehicle dealer to enter into any agreement or franchise or to take  
43 any action which is materially prejudicial to that new motor  
44 vehicle dealer or his business.

- 1 (28) To require, coerce, or attempt to coerce any new motor vehicle  
2 dealer to purchase or order any new motor vehicle as a  
3 precondition to purchasing, ordering, or receiving any other new  
4 motor vehicle or vehicles. Nothing herein shall prevent a  
5 manufacturer from requiring that a new motor vehicle dealer fairly  
6 represent and inventory the full line of new motor vehicles which  
7 are covered by the franchise agreement.
- 8 (29) To require, coerce, or attempt to coerce any new motor vehicle  
9 dealer to sell, transfer, or otherwise issue stock or other ownership  
10 interest in the dealership corporation to a general manager or any  
11 other person involved in the management of the dealership other  
12 than the dealer principal or dealer operator named in the  
13 franchise, unless the dealer principal or dealer operator is an  
14 absentee owner who is not involved in the operation of the  
15 dealership on a regular basis.
- 16 (30) To vary the price charged to any of its franchised new motor  
17 vehicle dealers located in this State for new motor vehicles based  
18 on the dealer's purchase of new facilities, supplies, computers,  
19 tools, equipment, or other merchandise from the manufacturer or  
20 any other person or entity designated, endorsed, or approved by  
21 the manufacturer, the dealer's relocation, remodeling, repair, or  
22 renovation of existing dealerships or construction of a new facility  
23 facility; the dealer's willingness or commitment to either establish  
24 or maintain exclusive facilities, personnel, or display space; the  
25 dealer's success in achieving certain scores or levels of customer  
26 satisfaction under a program or system for measuring customer  
27 satisfaction established or endorsed by the manufacturer; the  
28 dealer's willingness to provide loaner vehicles in whole or in part  
29 at the dealer's expense to customers who are having a vehicle  
30 serviced at the dealership; or upon the dealer's participation in  
31 training programs or employment or association of one or more  
32 consultants which are sponsored, endorsed, or recommended by  
33 the ~~manufacturer.~~ manufacturer, the payment for which is in any  
34 part the responsibility of the dealer.

35 The price of the vehicle, for purposes of this subdivision shall  
36 include the manufacturer's use of rebates, credits, bonuses, or  
37 other consideration which has the effect of causing a variance in  
38 the price of new motor vehicles offered to its franchised dealers  
39 located in the State.

40 Notwithstanding the foregoing, nothing in this subdivision shall  
41 be deemed to preclude a manufacturer from establishing sales  
42 contests or promotions which provide or award dealers or  
43 consumers rebates or incentives.

1           Nothing contained in this subdivision shall prohibit a  
2 manufacturer from providing assistance or encouragement to a  
3 franchised dealer to remodel, renovate, recondition, or relocate the  
4 dealer's existing facilities, provided that this assistance,  
5 encouragement, or rewards are not determined on a per vehicle  
6 basis.

7           In the event that at the time of the ratification of this act a  
8 manufacturer is currently operating a program or has in effect a  
9 policy which would violate this subdivision after the effective date  
10 of this act, it shall be lawful for that program or policy to continue  
11 in effect as to the manufacturer's franchised dealers located in this  
12 State until December 31, 1999. Any manufacturer shall be required  
13 to pay or otherwise compensate any franchise dealer who has  
14 earned the right to receive payment or other compensation under a  
15 program as of December 31, 1999, in accordance with the  
16 manufacturer's program or policy.

17       (31) Notwithstanding the terms of any contract, franchise, agreement,  
18 release, or waiver, to require that in any civil or administrative  
19 proceeding in which a new motor vehicle dealer asserts any claims,  
20 rights, or defenses arising under this Article or under the franchise,  
21 that the dealer or any nonprevailing party compensate the  
22 manufacturer or prevailing party for any court costs, attorneys'  
23 fees, or other expenses incurred in the litigation.

24       (32) To require that any of its franchised new motor vehicle dealers  
25 located in this State pay any extra fee, purchase unreasonable or  
26 unnecessary quantities of advertising displays or other materials, or  
27 remodel, renovate, or recondition the dealers' existing facilities in  
28 order to receive any particular model or series of vehicles  
29 manufactured or distributed by the manufacturer for which the  
30 dealers have a valid franchise. Notwithstanding the foregoing,  
31 nothing contained in this subdivision shall be deemed to prohibit  
32 or prevent a manufacturer from requiring that its franchised  
33 dealers located in this State purchase special tools or equipment,  
34 stock reasonable quantities of certain parts, or participate in  
35 training programs which are reasonably necessary for those dealers  
36 to sell or service any model or series of vehicles.

37       (33) To fail to reimburse a dealer located in this State in full for the  
38 actual cost of providing a loaner vehicle to any customer who is  
39 having a vehicle serviced at the dealership if the provision of such  
40 a loaner vehicle is required by the manufacturer.

41       (34) To require, coerce, or attempt to coerce any new motor vehicle  
42 dealer in this State to participate monetarily in any training  
43 program whose subject matter is not expressly limited to specific  
44 information necessary to sell or service the models of vehicles the

1           dealer is authorized to sell or service under the dealer's franchise  
2           with that manufacturer. Examples of training programs with  
3           respect to which a manufacturer is prohibited from requiring the  
4           dealer's monetary participation include, but are not limited to,  
5           those which purport to teach morale-boosting employee  
6           motivation, teamwork, or general principles of customer relations.  
7           A manufacturer is further prohibited from requiring the personal  
8           attendance of an owner or dealer principal of any dealership  
9           located in this State at any meeting or training program at which it  
10           is reasonably possible for another member of the dealer's  
11           management to attend and later relate the subject matter of the  
12           meeting or training program to the dealership's owners or  
13           principal operator."

14           Section 3. G.S. 20-305.1(b) reads as rewritten:

15           "(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any  
16 motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail  
17 to perform any of its warranty obligations with respect to a motor vehicle, to fail to  
18 compensate its motor vehicle dealers licensed in this State for warranty parts other  
19 than parts used to repair the living facilities of recreational vehicles, at the prevailing  
20 retail rate according to the factors in subsection (a) of this section, or, in service in  
21 accordance with the schedule of compensation provided the dealer pursuant to  
22 subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers  
23 licensed in this State against any judgment for damages or settlements agreed to by  
24 the manufacturer, including, but not limited to, court costs and reasonable attorneys'  
25 fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits  
26 including, but not limited to, strict liability, negligence, misrepresentation, express or  
27 implied warranty, or rescission or revocation of acceptance of the sale of a motor  
28 vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement  
29 relates to the alleged defective negligent manufacture, assembly or design of new  
30 motor vehicles, parts or accessories or other functions by the manufacturer, factory  
31 branch, distributor or distributor branch, beyond the control of the dealer. Any audit  
32 for warranty parts or service compensation shall only be for the 12-month period  
33 immediately following the date of the payment of the claim by the manufacturer,  
34 factory branch, distributor, or distributor branch. Any audit for sales incentives,  
35 service incentives, rebates, or other forms of incentive compensation shall only be for  
36 the ~~24-month~~ 12-month period immediately following the date of the payment of the  
37 claim by the manufacturer, factory branch, distributor, or distributor branch.  
38 Provided, however, these limitations shall not be effective in the case of fraudulent  
39 claims."

40           Section 4. G.S. 20-305.1(c) reads as rewritten:

41           "(c) In the event there is a dispute between the manufacturer, factory branch,  
42 distributor, or distributor branch, and the dealer with respect to any matter referred  
43 to in ~~subsections~~ subsection (a), (b), ~~(b1)~~, or (d) of this section, either party may  
44 petition the Commissioner in writing, within 30 days after either party has given

1 written notice of the dispute to the other, for a hearing on the subject and the  
2 decision of the Commissioner shall be binding on the parties, subject to rights of  
3 judicial review and appeal as provided in Chapter 150B of the General Statutes;  
4 provided, however, that nothing contained herein shall give the Commissioner any  
5 authority as to the content of any manufacturer's or distributor's warranty. Upon the  
6 filing of a petition before the Commissioner under this subsection, any chargeback to  
7 or any payment required of a dealer by a manufacturer relating to warranty parts or  
8 service compensation, or to sales incentives, service incentives, rebates, or other forms  
9 of incentive compensation, shall be stayed during the pendency of the determination  
10 by the Commissioner."

11 Section 5. G.S. 20-305.2 reads as rewritten:

12 "§ 20-305.2. Unfair methods of competition.

13 It is unlawful for any motor vehicle manufacturer, factory branch, distributor,  
14 distributor branch, or subsidiary thereof, to directly or indirectly through any  
15 subsidiary or affiliated entity, own, own any ownership interest in, operate, or control  
16 any motor vehicle dealership ~~in a relevant market area of this State already served by~~  
17 ~~a motor vehicle dealer under a franchise for the same line make from such~~  
18 ~~manufacturer, factory branch, distributor, or distributor branch, or subsidiary, in this~~  
19 State, provided that this section shall not be construed to prohibit (i) the operation  
20 by a manufacturer, factory branch, distributor, distributor branch, or subsidiary  
21 thereof, of a dealership for a temporary period (not to exceed one year) during the  
22 transition from one owner or operator to another, or (ii) the ownership or control of  
23 a dealership by a manufacturer, factory branch, distributor, distributor branch, or  
24 subsidiary thereof, ~~during a period while such dealership is being sold under a bona~~  
25 ~~fide contract or purchase option to the operator of the dealership, while in a bona~~  
26 fide relationship with any independent person, other than a manufacturer, factory  
27 branch, distributor, distributor branch, or an agent or affiliate thereof, who has made  
28 a significant investment that is subject to loss in the dealership and who can  
29 reasonably expect to acquire full ownership of the dealership within a reasonable  
30 period of time and on reasonable terms and conditions, or (iii) the ownership,  
31 operation or control of a dealership by a manufacturer, factory branch, distributor,  
32 distributor branch, or subsidiary thereof, if such manufacturer, factory branch,  
33 distributor, distributor branch, or subsidiary has been engaged in the retail sale of  
34 motor vehicles through such dealership for a continuous period of three years prior  
35 to March 16, 1973, and if the Commissioner determines, after a hearing on the matter  
36 at the request of any party, that there is no independent dealer available in the  
37 relevant market area to own and operate the franchise in a manner consistent with  
38 the public interest, or (iv) the ownership, operation, or control of a dealership by a  
39 manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if  
40 the Commissioner determines after a hearing on the matter at the request of any  
41 party, that there is no independent dealer available in the relevant market area to  
42 own and operate the franchise in a manner consistent with the public interest.

43 Provided, this section shall not apply to manufacturers or distributors of trailers or  
44 semitrailers."

1                   Section 6. Section 5 of this act shall not apply to manufacturers or  
2 distributors of trailers or semitrailers.

3                   Section 7. This act becomes effective October 1, 1999.



# SB 420: Clarify MV Dealers License Law

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** April 13, 1999  
**Version:** PCS for 1st Edition (PCS1720)

**Introduced by:** Sen. Hoyle  
**Summary by:** Linwood Jones  
Committee Counsel

**SUMMARY:** *Senate Bill 420 makes numerous changes to the laws governing motor vehicle dealer franchises. These laws regulate the relationship between motor vehicle manufacturers and distributors and motor vehicle dealers.*

### BILL ANALYSIS:

**Section 1.** If a dealer, before appealing to the Commissioner of Motor Vehicles, elects to contest a policy, determination, or decision of the manufacturer through alternative dispute resolution, including mediation, arbitration, or through an appeals board or internal grievance procedure of the manufacturer, the time for appealing to the Commissioner does not begin to run until the dealer receives a written final decision from the alternative dispute resolution. The bill also states that nothing in the bill is to be construed as requiring the dealer to exhaust alternative dispute resolution remedies established or required by the manufacturer.

**Section 2** amends G.S. 20-305 to make the following changes:

- **Acceptance of equipped vehicle:** Makes it unlawful for a manufacturer, factory branch, or distributor to require or coerce a dealer into accepting a vehicle that is equipped in a manner other than as specified by the dealer. Current law already makes it unlawful to require or coerce the dealer into accepting a vehicle or parts or accessories that the dealer did not order (*see page 2, lines 7-12*).
- **Dealership changes/appeal to Commissioner on manufacturer's disapproval:** Current law allows a dealer to appeal to the Commissioner of Motor Vehicles when a manufacturer or distributor refuses to approve the dealer's transfer of the dealership or the franchise, a change in the dealership's management, or a relocation of the dealership. The Commissioner determines whether the manufacturer's decision was "unreasonable under the circumstances." The manufacturer or distributor bears the burden of proving that the proposed dealership change is unreasonable under the circumstances (and that its decision to deny the change was therefore not unreasonable).

The bill provides that if the issue on appeal is the transfer of ownership of a dealership, then the Commissioner will hear evidence only on the proposed transferee's fitness to own the dealership, based on good moral character and written, reasonable, uniform standards concerning financial ability. If the issue is a change in the dealership's executive management or principal operator, the Commissioner may hear evidence only on the new management's or operator's fitness to run the dealership, based on training, prior experience, past performance, and character. If the issue is a relocation or any other change, the Commissioner will use the existing standard of whether the change



is “unreasonable under the circumstances.” The manufacturer retains the burden of proof in these hearings before the Commissioner. The bill also prohibits the manufacturer from conditioning approval for a change in ownership or management or a relocation on the dealer acquiring or refraining from acquiring one or more line-makes of vehicles, separating or divesting one or more line-makes of vehicles, or maintaining exclusive facilities, personnel, or display space. In addition, approval of ownership and management changes can not be conditioned on the dealer agreeing to build a new facility or renovate an existing facility (*see pages 3-4*)

- **Dealer relocation:** The law currently allows dealers to protest when new or existing dealerships are proposed for their relevant market area. The proposed location of an existing dealership to within 10 miles of a dealer selling the same line-make is subject to protest. The bill retains this 10-mile limit but states that only the dealers *selling the same line-make* within this 10-mile limit have standing before the Commissioner to protest the proposed relocation. In addition, the current exemption from relocation protests for the relocation of an existing dealership within 2 miles of its current site is restricted to such dealers that have operated at their existing sites for 3 years or more
- **Waiting period:** The bill provides that if the new dealership is challenged by an existing dealer and the Commissioner rejects the new dealership, the manufacturer or dealer seeking the new dealership must wait 3 years before seeking to establish the new dealership again within 10 miles of the proposed original site
- **Termination of dealership; stay:** If a manufacturer terminates or refuses to renew a dealership’s franchise, the dealer may file a protest with the Commissioner for a decision whether there is good cause for the termination or nonrenewal. The bill provides that if the Commissioner decides there is good cause, the order is stayed pending appeal (assuming a timely appeal) so that the dealer can continue in business until the matter is finally resolved on appeal. The dealer can also sell or transfer the franchise during the appeal in the same manner he could ordinarily sell or transfer it.
- **Notification of breach:** The current law recognizes that there is good cause for termination or nonrenewal of a dealership if the dealer has breached a material, reasonable provision of the franchise agreement, the manufacturer notified the dealer of the breach within 180 days, and the dealer did not show substantial progress within a reasonable period (at least 180 days) in addressing the problem. The bill lowers the 180-day notification requirement to 90 days – i.e., the manufacturer must notify the dealer of the breach within 90 days.
- **Notification of termination:** The law requires manufacturers and distributors to give dealers advance notice of terminations and nonrenewals. The amount of notice varies from 15 days for the most serious problems (such as dealership bankruptcy, felony convictions, and loss of required licenses) to 180 days for termination of a product line by the manufacturer or distributor. (All other causes for termination or nonrenewal require a 90-day notice). The bill adds an additional requirement: notice must be given no more than 1 year after the manufacturer first acquired knowledge of the facts that constitute the grounds for nonrenewal or termination (except for sales performance and service performance).
- **Manufacturer’s repurchase of items:** When a manufacturer terminates or nonrenews a dealer franchise, the manufacturer is required to repurchase certain inventory from the dealer: new vehicle

acquired within the past 18 months from the manufacturer, unused supplies and parts from the manufacturer, and special tools and equipment that were required to be purchased from the manufacturer or the manufacturer's approved sources. The bill adds "signs" to the list of items that the manufacturer is obligated to repurchase when it terminates or nonrenews the dealership franchise. The manufacturer is required to pay for the signs only if it required the dealer to purchase the signs from the manufacturer or the manufacturer's approved sources. The bill also requires the manufacturer to pay the transportation charges for shipping these items back to the manufacturer and prohibits the manufacturer from levying a restocking fee, handling charge, or similar surcharge for this purpose .

- **Dealership Facilities Assistance:** *Manufacturers* who nonrenew or terminate a dealership franchise for reasons other than dealer insolvency, fraud, criminal conduct, or license revocation must assist the dealer with rent or rental value. If the dealer leases the dealership facilities from someone other than the manufacturer, current law requires the manufacturer to pay the dealer an amount equal to the rent for the remainder of the lease or for *one* year, whichever is less. If the dealer owns the dealership facility, the manufacturer must pay the rental value of the facility for *one* year. Current law also imposes a requirement on dealers that they mitigate damages under the lease. The bill changes the law to provide for the following:
  - The dealer must be paid an amount equal to the rent on a leased facility for the remainder of the term or *three* years, whichever is less, and the dealer who owns a facility must be paid rental value for *three* years.
  - The dealer is not required to mitigate damages, but if does so (for example, by leasing the facility to a third party), he must pay over the net revenue therefrom to the manufacturer (up to the amount of facilities assistance received by the dealer).
  - If a dealer sells several manufacturers' vehicles at a single location, and only some of the manufacturers are terminating or nonrenewing, the amount those manufacturers must pay the dealership for facilities assistance is proportional to the amount of business the dealer does on those particular manufacturers' vehicles. This is measured by comparing the dealer's sales and leases plus parts and servicing for those vehicles for the past 3 years with the dealer's total sales, leasing, parts and servicing volume for all new vehicles during this period.
  - The facilities assistance payments due from the manufacturer must be paid within 90 days of the effective date of the termination or nonrenewal of the dealership franchise (*see page 13, lines 20-23*).
  - A dealer's termination or resignation is not deemed voluntary if it was done under a threat of nonrenewal or termination by the manufacturer (*see page 13, lines 28-32*).
- **Principal operator succession:** Current law allows a dealer to designate, through a will or other written instrument, a successor owner of the dealership and the franchise. If the manufacturer refuses to honor the designation, the dealer or the designated successor can appeal to the Commissioner, who will decide whether the manufacturer has shown good cause for rejecting the designated new owner. The bill makes clear that these protections exist not only for a designation of a new owner, but also for a designation of a new principal operator.
- **Added Accessories:** *Current* law prohibits manufacturers and distributors from requiring dealers to order or accept delivery of vehicles with special features, accessories or equipment that are not

included in the list price of the vehicle. The bill provides that this prohibition also applies to features, accessories, or equipment added by the manufacturer or distributor at port or at any other time after the vehicle was completed at the factory.

- **Required equipment purchases:** Current law prohibits manufacturers and distributors from requiring or coercing dealers to buy unnecessary or unreasonable quantities of training materials or showroom or other display items. The bill extends this prohibition to computer equipment and special tools.
- **Exclusive facilities:** Current law allows dealers to invest in or own other lines of vehicles as long as the dealer maintains reasonable capital and facilities for its operations. The current law also says that the manufacturer or distributor cannot require the dealer to establish exclusive facilities, personnel, or display items if that requirement would be “unreasonable in light of current economic conditions” and would not be “justifiable by reasonable business considerations.” The bill removes these two highlighted conditions. The result is that the manufacturer or distributor cannot require the dealer to establish exclusive facilities, personnel, or display space.
- **Dealer volume:** Manufacturers and distributors are required to deliver to a dealer (when it orders) a reasonable number of vehicles and parts (to the extent available) based on the dealer’s facilities and sales potential in its market area. The bill adds that sales potential in the market area will be determined “in accordance with reasonably applied economic principles.” In addition, language is added to require vehicles to be allocated in a manner that provides dealers an adequate supply of vehicles by series, product line and model in a fair manner and consistent with the manufacturer’s minimum sales requirements, planning volume, etc. Each manufacturer must make available to each dealer at least one of each such series, product line, or model that is nationally advertised. The manufacturer, in allocating vehicles, must give equal consideration to past sales by the dealer by series, model, or product line and vehicle registrations.
- **Concealment of material facts:** It is already unlawful for a manufacturer to make a materially false or misleading statement that induces the dealer to enter into a franchise agreement or that materially harms the dealer. The bill also makes it unlawful for the manufacturer to conceal material facts.
- **Manufacturer’s price variations:** A manufacturer cannot vary the price it charges dealers for new vehicles based on whether the dealer buys new facilities, supplies, or other items from the manufacturer, builds a new facility or renovates an existing one, or participates in manufacturer-sponsored or approved training courses at dealer expense. The bill extends the list so that the manufacturer also cannot vary the vehicle price based on (1) the purchase of computers or any other items from the manufacturer or a person designated by the manufacturer; (2) willingness to establish exclusive facilities, personnel, or display space; (3) willingness to provide loaner vehicles, at dealer expense, to customers having their cars repaired. The December 31, 1999 date for certain types of program payments is extended to March 31, 2000.
- **Reimbursement for loaners:** This provision of the bill makes it unlawful for the manufacturer to not reimburse the dealer for providing a loaner vehicle to a customer whose vehicle is being serviced if the manufacturer requires a loaner vehicle to be made available.
- **Training programs:** This provision of the bill makes it unlawful for a manufacturer to require or coerce a dealer to help pay for training programs that are not limited to specific information that the dealership’s employees or management need to sell or service the manufacturer’s vehicles. Manufacturers are also prohibited from requiring the personal attendance of the owner or principal

operator of the dealership at a training program if another capable managerial employee of the dealership can attend.

- **Number of dealerships:** A manufacturer cannot limit the number of franchises of the same line-make that a dealer may own unless it similarly limits all its franchisees.

**Section 3** of the bill amends the law governing the time period for audits of warranty parts or service compensation and audits for sales incentives, service incentives, rebates, and other forms of incentive compensation. The audit period for the former is currently 12 months; the audit period for the latter is currently 24 months. Section 3 of the bill decreases the audit period for incentives from 24 to 12 months so that it is identical to the warranty audit period.

**Section 3.1** of the bill provides that a manufacturer cannot reduce or deny a dealer's claims for service, sales or similar incentive payments unless the claims were fraudulent or not substantiated in accordance with the manufacturer's reasonable procedures.

**Section 4** makes clear that subsection (b1) of G.S. 20-305.1, which relates to payment by the manufacturer for warranty work, and subsection (b2), which is added by Section 3.1 of the bill, are included in the list of subsections concerning warranty payments that are subject to the appeal of the Commissioner.

**Section 5** amends the law that regulates a factory-owned or controlled dealer when it seeks to locate in the relevant market area of an existing dealer selling the same vehicle line-make. Currently, such factory-owned, operated, or controlled dealerships are not allowed except for (1) temporary transitional ownership (up to one year), (2) operation during the period that the dealership is being sold to the operator of the dealership, (3) certain factory dealerships grandfathered in prior to 1973, or (4) when the Commissioner has determined that there is no independent dealer available to operate and capable of operating a dealership in the area. Section 5 amends this law to state that the prohibition on factory dealerships applies throughout the State unless one of the four exceptions is met. Section 5 also amends the second exception – sale of a dealership to the operator – to provide that the exception applies to a factory dealership in which an independent entity has a significant investment subject to loss and that is reasonably expected to acquire full ownership of the dealership within a reasonable period of time (no more than 9 years) and on reasonable terms. Section 5 also extends the prohibition to both direct and indirect ownership (through a sub or affiliate of a manufacturer or ownership interest in a company), but provides a new (v) creating a limited exemption for certain factory ownership.

**Section 6** makes this act effective October 1, 1999.



1 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**  
2 **franchise; preventing transfer of ownership; granting additional franchises;**  
3 **terminating franchises without good cause; preventing family succession.**

4 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor  
5 branch, or any field representative, officer, agent, or any representative whatsoever of  
6 any of them:

- 7 (1) To require, coerce, or attempt to coerce any dealer to accept  
8 delivery of any motor vehicle or vehicles, parts or accessories  
9 therefor, or any other commodities, which shall not have been  
10 ordered by ~~such dealer~~, that dealer, or to accept delivery of any  
11 motor vehicle or vehicles which have been equipped in a manner  
12 other than as specified by the dealer.
- 13 (2) To require, coerce, or attempt to coerce any dealer to enter into  
14 any agreement with such manufacturer, factory branch, distributor,  
15 or distributor branch, or representative thereof, or do any other act  
16 unfair to such dealer, by threatening to cancel any franchise  
17 existing between such manufacturer, factory branch, distributor,  
18 distributor branch, or representative thereof, and such dealer;
- 19 (3) Unfairly without due regard to the equities of the dealer, and  
20 without just provocation, to cancel the franchise of such dealer;
- 21 (4) Notwithstanding the terms of any franchise agreement, to prevent  
22 or refuse to approve the sale or transfer of the ownership of a  
23 dealership by the sale of the business, stock transfer, or otherwise,  
24 or the transfer, sale or assignment of a dealer franchise, or a  
25 change in the executive management or principal operator of the  
26 dealership, or relocation of the dealership to another site within  
27 the dealership's relevant market area, if the Commissioner has  
28 determined, if requested in writing by the dealer within 30 days  
29 after receipt of an objection to the proposed transfer, sale,  
30 assignment, relocation, or change, and after a hearing on the  
31 matter, that the failure to permit or honor the transfer, sale,  
32 assignment, relocation, or change is unreasonable under the  
33 circumstances. No franchise may be transferred, sold, assigned,  
34 relocated, or the executive management or principal operators  
35 changed, unless the franchisor has been given at least 30 days'  
36 prior written notice as to the identity, financial ability, and  
37 qualifications of the proposed transferee, the identity and  
38 qualifications of the persons proposed to be involved in executive  
39 management or as principal operators, and the location and site  
40 plans of any proposed relocation. The franchisor shall send the  
41 dealership notice of objection, by registered or certified mail,  
42 return receipt requested, to the proposed transfer, sale, assignment,  
43 relocation, or change within 30 days after receipt of notice from  
44 the dealer, as provided in this section. Failure by the franchisor to

1 send notice of objection within 30 days shall constitute waiver by  
2 the franchisor of any right to object to the proposed transfer, sale,  
3 assignment, relocation, or change. ~~The manufacturer or distributor~~  
4 ~~has the burden of proving that the proposed transfer, sale,~~  
5 ~~assignment, relocation, or change is unreasonable under the~~  
6 ~~circumstances.~~ With respect to a proposed transfer of ownership,  
7 sale, or assignment, the sole issue for determination by the  
8 Commissioner and the sole issue upon which the Commissioner  
9 shall hear or consider evidence is whether, by reason of poor  
10 character or lack of financial ability, the proposed transferee is  
11 unfit to own the dealership. For purposes of this subdivision, the  
12 refusal by the manufacturer to accept a proposed transferee who is  
13 of good moral character and who otherwise meets the written,  
14 reasonable, and uniformly applied financial requirements, if any,  
15 required by the manufacturer of owners of its franchised  
16 automobile dealerships is presumed to demonstrate the  
17 manufacturer's failure to prove that the proposed transferee is unfit  
18 to own the dealership. With respect to a proposed change in the  
19 executive management or principal operator of the dealership, the  
20 sole issue for determination by the Commissioner and the sole  
21 issue on which the Commissioner shall hear or consider evidence  
22 shall be whether, by reason of lack of training, lack of prior  
23 experience, poor past performance, or poor character, the  
24 proposed candidate for a position within the executive  
25 management or as principal operator of the dealership is unfit for  
26 the position. For purposes of this subdivision, the refusal by the  
27 manufacturer to accept a proposed candidate for executive  
28 management or as principal operator who is of good moral  
29 character and who otherwise meets the written, reasonable, and  
30 uniformly applied standards or qualifications, if any, of the  
31 manufacturer relating to the business experience and prior  
32 performance of executive management required by the  
33 manufacturers of its dealers is presumed to demonstrate the  
34 manufacturer's failure to prove the proposed candidate for  
35 executive management or as principal operator is unfit to serve the  
36 the capacity. With respect to a proposed relocation or other  
37 proposed change, the issue for determination by the Commissioner  
38 is whether the proposed relocation or other change is unreasonable  
39 under the circumstances. For purposes of this subdivision, the  
40 refusal by the manufacturer to agree to a proposed relocation  
41 which meets the written, reasonable, and uniformly applied  
42 standards or criteria, if any, of the manufacturer relating to dealer  
43 relocations is presumed to demonstrate that the manufacturer's  
44 failure to prove the proposed relocation is unreasonable under the

1 circumstances. The manufacturer shall have the burden of proof  
2 before the Commissioner under this subdivision. It is unlawful for  
3 a manufacturer to in any way condition its approval of a proposed  
4 transfer, sale, assignment, change in the dealer's executive  
5 management or principal operator on the existing or proposed  
6 dealer's willingness to construct a new facility, renovate the  
7 existing facility, acquire or refrain from acquiring one or more  
8 line-makes of vehicles, separate or divest one or more line-makes  
9 of vehicle, or establish or maintain exclusive facilities, personnel,  
10 or display space. It is unlawful for a manufacturer to, in any way,  
11 condition its approval of a proposed relocation on the existing or  
12 proposed dealer's willingness to acquire or refrain from acquiring  
13 one or more line-makes of vehicles, separate or divest one or more  
14 line-makes of vehicle, or establish or maintain exclusive facilities,  
15 personnel, or display space.

- 16 (5) To enter into a franchise establishing an additional new motor  
17 vehicle dealer or relocating an existing new motor vehicle dealer  
18 into a relevant market area where the same line make is then  
19 represented without first notifying in writing the Commissioner and  
20 each new motor vehicle dealer in that line make in the relevant  
21 market area of the intention to establish an additional dealer or to  
22 relocate an existing dealer within or into that market area. Within  
23 30 days of receiving such notice or within 30 days after the end of  
24 any appeal procedure provided by the manufacturer, any new  
25 motor vehicle dealer may file with the Commissioner a protest to  
26 the establishing or relocating of the new motor vehicle dealer.  
27 When a protest is filed, the Commissioner shall promptly inform  
28 the manufacturer that a timely protest has been filed, and that the  
29 manufacturer shall not establish or relocate the proposed new  
30 motor vehicle dealer until the Commissioner has held a ~~hearing,~~  
31 ~~nor thereafter, if the Commissioner~~ hearing and has determined  
32 that there is good cause for ~~not~~ permitting the addition or  
33 relocation of such new motor vehicle dealer.

34 a. This section does not apply:

- 35 1. To the relocation of an existing new motor vehicle  
36 dealer within that dealer's relevant market area,  
37 provided that the relocation not be at a site within 10  
38 miles of a licensed new motor vehicle dealer for the  
39 same line make of motor ~~vehicle;~~ vehicle. If this sub-  
40 subdivision is applicable, only dealers trading in the  
41 same line-make of vehicle that are located within the  
42 10-mile radius shall be entitled to notice from the  
43 manufacturer and have the protest rights afforded  
44 under this section; or



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2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
  3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle ~~dealership~~; dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation; or
  4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.
- b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
  2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
  3. Effect on the consuming public in the relevant market area;
  4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
  5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
  6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area

- 1 would increase competition in a manner such as to be  
2 in the long-term public interest; and  
3 7. The effect on the relocating dealer of a denial of its  
4 relocation into the relevant market area.
- 5 c. The Commissioner shall try to conduct the hearing and  
6 render his final determination if possible, within 180 days  
7 after a protest is filed.
- 8 d. Any parties to a hearing by the Commissioner concerning  
9 the establishment or relocating of a new motor vehicle  
10 dealer shall have a right of review of the decision in a court  
11 of competent jurisdiction pursuant to Chapter 150B of the  
12 General Statutes.
- 13 e. In a hearing involving a proposed additional dealership, the  
14 manufacturer or distributor has the burden of proof under  
15 this section. In a proceeding involving the relocation of an  
16 existing dealership, the dealer seeking to relocate has the  
17 burden of proof under this section.
- 18 f. If the Commissioner determines, following a hearing, that  
19 good cause ~~does not exist for refusing to permit~~ exists for  
20 permitting the proposed additional or relocated motor  
21 vehicle dealership, the dealer seeking the proposed  
22 additional or relocated motor vehicle dealership must,  
23 within two years, obtain a license from the Commissioner  
24 for the sale of vehicles at the relevant site, and actually  
25 commence operations at the site selling new motor vehicles  
26 of all line makes, as permitted by the Commissioner. Failure  
27 to obtain a permit and commence sales within two years  
28 shall constitute waiver by the dealer of the dealer's right to  
29 the additional or relocated dealership, requiring  
30 renotification, a new hearing, and a new determination as  
31 provided in this section. If the Commissioner fails to  
32 determine that good cause exists for permitting the proposed  
33 additional or relocated motor vehicle dealership, the  
34 manufacturer seeking the proposed additional dealership or  
35 dealer seeking to relocate may not again provide notice of  
36 its intention or otherwise attempt to establish an additional  
37 dealership or relocate to any location within 10 miles of the  
38 site of the original proposed additional dealership or  
39 relocation site for a minimum of three years from the date  
40 of the Commissioner's determination.
- 41 g. (See editor's note for applicability) For purposes of this  
42 subdivision, the addition, creation, or operation of a  
43 "satellite" or other facility, not physically part of or  
44 contiguous to an existing licensed new motor vehicle dealer,

1                   whether or not owned or operated by a person or other  
2                   entity holding a franchise as defined by G.S. 20-286(8a), at  
3                   which warranty service work authorized or reimbursed by a  
4                   manufacturer is performed or at which new motor vehicles  
5                   are offered for sale to the public, shall be considered an  
6                   additional new motor vehicle dealer requiring a showing of  
7                   good cause, prior notification to existing new motor vehicle  
8                   dealers of the same line make of vehicle within the relevant  
9                   market area by the manufacturer and the opportunity for a  
10                  hearing before the Commissioner as provided in this  
11                  subdivision.

- 12                  (6) Notwithstanding the terms, provisions or conditions of any  
13                  franchise or notwithstanding the terms or provisions of any waiver,  
14                  to terminate, cancel or fail to renew any franchise with a licensed  
15                  new motor vehicle dealer unless the manufacturer has satisfied the  
16                  notice requirements of subparagraph c. and the Commissioner has  
17                  determined, if requested in writing by the dealer within the time  
18                  period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and  
19                  after a hearing on the matter, that there is good cause for the  
20                  termination, cancellation, or nonrenewal of the franchise and that  
21                  the manufacturer has acted in good faith as defined in this act  
22                  regarding the termination, cancellation or nonrenewal. When such  
23                  a petition is made to the Commissioner by a dealer for  
24                  determination as to the existence of good cause and good faith for  
25                  the termination, cancellation or nonrenewal of a franchise, the  
26                  Commissioner shall promptly inform the manufacturer that a  
27                  timely petition has been filed, and the franchise in question shall  
28                  continue in effect pending the Commissioner's decision. The  
29                  Commissioner shall try to conduct the hearing and render a final  
30                  determination within 180 days after a petition has been filed. If the  
31                  termination, cancellation or nonrenewal is pursuant to G.S. 20-  
32                  305(6)c1III then the Commissioner shall give the proceeding  
33                  priority consideration and shall try to render his final  
34                  determination no later than 90 days after the petition has been  
35                  filed. Any parties to a hearing by the Commissioner under this  
36                  section shall have a right of review of the decision in a court of  
37                  competent jurisdiction pursuant to Chapter 150B of the General  
38                  Statutes. Any determination of the Commissioner under this  
39                  section finding that good cause exists for the nonrenewal,  
40                  cancellation, or termination of any franchise shall automatically be  
41                  stayed during any period that the affected dealer shall have the  
42                  right to judicial review or appeal of the determination before the  
43                  superior court or any other appellate court and during the  
44                  pendency of any appeal. Furthermore, unless and until the

1 termination, cancellation, or nonrenewal of a dealer's franchise  
2 shall finally become effective, in light of any stay or any order of  
3 the commissioner determining that good cause exists for the  
4 termination, cancellation, or nonrenewal of a dealer's franchise as  
5 provided in this paragraph, a dealer who receives a notice of  
6 termination, cancellation, or nonrenewal from a manufacturer as  
7 provided in this subdivision shall continue to have the same rights  
8 to assign, sell, or transfer the franchise to a third party under the  
9 franchise and as permitted under G.S. 20-305(4) as if notice of the  
10 termination had not been given by the manufacturer. Any  
11 franchise under notice or threat of termination, cancellation, or  
12 nonrenewal by the manufacturer which is duly transferred in  
13 accordance with G.S. 20-305(4) shall not be subject to termination  
14 by reason of failure of performance or breaches of the franchise on  
15 the part of the transferor.

16 a. Notwithstanding the terms, provisions or conditions of any  
17 franchise or the terms or provisions of any waiver, good  
18 cause shall exist for the purposes of a termination,  
19 cancellation or nonrenewal when:

20 1. There is a failure by the new motor vehicle dealer to  
21 comply with a provision of the franchise which  
22 provision is both reasonable and of material  
23 significance to the franchise relationship provided  
24 that the dealer has been notified in writing of the  
25 failure within ~~180~~ 90 days after the manufacturer first  
26 acquired knowledge of such failure;

27 2. If the failure by the new motor vehicle dealer relates  
28 to the performance of the new motor vehicle dealer  
29 in sales or service, then good cause shall be defined  
30 as the failure of the new motor vehicle dealer to  
31 comply with reasonable performance criteria  
32 established by the manufacturer if the new motor  
33 vehicle dealer was apprised by the manufacturer in  
34 writing of the failure; and

35 I. The notification stated that notice was  
36 provided of failure of performance pursuant to  
37 this section;

38 II. The new motor vehicle dealer was afforded a  
39 reasonable opportunity, for a period of not less  
40 than 180 days, to comply with the criteria; and

41 III. The new motor vehicle dealer failed to  
42 demonstrate substantial progress towards  
43 compliance with the manufacturer's  
44 performance criteria during such period and

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the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal.

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where

1 the manufacturer or distributor is discontinuing  
2 the sale of the product line.

3 V. Unless the failure by the new motor vehicle  
4 dealer relates to the performance of the new  
5 motor vehicle dealer in sales or service, not  
6 more than 1 year after the manufacturer first  
7 acquired knowledge of the basic facts  
8 comprising the failure.

9 2. Notification under this section shall be in writing;  
10 shall be by certified mail or personally delivered to  
11 the new motor vehicle dealer; and shall contain:

12 I. A statement of intention to terminate, cancel  
13 or not to renew the franchise;

14 II. A detailed statement of all of the material  
15 reasons for the termination, cancellation or  
16 nonrenewal; and

17 III. The date on which the termination,  
18 cancellation or nonrenewal takes effect.

19 3. Notification provided in G.S. 20-305(6)c1II of 90 days  
20 prior to the effective date of such termination,  
21 cancellation or renewal may run concurrent with the  
22 180 days designated in G.S. 20-305(6)a2II provided  
23 the notification is clearly designated by a separate  
24 written document mailed by certified mail or  
25 personally delivered to the new motor vehicle dealer.

26 d. Payments. --

27 1. Upon the termination, nonrenewal or cancellation of  
28 any franchise by the manufacturer or distributor,  
29 pursuant to this section, the new motor vehicle dealer  
30 shall be allowed fair and reasonable compensation by  
31 the manufacturer for the:

32 I. New motor vehicle inventory that has been  
33 acquired from the manufacturer within 18  
34 months, at a price not to exceed the original  
35 manufacturer's price to the dealer, and which  
36 has not been altered or damaged, and which  
37 has not been driven more than 200 miles, and  
38 for which no certificate of title has been issued;

39 II. Unused, undamaged and unsold supplies and  
40 parts purchased from the manufacturer, at a  
41 price not to exceed the original manufacturer's  
42 price to the dealer, provided such supplies and  
43 parts are currently offered for sale by the

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manufacturer or distributor in its current parts catalogs and are in salable condition;

III. ~~Equipment~~ Equipment, signs, and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has offered to convey clear title to the inventory and has conveyed title and possession of the same to the manufacturer. The manufacturer shall be obligated to pay or reimburse the dealer for any transportation charges associated with the manufacturer's repurchase obligations under this sub-subparagraph. The manufacturer may not charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or ~~one~~ three year's rent, whichever is less, or such longer

- 1 term as is provided in the franchise agreement  
2 between the dealer and manufacturer; or  
3 2. Subject to paragraph 3, if the new motor vehicle  
4 dealer owns the dealership facilities, the manufacturer  
5 shall pay the new motor vehicle dealer a sum  
6 equivalent to the reasonable rental value of the  
7 dealership facilities for ~~one year.~~ three years.  
8 3. ~~Provided nothing in this paragraph e. shall relieve a~~  
9 ~~lessee or owner, as the case may be, from the~~  
10 ~~obligation to mitigate damages under the lease, nor~~  
11 ~~prevent a manufacturer from occupying and using the~~  
12 ~~dealership facilities while paying rent under~~  
13 ~~subsections 1 and 2, nor prevent a manufacturer from~~  
14 ~~obligations by negotiating a lease termination, a~~  
15 ~~sublease or a new lease. Any amounts recovered by~~  
16 ~~the lessee or owner resulting from mitigation of~~  
17 ~~damages shall be deducted from the amount due from~~  
18 ~~the manufacturer.~~  
19 In order to be entitled to facilities assistance from the  
20 manufacturer, as provided in this paragraph e., no  
21 dealer, owner, or lessee, as the case may be, shall  
22 have an obligation to mitigate damages under the  
23 lease; provided, however, that to the extent that a  
24 dealer, owner, or lessee does elect to voluntarily  
25 mitigate damages, the dealer shall be obligated to pay  
26 the manufacturer the net revenue received from such  
27 mitigation up to the total amount of facilities  
28 assistance which the dealer has received from the  
29 manufacturer pursuant to sub-subdivisions 1, and 2.  
30 To the extent and for such uses and purposes as may  
31 be consistent with the terms of the lease, a  
32 manufacturer who pays facilities assistance to a dealer  
33 under this paragraph e. shall be entitled to occupy  
34 and use the dealership facilities during the years for  
35 which the manufacturer shall have paid rent under  
36 sub-subdivisions 1, and 2.  
37 4. In the event the termination relates to fewer than all  
38 of the franchises operated by the dealer at a single  
39 location, the amount of facilities assistance which the  
40 manufacturer is required to pay the dealer under this  
41 sub-subdivision shall be based on the proportion of  
42 gross revenue received from the sale and lease of new  
43 vehicles by the dealer and from the dealer's parts and  
44 service operations during the three years immediately



1 preceding the effective date of the termination (or  
2 any shorter period that the dealer may have held  
3 these franchises) of the line-makes being terminated,  
4 in relation to the gross revenue received from the sale  
5 and lease of all line-makes of new vehicles by the  
6 dealer and from the total of the dealer's and parts  
7 and service operations from this location during the  
8 same three-year period.

9 5. The compensation required for facilities assistance  
10 under this paragraph e. shall be paid by the  
11 manufacturer within 90 days of the effective date of  
12 termination, cancellation, or nonrenewal.

13 f. The provisions of ~~paragraphs~~ sub-subdivisions d. and e.  
14 above shall not be applicable when the termination,  
15 nonrenewal or cancellation of the franchise agreement is the  
16 result of the voluntary act of the dealer.

17 Notwithstanding the terms of any contract or agreement,  
18 any dealer's termination or resignation shall not be deemed  
19 to be voluntary if that termination or resignation occurred  
20 under the manufacturer's threat of nonrenewal, cancellation,  
21 or termination of the franchise.

22 (7) Notwithstanding the terms of any contract or agreement, to prevent  
23 or refuse to honor the succession to a dealership, including the  
24 franchise, by a motor vehicle dealer's designated successor as  
25 provided for under this subsection.

26 a. Any owner of a new motor vehicle dealership may appoint  
27 by will, or any other written instrument, a designated  
28 successor to succeed in the respective ownership interest or  
29 interest as principal operator of the said owner in the new  
30 motor vehicle dealership, including the franchise, upon the  
31 death or incapacity of the ~~owner.~~ owner or principal  
32 operator. In order for succession to the position of principal  
33 operator to occur by operation of law in accordance with  
34 sub-subdivision c. below, the owner's choice of a successor  
35 must be approved by the dealer, in accordance with the  
36 dealer's bylaws, if applicable, either prior or subsequent to  
37 the death or incapacity of the existing principal operator.

38 b. Any objections by a manufacturer or distributor to an  
39 owner's appointment of a designated successor shall be  
40 asserted in accordance with the following procedure:

41 1. Within 30 days after receiving written notice of the  
42 identity of the owner's designated successor and  
43 general information as to the financial ability and  
44 qualifications of the designated successor, the

1 franchisor shall send the owner and designated  
2 successor notice of objection, by registered or  
3 certified mail, return receipt requested, to the  
4 appointment of the designated successor. The notice  
5 of objection shall state in detail all facts which  
6 constitute the basis for the contention on the part of  
7 the manufacturer or distributor that good cause, as  
8 defined in this sub-subdivision below, exists for  
9 rejection of the designated successor. Failure by the  
10 franchisor to send notice of objection within 30 days  
11 and otherwise as provided in this sub-subdivision  
12 shall constitute waiver by the franchisor of any right  
13 to object to the appointment of the designated  
14 successor.

15 2. Any time within 30 days of receipt of the  
16 manufacturer's notice of objection the owner or the  
17 designated successor may file a request in writing  
18 with the Commissioner that the Commissioner hold  
19 an evidentiary hearing and determine whether good  
20 cause exists for rejection of the designated successor.  
21 When such a request is filed, the Commissioner shall  
22 promptly inform the affected manufacturer or  
23 distributor that a timely request has been filed.

24 3. The Commissioner shall endeavor to hold the  
25 evidentiary hearing required under this sub-  
26 subdivision and render a determination within 180  
27 days after receipt of the written request from the  
28 owner or designated successor. In determining  
29 whether good cause exists for rejection of the owner's  
30 appointed designated successor, the manufacturer or  
31 distributor has the burden of proving that the  
32 designated successor is a person who is not of good  
33 moral character or does not meet the franchisor's  
34 existing written and reasonable standards and,  
35 considering the volume of sales and service of the  
36 new motor vehicle dealer, uniformly applied  
37 minimum business experience standards in the market  
38 area.

39 4. Any parties to a hearing by the Commissioner  
40 concerning whether good cause exists for the  
41 rejection of the dealer's designated successor shall  
42 have a right of review of the decision in a court of  
43 competent jurisdiction pursuant to Chapter 150B of  
44 the General Statutes.

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5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from ~~a dealer~~ an owner of the identity of the ~~dealer's~~ owner's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.
6. In the event death or incapacity of the owner or principal operator occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's or principal operator's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.
- c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner or principal operator of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ~~ownership~~ rights and obligations of the owner or principal operator in the new motor vehicle dealership and under the existing franchise.
- d. Within 60 days after the death or incapacity of the ~~owner,~~ owner or principal operator, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ~~ownership~~ position of owner or principal operator of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the ~~owner's~~ death or incapacity of the owner or principal operator shall not result in the waiver or termination of the designated

1 successor's right to succeed to the ownership of the new  
2 motor vehicle dealership unless the manufacturer or  
3 distributor gives written notice of this provision to either the  
4 designated successor or the deceased or incapacitated  
5 owner's executor, administrator, guardian or other fiduciary  
6 by certified or registered mail, return receipt requested, and  
7 said written notice grants not less than 30 days time within  
8 which the designated successor may give the notice required  
9 hereunder, provided the designated successor or the  
10 deceased or incapacitated owner's executor, administrator,  
11 guardian or other fiduciary has given the manufacturer  
12 reasonable notice of death or incapacity. Within 30 days of  
13 receipt of the notice by the manufacturer or distributor from  
14 the designated successor provided in this paragraph, the  
15 manufacturer or distributor may request that the designated  
16 successor complete the application forms generally utilized  
17 by the manufacturer or distributor to review the designated  
18 successor's qualifications to establish a successor dealership.  
19 Within 30 days of receipt of the completed forms, the  
20 manufacturer or distributor shall send a letter by certified or  
21 registered mail, return receipt requested, advising the  
22 designated successor of facts and circumstances which have  
23 changed since the manufacturer's or distributor's original  
24 approval of the designated successor, and which have caused  
25 the manufacturer or distributor to object to the designated  
26 successor. Upon receipt of such notice, the designated  
27 successor may either designate an alternative successor or  
28 may file a request for evidentiary hearing in accordance  
29 with the procedures provided in sub-subdivisions b. 2.-5. of  
30 this subdivision. In any such hearing, the manufacturer or  
31 distributor shall be limited to facts and circumstances which  
32 did not exist at the time the designated successor was  
33 originally approved or evidence which was originally  
34 requested to be produced by the designated successor at the  
35 time of the original request and was ~~either not produced or~~  
36 ~~the material which was produced was incorrect.~~ fraudulent.

- 37 e. The designated successor shall agree to be bound by all  
38 terms and conditions of the franchise in effect between the  
39 manufacturer or distributor and the owner at the time of the  
40 owner's or principal operator's death or incapacity, if so  
41 requested in writing by the manufacturer or distributor  
42 subsequent to the owner's or principal operator's death or  
43 incapacity.

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- f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.
- (8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, options, accessories or equipment which are either:
- a. ~~not~~ Not included in the list price of ~~such~~ those motor vehicles as publicly advertised by the manufacturer or ~~distributor.~~ distributor; or
- b. Added by the manufacturer or distributor at port or at any other time subsequent to the time assembly of the vehicle has been completed at the manufacturer's factory.
- (9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, ~~training programs,~~ showroom or other display ~~decorations or materials~~ decorations, materials, computer equipment or programs, or special tools at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.
- (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise

- 1 without the consent of the manufacturer or distributor, provided  
2 that said consent shall not be unreasonably withheld.
- 3 (11) To require, coerce, or attempt to coerce any new motor vehicle  
4 dealer in this State to refrain from participation in the management  
5 of, investment in, or the acquisition of any other line of new motor  
6 vehicle or related products; Provided, however, that this subsection  
7 does not apply unless the new motor vehicle dealer maintains a  
8 reasonable line of credit for each make or line of new motor  
9 vehicle, and the new motor vehicle dealer remains in compliance  
10 with any reasonable capital standards and facilities requirements of  
11 the manufacturer. The reasonable facilities requirements shall not  
12 include any requirement that a new motor vehicle dealer establish  
13 or maintain exclusive facilities, personnel, or display space, ~~when~~  
14 ~~such requirements, or any of them, would be unreasonable in light~~  
15 ~~of current economic conditions and would not otherwise be~~  
16 ~~justified by reasonable business considerations.~~ space.
- 17 (12) To require, coerce, or attempt to coerce any new motor vehicle  
18 dealer in this State to change location of the dealership, or to make  
19 any substantial alterations to the dealership premises or facilities,  
20 when to do so would be unreasonable, or without written  
21 assurance of a sufficient supply of new motor vehicles so as to  
22 justify such an expansion, in light of the current market and  
23 economic conditions.
- 24 (13) To require, coerce, or attempt to coerce any new motor vehicle  
25 dealer in this State to prospectively assent to a release, assignment,  
26 novation, waiver or estoppel which would relieve any person from  
27 liability to be imposed by this law or to require any controversy  
28 between a new motor vehicle dealer and a manufacturer,  
29 distributor, or representative, to be referred to any person other  
30 than the duly constituted courts of the State or the United States of  
31 America, or to the Commissioner, if such referral would be  
32 binding upon the new motor vehicle dealer.
- 33 (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle  
34 parts or accessories in reasonable quantities relative to the new  
35 motor vehicle dealer's facilities and sales potential in the new  
36 motor vehicle dealer's ~~relevant market area, and area as~~  
37 determined in accordance with reasonably applied economic  
38 principles, or within a reasonable time, after receipt of an order  
39 from a dealer having a franchise for the retail sale of any new  
40 motor vehicle sold or distributed by the manufacturer or  
41 distributor, any new vehicle, parts or accessories to new vehicles as  
42 are covered by such franchise, and such vehicles, parts or  
43 accessories as are publicly advertised as being available or actually  
44 being delivered. The delivery to another dealer of a motor vehicle

1 of the same model and similarly equipped as the vehicle ordered  
2 by a motor vehicle dealer who has not received delivery thereof,  
3 but who has placed his written order for the vehicle prior to the  
4 order of the dealer receiving the vehicle, shall be evidence of a  
5 delayed delivery of, or refusal to deliver, a new motor vehicle to a  
6 motor vehicle dealer within a reasonable time, without cause.  
7 Each manufacturer shall allocate its products in a manner that  
8 provides each of its franchised dealers in this State an adequate  
9 supply of vehicles by series, product line, and model to achieve the  
10 manufacturer's minimum sales requirements, planning volume, or  
11 sales objectives and that is fair and equitable to all of its franchised  
12 dealers in this State. Additionally, each manufacturer shall make  
13 available to each of its franchised dealers in this State a minimum  
14 of one of each vehicle series, model, or product line that the  
15 manufacturer advertises nationally as being available for purchase.  
16 In allocating its vehicles to its franchised dealers in this State, each  
17 manufacturer shall give equal weight to: (i) each dealer's past  
18 sales by series, model, or product line and (ii) the vehicle  
19 registrations by series, model, and product line within the dealer's  
20 assigned primary market area. A manufacturer shall not unfairly  
21 discriminate among its franchised dealers in this allocation process.  
22 This subsection is not violated, however, if such failure is caused  
23 by acts or causes beyond the control of the manufacturer,  
24 distributor, factory branch, or factory representative.

- 25 (15) To refuse to disclose to any new motor vehicle dealer, handling the  
26 same line make, the manner and mode of distribution of that line  
27 make within the State.
- 28 (16) To award money, goods, services, or any other benefit to any new  
29 motor vehicle dealership employee, either directly or indirectly,  
30 unless such benefit is promptly accounted for, and transmitted to,  
31 or approved by, the new motor vehicle dealer.
- 32 (17) To increase prices of new motor vehicles which the new motor  
33 vehicle dealer had ordered and which the manufacturer or  
34 distributor has accepted for immediate delivery for private retail  
35 consumers prior to the new motor vehicle dealer's receipt of the  
36 written official price increase notification. A sales contract signed  
37 by a private retail consumer shall constitute evidence of each such  
38 order provided that the vehicle is in fact delivered to that  
39 customer. Price differences applicable to new model or series shall  
40 not be considered a price increase or price decrease. Price changes  
41 caused by either: (i) the addition to a new motor vehicle of  
42 required or optional equipment; or (ii) revaluation of the United  
43 States dollar, in the case of foreign-make vehicles or components;  
44 or (iii) an increase in transportation charges due to increased rates

1 imposed by carriers; or (iv) new tariffs or duties imposed by the  
2 United States of America or any other governmental authority,  
3 shall not be subject to the provisions of this subsection.

4 (18) To prevent or attempt to prevent a dealer from receiving fair and  
5 reasonable compensation for the value of the franchised business  
6 transferred in accordance with G.S. 20-305(4) above.

7 (19) To offer any refunds or other types of inducements to any person  
8 for the purchase of new motor vehicles of a certain line make to be  
9 sold to the State or any political subdivision thereof without  
10 making the same offer available upon request to all other new  
11 motor vehicle dealers in the same line make within the State.

12 (20) To release to any outside party, except under subpoena or as  
13 otherwise required by law or in an administrative, judicial or  
14 arbitration proceeding involving the manufacturer or new motor  
15 vehicle dealer, any confidential business, financial, or personal  
16 information which may be from time to time provided by the new  
17 motor vehicle dealer to the manufacturer, without the express  
18 written consent of the new motor vehicle dealer.

19 (21) To deny any new motor vehicle dealer the right of free association  
20 with any other new motor vehicle dealer for any lawful purpose.

21 (22) To unfairly discriminate among its new motor vehicle dealers with  
22 respect to warranty reimbursements or authority granted its new  
23 motor vehicle dealers to make warranty adjustments with retail  
24 customers.

25 (23) To engage in any predatory practice against or unfairly compete  
26 with a new motor vehicle dealer located in this State.

27 (24) To terminate any franchise solely because of the death or  
28 incapacity of an owner who is not listed in the franchise as one on  
29 whose expertise and abilities the manufacturer relied in the  
30 granting of the franchise.

31 (25) To require, coerce, or attempt to coerce a new motor vehicle  
32 dealer in this State to either establish or maintain exclusive  
33 facilities, personnel, or display space, ~~when such requirements, or~~  
34 ~~any of them, would be unreasonable in light of current economic~~  
35 ~~conditions and would not otherwise be justified by reasonable~~  
36 ~~business considerations.~~ space.

37 (26) To resort to or to use any false or misleading advertisement in the  
38 conducting of its business as a manufacturer or distributor in this  
39 State.

40 (27) To knowingly make, either directly or through any agent or  
41 employee, any material statement which is false or misleading ~~and~~  
42 or conceal any material facts which ~~induces~~ induce any new motor  
43 vehicle dealer to enter into any agreement or franchise or to take



- 1 any action which is materially prejudicial to that new motor  
2 vehicle dealer or his business.
- 3 (28) To require, coerce, or attempt to coerce any new motor vehicle  
4 dealer to purchase or order any new motor vehicle as a  
5 precondition to purchasing, ordering, or receiving any other new  
6 motor vehicle or vehicles. Nothing herein shall prevent a  
7 manufacturer from requiring that a new motor vehicle dealer fairly  
8 represent and inventory the full line of new motor vehicles which  
9 are covered by the franchise agreement.
- 10 (29) To require, coerce, or attempt to coerce any new motor vehicle  
11 dealer to sell, transfer, or otherwise issue stock or other ownership  
12 interest in the dealership corporation to a general manager or any  
13 other person involved in the management of the dealership other  
14 than the dealer principal or dealer operator named in the  
15 franchise, unless the dealer principal or dealer operator is an  
16 absentee owner who is not involved in the operation of the  
17 dealership on a regular basis.
- 18 (30) To vary the price charged to any of its franchised new motor  
19 vehicle dealers located in this State for new motor vehicles based  
20 on the dealer's purchase of new facilities, supplies, computers,  
21 tools, equipment, or other merchandise from the manufacturer or  
22 any other person or entity designated, endorsed, or approved by  
23 the manufacturer, the dealer's relocation, remodeling, repair, or  
24 renovation of existing dealerships or construction of a new facility  
25 facility; the dealer's willingness or commitment to either establish  
26 or maintain exclusive facilities, personnel, or display space; the  
27 dealer's willingness to provide loaner vehicles in whole or in part  
28 at the dealer's expense to customers who are having a vehicle  
29 serviced at the dealership; or upon the dealer's participation in  
30 training programs or employment or association of one or more  
31 consultants which are sponsored, endorsed, or recommended by  
32 the ~~manufacturer.~~ manufacturer, the payment for which is in any  
33 part the responsibility of the dealer.
- 34 The price of the vehicle, for purposes of this subdivision shall  
35 include the manufacturer's use of rebates, credits, bonuses, or  
36 other consideration which has the effect of causing a variance in  
37 the price of new motor vehicles offered to its franchised dealers  
38 located in the State.
- 39 Notwithstanding the foregoing, nothing in this subdivision shall  
40 be deemed to preclude a manufacturer from establishing sales  
41 contests or promotions which provide or award dealers or  
42 consumers rebates or incentives.
- 43 Nothing contained in this subdivision shall prohibit a  
44 manufacturer from providing assistance or encouragement to a

1 franchised dealer to remodel, renovate, recondition, or relocate the  
2 dealer's existing facilities, provided that this assistance,  
3 encouragement, or rewards are not determined on a per vehicle  
4 basis.

5 In the event that at the time of the ratification of this act a  
6 manufacturer is currently operating a program or has in effect a  
7 policy which would violate this subdivision after the effective date  
8 of this act, it shall be lawful for that program or policy to continue  
9 in effect as to the manufacturer's franchised dealers located in this  
10 State until December 31, 1999. Any Whether or not a program  
11 operated by a manufacturer complies with this paragraph, a  
12 manufacturer shall be required to pay or otherwise compensate any  
13 franchise dealer who has earned the right to receive payment or  
14 other compensation under a program as of ~~December 31, 1999,~~  
15 March 31, 2000, in accordance with the manufacturer's program or  
16 policy.

17 (31) Notwithstanding the terms of any contract, franchise, agreement,  
18 release, or waiver, to require that in any civil or administrative  
19 proceeding in which a new motor vehicle dealer asserts any claims,  
20 rights, or defenses arising under this Article or under the franchise,  
21 that the dealer or any nonprevailing party compensate the  
22 manufacturer or prevailing party for any court costs, attorneys'  
23 fees, or other expenses incurred in the litigation.

24 (32) To require that any of its franchised new motor vehicle dealers  
25 located in this State pay any extra fee, purchase unreasonable or  
26 unnecessary quantities of advertising displays or other materials, or  
27 remodel, renovate, or recondition the dealers' existing facilities in  
28 order to receive any particular model or series of vehicles  
29 manufactured or distributed by the manufacturer for which the  
30 dealers have a valid franchise. Notwithstanding the foregoing,  
31 nothing contained in this subdivision shall be deemed to prohibit  
32 or prevent a manufacturer from requiring that its franchised  
33 dealers located in this State purchase special tools or equipment,  
34 stock reasonable quantities of certain parts, or participate in  
35 training programs which are reasonably necessary for those dealers  
36 to sell or service any model or series of vehicles.

37 (33) To fail to reimburse a dealer located in this State in full for the  
38 actual cost of providing a loaner vehicle to any customer who is  
39 having a vehicle serviced at the dealership if the provision of such  
40 a loaner vehicle is required by the manufacturer.

41 (34) To require, coerce, or attempt to coerce any new motor vehicle  
42 dealer in this State to participate monetarily in any training  
43 program whose subject matter is not expressly limited to specific  
44 information necessary to sell or service the models of vehicles the

1 dealer is authorized to sell or service under the dealer's franchise  
2 with that manufacturer. Examples of training programs with  
3 respect to which a manufacturer is prohibited from requiring the  
4 dealer's monetary participation include, but are not limited to,  
5 those which purport to teach morale-boosting employee  
6 motivation, teamwork, or general principles of customer relations.  
7 A manufacturer is further prohibited from requiring the personal  
8 attendance of an owner or dealer principal of any dealership  
9 located in this State at any meeting or training program at which it  
10 is reasonably possible for another member of the dealer's  
11 management to attend and later relate the subject matter of the  
12 meeting or training program to the dealership's owners or  
13 principal operator.

14 (35) Notwithstanding the terms of any franchise, agreement, waiver, or  
15 novation, to limit the number of franchises of the same line make  
16 of vehicle that any motor vehicle dealer may own or operate  
17 within this State or attach any such restrictions or conditions on  
18 such ownership or operation without making the same limitations,  
19 conditions, and restrictions applicable to all of its other  
20 franchisees."

21 Section 3. G.S. 20-305.1(b) reads as rewritten:

22 "(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any  
23 motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail  
24 to perform any of its warranty obligations with respect to a motor vehicle, to fail to  
25 compensate its motor vehicle dealers licensed in this State for warranty parts other  
26 than parts used to repair the living facilities of recreational vehicles, at the prevailing  
27 retail rate according to the factors in subsection (a) of this section, or, in service in  
28 accordance with the schedule of compensation provided the dealer pursuant to  
29 subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers  
30 licensed in this State against any judgment for damages or settlements agreed to by  
31 the manufacturer, including, but not limited to, court costs and reasonable attorneys'  
32 fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits  
33 including, but not limited to, strict liability, negligence, misrepresentation, express or  
34 implied warranty, or rescission or revocation of acceptance of the sale of a motor  
35 vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement  
36 relates to the alleged defective negligent manufacture, assembly or design of new  
37 motor vehicles, parts or accessories or other functions by the manufacturer, factory  
38 branch, distributor or distributor branch, beyond the control of the dealer. Any audit  
39 for warranty parts or service compensation shall only be for the 12-month period  
40 immediately following the date of the payment of the claim by the manufacturer,  
41 factory branch, distributor, or distributor branch. Any audit for sales incentives,  
42 service incentives, rebates, or other forms of incentive compensation shall only be for  
43 the ~~24-month~~ 12-month period immediately following the date of the payment of the  
44 claim by the manufacturer, factory branch, distributor, or distributor branch.

1 Provided, however, these limitations shall not be effective in the case of fraudulent  
2 claims."

3 Section 3.1. G.S. 20-305.1 is amended by adding a new subsection to  
4 read:

5 "(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales  
6 incentives, service incentives, rebates, or other forms of incentive compensation,  
7 reduce the amount to be paid to the dealer, or charge a dealer back subsequent to  
8 the payment of the claim unless it can be shown that the claim was false or  
9 fraudulent or that the dealer failed to reasonably substantiate the claim either in  
10 accordance with the manufacturer's written procedures or by other reasonable  
11 means."

12 Section 4. G.S. 20-305.1(c) reads as rewritten:

13 "(c) In the event there is a dispute between the manufacturer, factory branch,  
14 distributor, or distributor branch, and the dealer with respect to any matter referred  
15 to in ~~subsections~~ subsection (a), (b), (b1), (b2), or (d) of this section, either party may  
16 petition the Commissioner in writing, within 30 days after either party has given  
17 written notice of the dispute to the other, for a hearing on the subject and the  
18 decision of the Commissioner shall be binding on the parties, subject to rights of  
19 judicial review and appeal as provided in Chapter 150B of the General Statutes;  
20 provided, however, that nothing contained herein shall give the Commissioner any  
21 authority as to the content of any manufacturer's or distributor's warranty. Upon the  
22 filing of a petition before the Commissioner under this subsection, any chargeback to  
23 or any payment required of a dealer by a manufacturer relating to warranty parts or  
24 service compensation, or to sales incentives, service incentives, rebates, or other forms  
25 of incentive compensation, shall be stayed during the pendency of the determination  
26 by the Commissioner."

27 Section 5. G.S. 20-305.2 reads as rewritten:

28 "**§ 20-305.2. Unfair methods of competition.**

29 It is unlawful for any motor vehicle manufacturer, factory branch, distributor,  
30 distributor branch, or subsidiary thereof, to directly or indirectly through any  
31 subsidiary or affiliated entity, own, own any ownership interest in, operate, or control  
32 any motor vehicle dealership ~~in a relevant market area of this State already served by~~  
33 ~~a motor vehicle dealer under a franchise for the same line make from such~~  
34 ~~manufacturer, factory branch, distributor, or distributor branch, or subsidiary, in this~~  
35 State, provided that this section shall not be construed to prohibit (i) the operation  
36 by a manufacturer, factory branch, distributor, distributor branch, or subsidiary  
37 thereof, of a dealership for a temporary period (not to exceed one year) during the  
38 transition from one owner or operator to another, or (ii) the ownership or control of  
39 a dealership by a manufacturer, factory branch, distributor, distributor branch, or  
40 subsidiary thereof, ~~during a period while such dealership is being sold under a bona~~  
41 ~~fide contract or purchase option to the operator of the dealership, while in a bona~~  
42 fide relationship with any independent person, other than a manufacturer, factory  
43 branch, distributor, distributor branch, or an agent or affiliate thereof, who has made  
44 a significant investment that is subject to loss in the dealership and who can

1 reasonably expect to acquire full ownership of the dealership within a reasonable  
2 period of time (not to exceed nine years) and on reasonable terms and conditions, or  
3 (iii) the ownership, operation or control of a dealership by a manufacturer, factory  
4 branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer,  
5 factory branch, distributor, distributor branch, or subsidiary has been engaged in the  
6 retail sale of motor vehicles through such dealership for a continuous period of three  
7 years prior to March 16, 1973, and if the Commissioner determines, after a hearing  
8 on the matter at the request of any party, that there is no independent dealer  
9 available in the relevant market area to own and operate the franchise in a manner  
10 consistent with the public interest, or (iv) the ownership, operation, or control of a  
11 dealership by a manufacturer, factory branch, distributor, distributor branch, or  
12 subsidiary thereof, if the Commissioner determines after a hearing on the matter at  
13 the request of any party, that there is no independent dealer available in the relevant  
14 market area to own and operate the franchise in a manner consistent with the public  
15 ~~interest.~~ interest, or (v) the ownership, operation, control of a new motor vehicle  
16 dealership by a manufacturer, factory branch or distributor, distributor branch or  
17 subsidiary thereof (herein 'manufacturer') which directly or indirectly owns, in  
18 aggregate, directly or indirectly, no more than a thirty-four percent (34%) interest in  
19 the dealership and which is not located within 65 miles of any other new motor  
20 vehicle dealership trading in the same line make of vehicle, with the exception of  
21 other same line make new motor vehicle dealerships that are owned and operated by  
22 the same or affiliated corporations or other business entities, and there are no other  
23 dealerships of the same line make owned by other parties within said 65 miles.

24       Provided, this section shall not apply to manufacturers or distributors of trailers or  
25 semitrailers."

26               Section 6. This act becomes effective October 1, 1999.

**Statement By RICHARD STAELIN**  
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**Professor of Business Administration**  
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**Concerning**  
**S 419 AND S 420**

**Summary**

My overarching conclusion is that many of the proposed amendments of S419 and S420 will restrict the interactions between manufacturers and dealers and thereby stifle changes that would otherwise lead to better service and product selection and lower prices. All three imply increased consumer welfare. I specifically discuss this conclusion within in this context three issues, transfer right, exclusive dealerships and company stores.

Transfer rights are important because it is one of the ways that a manufacturer is able to influence the selection of its new channel partner. Both the dealer's and manufacturer's actions can strongly impact the customer's perceptions of a brand. These perceptions have great importance to both the manufacturer and the dealers since they affect the ease with which one can sell the brand. The easier it is to sell the product at a fixed price, the greater the brand's value (i.e., brand equity). Restricting the manufacturer from protecting this brand equity not only hurts the manufacturer, but also other dealers who sell this brand.

Manufacturers invest huge sums of money in advertising and other marketing actions with the goal of differentiating their products from their competitors. This differentiation provides customers with value since consumers like to have unique buying experiences. Restricting manufacturers from requiring exclusive facilities and personnel would greatly degrade the value of their investment in product differentiation. Consequently, these manufacturers would be less likely to compete on this attribute. This stifles competition and innovation and, thus, hurts the consumer.

It is a well acknowledged fact that company stores will lead to lower retail prices. Consequently, any rules or regulations that prohibit the existence of this channel system would adversely affect the consumer.

In summary, these three proposed amendments will stifle competition, lead to higher prices and in general leave the consumer worse off.

**Background**

I have been involved with the dealer/manufacturer interface for almost 30 years, as an expert witness and as an academic who studies and writes about the automobile industry. In that period of time, I have testified in numerous "dealer day in court" cases (mostly representing the dealer) at both the state and federal level, written and presented a number of scholarly papers on the

economic impact of different types of channel systems and lectured to automobile personnel on the value of maintaining good channel relationships with their dealers.

Any comment on the above referenced proposed amendments needs to be made in context. Over the last 15 years the production and distribution of automobiles has seen a tremendous transformation. Manufacturers have instituted major quality initiatives, both at the factory level and at the dealer level. For example we now find the manufacturer (and sometimes the dealer) conducting customer satisfaction surveys with the goal of providing the consumer with a better purchase experience. Engineering design changes have lead to improved quality level in terms of product reliability, the reduced need for maintenance and, in general, have increased the average life of a car. More recently, with the advent of the Internet, we have seen customers altering their purchase behavior. Current estimates indicate that 20 percent of new automobile purchasers use the Internet to gather information before making a purchase. Not only has this resulted in more competition across market areas, it has also allowed customers to more easily collect product and price information.

Given these rapid changes, it is imperative that the State does not impose any more restrictions on the dealer/manufacturer relationship. Instead, the State should look to deregulation and allow the channel system to freely evolve with the changing market forces. Only then will consumers be able to reap the rewards of competition via lower prices, better selection and higher product and service quality.

It is also important to point out that any proposed amendment should view the dealer/manufacturer channel system as a partnership. Although the individual channel members have conflicting goals at times, they also have much to gain by working together to make the channel system work efficiently. In most instances, these partners, if unfettered by rules and regulations, can develop a strategy that leave both members better off in the long run. In many ways, one can think of this relationship is like a marriage. There are times when one partner might believe that he/she would be better off if the other partner was required to do something different. However, if both partners modify their behavior somewhat the relationship is improved and both members reap the benefits. Trust and support are important dimensions of any good channel system. Said differently, it is hard to regulate a good partnership.

### **Transfer Rights**

Bill S419 and portions of S420 are concerned with the transfer of a dealership when a dealer wants to terminate his/her contract with the manufacturer. Dealerships have value for a number of reasons. First, each dealership has tangible assets, i.e., inventory, physical facilities, etc. Second, each dealership has value because it is able to attract a set of loyal customers who believe they get incremental value when dealing with that particular dealership. This incremental value is referred to as brand equity. Part of this brand equity is attributable to the manufacturer's actions, part to the dealers prior actions. It is for the latter reason that dealers should be fairly compensated when the business is transferred to another buyer since their actions lead, in part, to the current value of the business.

As currently written, subdivision 18 of 20-305 makes it unlawful for a manufacturer to prevent or attempt to prevent a dealer from receiving fair and reasonable compensation when the dealership is transferred to another person. However, the proposed bill S419 would prohibit a manufacturer from exercising any contractual right of first refusal. In addition, portions of S420 propose to limit the reasons that a manufacturer can object to a proposed transfer of ownership to such issues as poor character and lack of financial ability. No longer could a manufacturer object because the person lacks experience or had a poor past business record (e.g., poor customer service, etc.). Such restrictions have the potential of harming not only the manufacturer's brand equity but also other dealers' equity and ultimately the consumer. Let me be more specific.

Manufacturers have invested billions of dollars to develop consumer confidence in their brand name. Part of this confidence has to do with the dealer's interaction with the customers. Manufacturers need to have the ability to select or at least approve, their new channel partner since this new partner directly impacts the manufacturer's brand equity. Right of first refusal provides them with the opportunity to influence the identity of the new partner. So does the ability of being able to object to a person, or a transfer, if it does not fit in to their current distribution strategy.

Dealers are also affected when a dealership changes hands. Consumers tend to generalize from one dealer to another. If a dealer is less qualified, or if the transferred dealership is not in harmony with the current distribution strategy, then other surrounding dealers ultimately suffer. Finally, if a less qualified dealers is able to take possession of a dealership, the consumer is hurt via higher prices and poorer service.

In summary, the manufacturer needs to have the ability to approve of its new partner. This does not mean that the dealer has no rights. Note that once the manufacturer agrees to the new partner, the manufacturer is bound by the contract terms and the current rules and regulations associated with dealer interactions and termination. Moreover, current regulations require the manufacturer to fairly compensate the selling dealer for the value of his/her existing business. However, without the ability to influence the transfer of a dealership, the manufacturer is unable to protect and enhance the firm's brand equity. As stated earlier, this ultimately hurts the consumer.

### **Exclusive Dealership**

A portion of S420 deals with the issue of exclusivity. Current regulations prohibit the manufacturer from requiring exclusivity if this would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations. However in most instances, manufacturers now require their dealers to maintain exclusive facilities. The proposed changes would eliminate the manufacturer's ability to justify this requirement.

The proposed amendments are in direct contradiction with current practices for most franchised systems. Certainly we do not see fast food franchises selling competing burgers, or gas stations selling two brands of gas. This is because each franchise wants to be able to provide its



customers with a unique buying experience. Currently, automobile manufacturers ask their dealers to invest in separate outlets so that they can keep some measure of product differentiation. This differentiation allows their exclusive dealers to compete on price and on service with other competing brands. This competition, and the uniqueness of the different approaches, provides benefit to consumers.

Nothing in the current rules and regulations, or current contracts, prohibits a dealer from selling two or more competing cars. The only restriction is selling these competing cars out of the same facility and using the same personnel. This differentiation is at the heart of any manufacturers' strategy.

### **Company Stores**

Manufacturers are currently prohibited from owning, operating or controlling any dealership in a relevant market area already covered by a same line make dealer except under special circumstances. The proposed amendment would rule out these special circumstances, thereby creating an absolute prohibition on manufacturer owned dealerships.

As I and others have shown in published scholarly works (e.g., McGuire and Staelin, *Marketing Science*, 1983), prohibiting company owned stores would have the effect of raising prices and, thus, lowering consumer welfare. These analyses also show that it is often in the manufacturer's best interest to distribute its product through private third parties (i.e., a franchised system). However, whenever the manufacturer uses company stores to distribute its products, retail prices will drop and the quantity sold will increase. Such occurrences have direct positive value to consumers. Consequently, prohibiting company stores will hurt consumers.

**SENATE COMMERCE COMMITTEE**

<u>Member</u>	<u>Counties Represented</u>	<u>1990 Census</u>	<u>Revised Estimates 1996</u>	<u>Projected 2000</u>	<u>Population Growth or Decline</u>
R. C. Soles	Bladen	28,663	29,966	30,847	+ 2,184
	Brunswick	50,985	62,695	70,813	+19,828
	Columbus	49,587	51,764	52,649	+ 3,062
	New Hanover	120,284	143,432	155,595	+35,311
Betsy Cochran	Davidson	126,677	138,437	145,574	+18,897
	Davie	27,859	30,544	32,669	+ 4,840
	Forsyth	265,878	283,687	296,098	+30,220
	Rowan	110,605	120,874	127,595	+16,990
David Hoyle	Cleveland	84,713	90,090	92,620	+ 7,907
	Gaston	175,093	178,765	182,322	+ 7,229
	Lincoln	50,319	56,742	60,932	+10,613
Howard Lee	Chatham	38,759	44,346	47,577	+ 8,818
	Lee	41,370	47,326	51,014	+ 9,644
	Moore	59,000	68,042	73,196	+14,196
	Orange	93,851	105,769	111,982	+18,131
	Randolph	106,546	118,527	128,118	+21,572
Bob Martin	Edgecombe	56,692	55,976	54,617	- 2,075
	Martin	25,078	25,686	25,570	+ 492
	Pitt	108,480	119,001	126,439	+17,959
	Washington	13,997	13,472	12,879	- 1,118
	Wilson	66,061	68,330	69,753	+ 3,692
Ed Warren	Beaufort	42,283	43,149	43,709	+ 1,426
	Lenoir	57,274	59,182	59,223	+ 1,949
	Martin	25,078	25,686	25,570	+ 492
	Pitt	108,480	119,001	126,439	+17,959
Patrick Ballantine	Carteret	52,553	58,220	61,405	+ 8,852
	New Hanover	120,284	143,432	155,595	+35,311
	Onslow	149,838	148,978	150,410	+ 572
	Pender	28,855	35,926	40,329	+11,474

<u>Member</u>	<u>Counties Represented</u>	<u>1990 Census</u>	<u>Revised Estimates 1996</u>	<u>Projected 2000</u>	<u>Population Growth or Decline</u>
Frank Ballance	Bertie	20,388	20,482	20,044	- 344
	Gates	9,305	9,852	10,113	+ 808
	Halifax	55,516	56,408	55,117	- 399
	Hertford	22,523	22,184	21,533	- 990
	Northampton	20,798	20,791	20,807	+ 9
	Vance	38,892	40,532	41,980	+ 3,088
	Warren	17,265	18,139	18,368	+ 1,103
Bob Carpenter	Buncombe	174,778	190,480	196,018	+21,240
	Cherokee	20,170	22,026	23,190	+ 3,020
	Clay	7,155	7,826	8,414	+ 1,259
	Graham	7,196	7,524	7,599	+ 403
	Polk	14,416	16,203	17,097	+ 2,681
	Haywood	46,942	55,565	52,736	+ 5,794
	Henderson	69,326	77,386	82,784	+ 13,458
	Jackson	26,846	29,148	29,815	+ 2,969
	Macon	23,499	27,020	29,276	+ 5,777
	Transylvania	25,520	27,546	28,705	+ 3,185
John Carrington	Wake	426,301	538,482	606,403	+180,102
Charles Carter	Buncombe	174,778	190,480	196,018	+ 21,240
	Burke	75,740	82,408	85,651	+ 9,911
	Madison	16,953	18,170	18,882	+ 1,929
	McDowell	35,681	38,254	41,296	+ 5,615
	Yancey	15,419	16,189	16,667	+ 1,248
Walter Dalton	Cleveland	84,713	90,090	92,620	+ 7,907
	Rutherford	56,919	59,259	60,140	+ 3,221
Jim Forrester	Gaston	175,093	178,765	182,322	+ 7,229
	Iredell	92,935	106,004	115,190	+ 22,255
	Lincoln	50,319	56,742	60,932	+ 10,613

<u>Member</u>	<u>Counties Represented</u>	<u>1990 Census</u>	<u>Revised Estimates 1996</u>	<u>Projected 2000</u>	<u>Population Growth or Decline</u>
Virginia Foxx	Alleghany	9,590	9,590	9,719	+ 129
	Ashe	22,209	23,410	24,138	+ 1,929
	Guilford	347,420	377,124	396,728	+ 49,308
	Rockingham	86,064	89,022	90,270	+ 4,206
	Stokes	37,223	42,122	44,943	+ 7,720
	Surry	61,704	65,766	68,738	+ 7,034
	Watauga	36,953	40,356	41,954	+ 5,001
Luther Jordan	Jones	9,414	9,278	8,672	- 742
	Lenoir	57,274	59,182	59,223	+ 1,949
	New Hanover	120,284	143,432	155,595	+ 34,311
	Onslow	149,838	148,978	150,410	+ 572
	Pender	28,855	35,926	40,329	+ 11,474
John Kerr	Greene	15,384	17,122	18,504	+ 3,120
	Lenoir	57,274	59,182	59,223	+ 1,949
	Wayne	104,666	112,289	116,027	+ 11,361
Steve Metcalf	Buncombe	174,778	190,480	196,018	+ 21,240
	Burke	75,740	82,404	85,651	+ 9,911
	Madison	16,953	18,170	18,882	+ 1,929
	McDowell	35,681	38,254	41,296	+ 5,615
	Yancey	15,419	16,189	16,667	+ 1,248
Ken Moore	Alexander	27,544	30,508	32,357	+ 4,813
	Avery	14,867	15,177	15,721	+ 854
	Burke	75,740	82,404	85,651	+ 9,911
	Caldwell	70,709	74,124	76,178	+ 5,469
	Mitchell	14,433	14,658	14,781	+ 348
	Wilkes	59,393	62,680	64,407	+ 5,014
	Yadkin	30,488	34,708	36,873	+ 6,385
Aaron Plyler	Anson	23,474	23,692	23,912	+ 438
	Hoke	22,856	28,159	31,025	+ 8,169
	Montgomery	23,352	24,350	24,929	+ 1,577
	Richmond	44,518	45,785	45,979	+ 1,461
	Scotland	33,763	34,996	35,451	+ 1,688
	Stanly	51,765	54,470	56,498	+ 4,733
	Union	84,210	102,087	115,095	+ 30,885

<u>Member</u>	<u>Counties Represented</u>	<u>1990 Census</u>	<u>Revised Estimates 1996</u>	<u>Projected 2000</u>	<u>Population Growth or Decline</u>
Bill Purcell	Anson	23,474	23,692	23,912	+ 438
	Hoke	22,856	28,159	31,025	+ 8,169
	Montgomery	23,352	24,350	24,929	+ 1,577
	Richmond	44,518	45,785	45,979	+ 1,461
	Scotland	33,763	34,996	35,451	+ 1,688
	Stanly	51,765	54,470	56,498	+ 4,733
	Union	84,210	102,087	115,095	+ 30,885
Tony Rand	Cumberland	274,713	293,541	299,459	+ 24,746
Eric Reeves	Wake	426,301	538,482	606,403	+180,102
	Johnston	81,306	99,157	111,780	+ 30,474
Bob Rucho	Mecklenburg	511,481	592,257	648,305	+136,824
Larry Shaw	Cumberland	274,713	293,541	299,459	+ 24,746
Robert Shaw	Davidson	126,677	138,437	145,574	+ 18,897
	Guilford	347,420	377,124	396,728	+ 49,308
	Randolph	106,546	118,527	128,118	+ 21,572

**MAZDA****ASHEBORO HONDA-MAZDA**

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Asheboro, N.C. 27204

Telephone (336) 829-9999

**HONDA**

April 19, 1999

Senator R. L. Soles Jr.  
Chairman, Senate Commerce Committee  
Legislative Building

Dear Senator Soles:

I'm writing to you concerning Senate Bills 419 and 420 and the long-term importance of these bills for North Carolina's automotive retailers, their many employees, and their customers.

As you know, there is much interest in this legislation from both manufacturers and retail dealers. For the manufacturers, stopping the passage of the bills represents an opportunity to strengthen their power over the local independent owner/operator. For the North Carolina dealer, loss of this legislation represents a clear and direct threat to locally-owned businesses which, in many cases, have been family operations spanning more than one generation.

I may be in a unique position to understand both manufacturer and dealer positions regarding this legislation. Currently I have ownership interests in four North Carolina dealerships. Prior to becoming a dealer I worked for both Ford Motor Company and Nissan Motor Corporation in the areas of dealer placement, market studies, and dealer franchising. It is clear to me that Senate Bills 419 and 420 are necessary to protect local businesses and their many employees from the manufacturers' desire to reduce the dealer count and own the remaining dealerships themselves.

There is a trend nationally for the manufacturers to attempt to become dealership owners. This would not be healthy for North Carolina for many reasons, including the following:

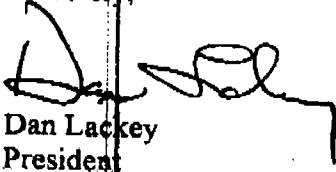
Although their lobbyists assert that passage of these bills could cause the customer cost of vehicles to rise, the opposite is true. Manufacturers tend to have increased overhead expenses which are not found in locally-owned and operated dealerships. (Ford Motor Company recently took control of the dealerships in Tulsa, Oklahoma. A huge capital infusion is already necessary due to unforeseen expenses.) Result: Higher costs which will be passed along to the consumer.

Manufacturer ownership of a retail outlet places it in direct competition with locally owned outlets. The unfair trade advantage in product availability enjoyed by the manufacturer could easily force the independent dealer to sell his business. With the right of first refusal to purchase the business at a discounted price, the manufacturer would likely close many of the dealerships in smaller communities. This will decrease competition in the marketplace. Result: Loss of many local jobs, erosion of the tax base, inconvenience for the customer.

Note that in several states there is a movement to introduce legislation to restrict manufacturers' power *after* these negative effects have been realized. Please don't wait until it is too late. Your positive pro-action on Senate Bill 419/420 will protect North Carolina dealers, their many employees and the consumers, without diminishing the current position of the manufacturers.

Thank you for taking the time to consider these points. If I may offer further explanation or discuss them with you please call me at the above number. If you feel that my manufacturer/dealer background would allow me to assist you in any way I would be happy to meet with you.

Sincerely,



Dan Lackey  
President

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 419

Short Title: Clarify MV Dealer Transfer Rights.

(Public)

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Sponsors: Senators Hoyle; Allran, Ballantine, Carpenter, Carter, Cochrane, Dalton, Dannelly, Forrester, Foxx, Garwood, Gulley, Hagan, Horton, Kerr, Lee, Martin of Pitt, Metcalf, Miller, Moore, Odom, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Robinson, Rucho, Soles, Warren, and Wellons.

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Referred to: Commerce.

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March 18, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY MOTOR VEHICLE DEALER TRANSFER RIGHTS.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. G.S. 20-305(18) reads as rewritten:  
5 "(18) To prevent or attempt to prevent a dealer from receiving fair and  
6 reasonable compensation for the value of the franchised business  
7 transferred in accordance with G.S. 20-305(4) ~~above.~~ above, or to  
8 prevent or attempt to prevent, through the exercise of any  
9 contractual right of first refusal or otherwise, a dealer located in  
10 this State from transferring the franchised business to such  
11 persons or other entities as the dealer shall designate in  
12 accordance with G.S. 20-305(4). The opinion or determination of  
13 a manufacturer that the existence or location of one of its  
14 franchised dealers situated in this State is not viable or is not  
15 consistent with the manufacturer's distribution or marketing  
16 forecast or plans shall not constitute a lawful basis for the  
17 manufacturer to fail or refuse to approve a dealer's proposed  
18 transfer of ownership submitted in accordance with G.S. 20-  
19 305(4), or "good cause" for the termination, cancellation, or  
20 nonrenewal of the franchise under G.S. 20-305(6) or for the  
21 rejection of an owner's designated successor appointed pursuant



1                   to G.S. 20-305(7). No manufacturer shall owe any duty to any  
2                   actual or potential purchaser of a motor vehicle franchise located  
3                   in this State to disclose to such actual or potential purchaser its  
4                   own opinion or determination that the franchise being sold or  
5                   otherwise transferred is not viable or is not consistent with the  
6                   manufacturer's distribution or marketing forecast or plans."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 941

Short Title: Manufactured Homes Law Changes.

(Public)

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Sponsors: Senators Warren; Albertson, Clodfelter, Cooper, Dannelly, Hoyle, Martin of Guilford, Martin of Pitt, and Rand.

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Referred to: Commerce.

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April 14, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO UPDATE THE MANUFACTURED HOUSING BOARD STATUTES,  
3 TO PROVIDE FOR CONTINUING EDUCATION FOR LICENSEES, TO  
4 IMPROVE THE BUYER CANCELLATION LAW, AND TO UPDATE THE  
5 LAW ON MANUFACTURED HOME STANDARDS TO COMPLY WITH  
6 FEDERAL LAWS AND REGULATIONS.

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 9A of Chapter 143 of the General Statutes reads as  
9 rewritten:

10 "ARTICLE 9A.

11 "North Carolina Manufactured Housing Board --

12 "Manufactured Home Warranties.

13 "§ 143-143.8. Purpose.

14 The General Assembly finds that ~~mobile~~ manufactured homes have become a  
15 primary housing resource for many of the citizens of North Carolina. The General  
16 Assembly finds further that it is the responsibility of the ~~mobile~~ manufactured home  
17 industry to provide homes which are of reasonable quality and safety and to offer  
18 warranties to buyers that provide a means of remedying quality and safety defects in  
19 ~~mobile~~ manufactured homes. The General Assembly also finds that it is in the public  
20 interest to provide a means for enforcing such warranties.

21 Consistent with these findings and with the legislative intent to promote the  
22 general welfare and safety of ~~mobile~~ manufactured home residents in North Carolina,  
23 the General Assembly finds that the most efficient and economical way to assure

1 safety, quality and responsibility is to require the licensing and bonding of all  
2 segments of the ~~mobile~~ manufactured home industry. The General Assembly also  
3 finds that it is reasonable and proper for the ~~mobile~~ manufactured home industry to  
4 cooperate with the Commissioner of Insurance, through the establishment of the  
5 North Carolina Manufactured Housing Board, to provide for a comprehensive  
6 framework for industry regulations.

7 **"§ 143-143.9. Definitions.**

8 The following ~~words, terms and phrases, when used in this Article, shall have the~~  
9 ~~meanings respectively ascribed to them in this section, except where the context~~  
10 ~~clearly indicates a different meaning;~~ definitions apply in this Article:

- 11 (1) ~~"Board" means the Board.~~ -- The North Carolina Manufactured  
12 Housing Board.
- 13 (2) ~~"Buyer" means a Buyer.~~ -- A person who purchases at retail from a  
14 dealer or manufacturer a manufactured home for personal use as  
15 a residence or other related use.
- 16 (3) ~~"Code" means the appropriate Code.~~ -- Engineering standards  
17 adopted by the Commissioner.
- 18 (4) ~~"Commissioner" means the Commissioner.~~ -- The Commissioner of  
19 Insurance of the State of North Carolina.
- 20 (5) ~~"Department" means the Department.~~ -- The Department of  
21 Insurance of the State of North Carolina.
- 22 (5a) License. -- A license issued under this Article.
- 23 (5b) Licensee. -- A person who has been issued a license under this  
24 Article by the North Carolina Manufactured Housing Board.
- 25 (6) ~~"Manufactured home" or "mobile home" means a Manufactured~~  
26 home. -- A structure, transportable in one or more sections, which,  
27 in the travelling mode, is eight feet or more in width or is 40 feet  
28 or more in length, or when erected on site, is 320 or more square  
29 feet, and which is built on a permanent chassis and designed to be  
30 used as a dwelling with or without a permanent foundation when  
31 connected to the required utilities, and includes the plumbing,  
32 heating, air conditioning and electrical systems contained therein.
- 33 (7) ~~"Manufactured home dealer" or "dealer" means any Manufactured~~  
34 home dealer or dealer. -- Any person engaged in the business of  
35 buying, buying or selling or dealing in manufactured homes or  
36 offering or displaying manufactured homes for sale in North  
37 Carolina. Any person who buys, sells or deals in buys or sells three  
38 or more manufactured homes in any 12-month period, or who  
39 offers or displays for sale three or more manufactured homes in  
40 any 12-month period shall be presumed to be a manufactured  
41 home dealer. The terms 'selling' and 'sale' include lease-purchase  
42 transactions. The term 'manufactured home dealer' does not  
43 include banks and finance companies that acquire manufactured  
44 homes as an incident to their regular business.

- 1 (8) ~~"Manufactured home manufacturer" or "manufacturer"~~ means any  
2 Manufactured home manufacturer or manufacturer. -- Any person,  
3 resident or nonresident, who manufactures or assembles  
4 manufactured homes for sale to dealers in North Carolina.
- 5 (9) ~~"Manufactured home salesman" or "salesman"~~ means any  
6 Manufactured home salesperson or salesperson. -- Any person  
7 employed ~~as a salesman~~ by a manufactured home dealer to sell  
8 manufactured homes to buyers.
- 9 (10) ~~"Person"~~ means any Person. -- Any individual, natural persons,  
10 firm, partnership, association, corporation, legal representative or  
11 other recognized legal entity.
- 12 (11) ~~"Responsible party"~~ means a Responsible party. A manufacturer,  
13 dealer, supplier, or set-up contractor.
- 14 (12) ~~"Setup"~~ means the Setup. -- The operations performed at the  
15 occupancy site which render a manufactured home fit for  
16 habitation. ~~Such operations include, but are not limited to,~~  
17 ~~transportation by a bona fide private or exempt carrier operating~~  
18 ~~under the provisions of the Public Utilities Act, positioning,~~  
19 ~~blocking, leveling, supporting, tying down, connecting utility~~  
20 ~~systems, making minor adjustments, or assembling multiple or~~  
21 ~~expandable units. Such operations do not include lawful~~  
22 ~~transportation services performed by public utilities operating~~  
23 ~~under certificates or permits issued by the North Carolina Utilities~~  
24 ~~Commission.~~
- 25 (13) ~~"Set-up contractor"~~ means a Set-up contractor. -- A person who  
26 engages in the business of performing ~~set-up operations~~ setups for  
27 compensation in North Carolina.
- 28 (14) ~~"Substantial defect"~~ means any Substantial defect. -- Any  
29 substantial deficiency in or damage to materials or workmanship  
30 occurring in a manufactured home which has been reasonably  
31 maintained and cared for in normal use. The term also means any  
32 structural element, utility system or component part of the  
33 manufactured home which fails to comply with the Code.
- 34 (15) ~~"Supplier"~~ means the Supplier. -- The original producer of  
35 completed components, including refrigerators, stoves, hot water  
36 heaters, dishwashers, cabinets, air conditioners, heating units, and  
37 similar components, and materials such as floor coverings,  
38 panelling, siding, trusses, and similar materials, which are furnished  
39 to a manufacturer or dealer for installation in the manufactured  
40 home prior to sale to a buyer.

41 **"§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.**

- 42 (a) There is ~~hereby~~ created the North Carolina Manufactured Housing Board  
43 within the ~~Department of Insurance.~~ Department. The Board shall be composed of  
44 nine members as follows:

- 1 (1) The Commissioner of Insurance or his ~~designee~~ designee.
- 2 (2) A manufactured home ~~manufacturer~~ manufacturer.
- 3 (3) A manufactured home ~~dealer~~ dealer.
- 4 (4) A representative of the banking and finance ~~business~~ business.
- 5 (5) A representative of the insurance ~~industry~~ industry.
- 6 (6) A manufactured home ~~supplier~~ supplier.
- 7 (7) A set-up ~~contractor~~ contractor.
- 8 (8) Two representatives of the general public.

9 The Commissioner ~~of Insurance~~ or his designee shall ~~serve as chairman of chair~~  
10 the Board. The Governor shall appoint to the Board the manufactured home  
11 manufacturer and the manufactured home dealer. The General Assembly upon the  
12 recommendation of the Speaker of the House of Representatives in accordance with  
13 G.S. 120-121 shall appoint the representative of the banking and finance industry and  
14 the representative of the insurance industry. The General Assembly upon the  
15 recommendation of the President Pro Tempore of the Senate in accordance with G.S.  
16 120-121 shall appoint the manufactured home supplier and set-up contractor. The  
17 Commissioner ~~of Insurance~~ shall appoint two representatives of the general public.  
18 Except for the representatives from the general public and the persons appointed by  
19 the General Assembly, each member of the Board shall be appointed by the  
20 appropriate appointing authority from a list of nominees submitted to the appropriate  
21 appointing authority by the Board of Directors of the North Carolina Manufactured  
22 Housing Institute. At least three nominations shall be submitted for each position on  
23 the Board. The members of the Board shall be residents of the State.

24 The members of the Board shall serve for terms of three ~~years to begin on October~~  
25 ~~1, 1981, except that the persons appointed by the General Assembly upon the~~  
26 ~~recommendation of the Speaker shall serve two year terms to expire on September~~  
27 ~~30, 1985, and the persons appointed by the General Assembly upon the~~  
28 ~~recommendation of the President Pro Tempore of the Senate shall serve for~~  
29 ~~three year terms to expire on September 30, 1986.~~ years. In the event of any vacancy  
30 of a position appointed by the Governor or ~~Commissioner of Insurance,~~  
31 Commissioner, the appropriate appointing authority shall appoint a replacement in  
32 the same manner as provided for the original appointment to serve the remainder of  
33 the unexpired term. Vacancies in appointments made by the General Assembly shall  
34 be filled in accordance with G.S. 120-122. In the event of any vacancy, the  
35 appropriate appointing authority shall appoint a replacement to serve the remainder  
36 of the unexpired term. Such appointment shall be made in the same manner as  
37 provided for the original appointment. No member of the Board shall serve more  
38 than two consecutive, three-year terms.

39 The member of the Board representing the general public shall have no financial  
40 interest connected with the manufactured housing industry. No member of the Board  
41 shall participate in any proceeding before the Board involving that member's own  
42 business.

43 Each member of the Board, except the Commissioner ~~of Insurance~~ and any other  
44 State employee, shall receive per diem and allowances as provided with respect to

1 occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall  
2 be paid exclusively out of the fees received by the Board as authorized by this  
3 Article. In no case shall any salary, expense, or other obligation of the Board be  
4 charged against the ~~Treasury~~ General Fund of the State of North Carolina. All  
5 moneys and receipts shall be kept in a special fund by and for the use of the Board  
6 for the exclusive purpose of carrying out the provisions of this Article. Unexpended  
7 funds shall not revert to the General Fund.

8 (b) In accordance with the provisions of this Article, the ~~North Carolina~~  
9 ~~Manufactured Housing~~ Board shall have the following powers and duties:

- 10 (1) To issue licenses to manufacturers, dealers, ~~salesmen~~ salespersons,  
11 and set-up ~~contractors~~; contractors.
- 12 (2) To require that an adequate bond or other security be posted by  
13 all licensees, except manufactured housing ~~salesmen~~; salespersons.
- 14 (3) To receive and resolve complaints from buyers of manufactured  
15 homes and from persons in the manufactured housing industry, in  
16 connection with the warranty, warranty service, licensing  
17 requirements or any other provision under this ~~Article~~; and  
18 Article.
- 19 (4) To ~~promulgate~~ adopt rules in accordance with Chapter 150B of the  
20 General Statutes as are necessary to carry out the provisions of this  
21 Article.
- 22 (5) To file against the bond posted by a licensee for warranty repairs  
23 and service on behalf of a buyer.

24 "§ 143-143.11. License required; application for license.

25 (a) It shall be unlawful for any manufactured home manufacturer, dealer,  
26 ~~salesman~~ salesperson, or set-up contractor to engage in business as such in this State  
27 without first obtaining a license from the Board, as provided in this Article. The fact  
28 that a person is licensed by the Board as a set-up contractor or a dealer does not  
29 preempt any other licensing boards' applicable requirements for that person.

30 (b) Application for ~~such~~ the license shall be made to the Board at such time, in  
31 such form, and contain ~~such~~ information as the Board ~~shall require~~; requires, and  
32 shall be accompanied by the ~~required~~ fee established by the Board. ~~Such~~ The fee  
33 shall not exceed three hundred dollars (\$300.00) for any license.

34 (c) In ~~such~~ the application, the Board shall require information relating to the  
35 matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and  
36 information relating to other pertinent matters consistent with safeguarding the public  
37 interest. All ~~such~~ of this information shall be considered by the Board in determining  
38 the fitness of the ~~applicant to engage in the business for which a license is sought~~.  
39 applicant.

40 (d) All licenses ~~that are granted~~ shall expire, unless ~~sooner~~ revoked or suspended,  
41 on June 30 of each year following the date of issue.

42 (e) Every ~~registrant under this Chapter~~ licensee shall, on or before the first day of  
43 July of each year, obtain a renewal of a license for the ensuing next year, by  
44 application, accompanied by the required ~~fee~~; and upon fee. Upon failure to renew,

1 ~~his a license shall automatically expire; but such expires.~~ The license may be renewed  
2 at any time within one year upon payment of the ~~prescribed renewal fee and upon~~  
3 ~~evidence satisfactory to the Board that the applicant has not engaged in business as a~~  
4 ~~manufactured home manufacturer, dealer, salesman or set-up contractor after~~  
5 ~~expiration of the license and is otherwise eligible for registration under the provisions~~  
6 ~~of this Chapter.~~ renewal fee.

7 (f) Supplemental licenses shall be issued for each place of business, operated or  
8 proposed to be operated by the licensee, that is not contiguous to other premises for  
9 which a license is issued. The fee for a supplemental license shall be established by  
10 the Board and shall not exceed three hundred dollars (\$300.00), provided that no  
11 supplemental license shall be required for a place of business operated by a licensee  
12 that is used exclusively for storage.

13 (g) Notwithstanding the provisions of subsection (a), the Board may provide by  
14 rule that a manufactured home ~~salesman~~ salesperson will be allowed to engage in  
15 business during the time period after making application for a license but before such  
16 license is granted.

17 (h) ~~To obtain~~ As a prerequisite to obtaining a license under this Article, a person  
18 ~~must~~ may be required to pass an examination prescribed by the Board that is based  
19 on the ~~North Carolina Manufactured/Mobile Home Regulations and Administrative~~  
20 ~~Procedures required to enforce the Codes.~~ Code, this Article, and any other subject  
21 matter considered relevant by the Board.

22 **"§ 143-143.11A. Notification of change of address; service of notice.**

23 (a) Every applicant for a license shall inform the Board of the applicant's business  
24 address. Every licensee shall give written notification to the Board of any change in  
25 the licensee's business address, for whatever reason, within 10 business days after the  
26 licensee moves to a new address or a change in the address takes place. A violation  
27 of this subsection shall not constitute grounds for revocation, suspension, or non-  
28 renewal of a license or for the imposition of any other penalty by the Board.

29 (b) Notwithstanding any other provision of law, whenever the Board is authorized  
30 or required to give notice to a licensee under this Article, the notice may be  
31 delivered personally to the licensee or sent by first-class mail to the licensee at the  
32 address provided to the Board under subsection (a) of this section. Notice shall be  
33 deemed given four days after mailing, and any Department employee may certify that  
34 notice has been given.

35 **"§ 143-143.11B. Continuing education.**

36 (a) The Board may establish programs and requirements of continuing education  
37 for licensees, but shall not require licensees to complete more than eight credit hours  
38 of continuing education. Prior to the renewal of a license, a licensee shall present  
39 evidence to the Board that he or she has completed the required number of  
40 continuing education hours in courses approved by the Board during the two months  
41 immediately preceding the expiration of his or her license.

42 (b) The Board may establish nonrefundable fees for the purpose of providing staff  
43 and resources to administer continuing education programs, and may establish  
44 nonrefundable course application fees, not to exceed one hundred fifty dollars

1 (\$150.00), for the Board's review and approval of proposed continuing education  
2 courses. The Board may charge the sponsor of an approved course a nonrefundable  
3 fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of course  
4 approval. The Board may also require a course sponsor to pay a fee, not to exceed  
5 five dollars (\$5.00) per credit hour per licensee, for each licensee completing an  
6 approved continuing education course conducted by the sponsor. The Board may  
7 award continuing education credit for an unapproved course or related educational  
8 activity and may prescribe procedures for a licensee to submit information on an  
9 unapproved course or related educational activity for continuing education credit and  
10 may charge the licensee a fee not to exceed fifty dollars (\$50.00) for each course or  
11 activity submitted. Any unexpended revenue from the fees shall not revert to the  
12 General Fund.

13 (c) The Board may adopt any reasonable rules not inconsistent with this Article to  
14 give purpose and effect to the continuing education requirement, including rules that  
15 govern:

- 16 (1) The content and subject matter of continuing education courses.
- 17 (2) The criteria, standards, and procedures for the approval of courses,  
18 course sponsors, and course instructors.
- 19 (3) The methods of instruction.
- 20 (4) The computation of course credit.
- 21 (5) The ability to carry forward course credit from one year to  
22 another.
- 23 (6) The waiver of or variance from the continuing education  
24 requirement for hardship or other reasons.
- 25 (7) The procedures for compliance and sanctions for noncompliance.

26 (d) The license of any person who fails to comply with the continuing education  
27 requirements under this section shall lapse. The Board may, for good cause shown,  
28 grant extensions of time to licensees to comply with these requirements. Any licensee  
29 who, after obtaining an extension, offers evidence satisfactory to the Board that he or  
30 she has satisfactorily completed the required continuing education courses shall be  
31 deemed in compliance with this section.

32 **"§ 143-143.12. Bond required.**

33 (a) A person licensed as a manufactured home ~~salesman~~ salesperson shall not be  
34 required to furnish a bond, but each applicant approved by the Board for license as a  
35 manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash  
36 bond or fixed value equivalent ~~thereof~~ in the following amounts:

- 37 (1) For a ~~manufactured~~, manufacturer, two thousand dollars (\$2,000)  
38 per manufactured home manufactured in the prior license year, up  
39 to a maximum of one hundred thousand dollars (\$100,000). When  
40 no manufactured homes were produced in the prior year, the  
41 amount required shall be based on the estimated number of  
42 manufactured homes to be produced during the current ~~year~~, year.



- 1           (2) For a dealer ~~who buys, sells, or deals in manufactured homes and~~  
 2           who has four or less places of business, the amount shall be  
 3           twenty-five thousand dollars ~~(\$25,000); (\$25,000).~~  
 4           (3) For a dealer ~~who buys, sells, or deals in manufactured homes and~~  
 5           who has more than four places of business, the amount shall be  
 6           fifty thousand dollars ~~(\$50,000); (\$50,000).~~  
 7           (4) For a set-up contractor, the amount shall be five thousand dollars  
 8           (\$5,000).

9           (b) A corporate surety bond shall be approved by the Board as to form and shall  
 10 be conditioned upon the obligor faithfully conforming to and abiding by the  
 11 provisions of this Article. A cash bond or fixed value equivalent ~~thereof~~ shall be  
 12 approved by the Board as to form and terms of deposits in order to secure the  
 13 ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year  
 14 period, and a new bond or a proper continuation certificate shall be delivered to the  
 15 Board at the beginning of each subsequent one-year period.

16           (c) Any buyer of a manufactured home who suffers any loss or damage by any act  
 17 of a licensee that constitutes a violation of this Article ~~shall have the right to~~ may  
 18 institute an action to recover against ~~such~~ the licensee and the surety.

19           (d) The Board may adopt rules to assure satisfaction of claims.

20 "**§ 143-143.13. Grounds for denying, ~~suspending~~ suspending, or revoking license-**  
 21 **licenses; civil penalties.**

22           (a) A license may be denied, suspended or revoked by the Board on any one or  
 23 more of the following grounds:

- 24           (1) ~~Material~~ Making a material misstatement in application for ~~license;~~  
 25           license.  
 26           (2) ~~Failure~~ Failing to post an adequate corporate surety bond, cash  
 27           bond or fixed value ~~equivalent thereof;~~ equivalent.  
 28           (3) Engaging in the business of manufactured home manufacturer,  
 29           dealer, ~~salesman~~ salesperson, or set-up contractor without first  
 30           obtaining a license from the ~~Board;~~ Board.  
 31           (4) ~~Failure~~ Failing to comply with the warranty service obligations and  
 32           claims procedure established by this ~~Article;~~ Article.  
 33           (5) ~~Failure~~ Failing to comply with the ~~set-up and tie-down~~ set-up  
 34           requirements established by this ~~Article;~~ Article.  
 35           (6) ~~Having knowingly failed or refused~~ Failing or refusing to account  
 36           for or to pay over moneys or other valuables belonging to others  
 37           ~~which~~ that have come into licensee's possession arising out of the  
 38           sale of manufactured ~~homes;~~ homes.  
 39           (7) ~~Use of~~ Using unfair methods of competition or committing unfair  
 40           or deceptive ~~commercial~~ acts or ~~practices;~~ practices.  
 41           (8) ~~Failure~~ Failing to comply with any provision of this ~~Article;~~  
 42           Article.  
 43           (9) ~~Failure~~ Failing to appear for a hearing before the Board or for a  
 44           prehearing conference with a person or persons designated by the

- 1 ~~Board upon due after proper notice or failing to follow directives~~  
2 ~~comply with orders of the Board issued pursuant to this Article;~~  
3 ~~Article.~~
- 4 (10) ~~Employing unlicensed retail salesmen; salespersons.~~
- 5 (11) ~~Knowingly offering for sale the products of manufacturers who are~~  
6 ~~not licensed pursuant to this Article or selling, to dealers not~~  
7 ~~licensed pursuant to this Article, manufactured homes which are to~~  
8 ~~be sold in this State to buyers as defined in this Article; Offering~~  
9 ~~for sale manufactured homes manufactured or assembled by~~  
10 ~~unlicensed manufacturers or selling manufactured homes to~~  
11 ~~unlicensed dealers for sale to buyers in this State.~~
- 12 (12) Conviction of a felony or any crime involving moral turpitude;  
13 turpitude.
- 14 (13) Having had a license revoked, suspended or denied by the Board  
15 ~~under this Article; Board;~~ or having had a license revoked,  
16 suspended or denied by a similar entity in another state; or  
17 engaging in conduct in another state which conduct, if committed  
18 in this State, would have been a violation under this Article;  
19 Article.
- 20 (14) ~~Knowingly engaging~~ Employing or contracting with any person to  
21 perform ~~set-up operations~~ setups who is not licensed by the Board  
22 as a set-up contractor.
- 23 (b) Repealed by Session Laws 1985, c. 666, s. 38.
- 24 (c) In addition to the authority to deny, suspend, or revoke a license under this  
25 Article, the Board ~~also has the authority to~~ may impose a civil penalty upon any  
26 person violating the provisions of this Article. Upon a finding by the Board of a  
27 violation of this Article, the Board shall ~~direct~~ order the payment of a penalty of not  
28 less than one hundred dollars (\$100.00) nor more than five hundred dollars  
29 (\$500.00). In determining the amount of the penalty, the Board shall consider the  
30 degree and extent of harm caused by the violation, the amount of money that inured  
31 to the benefit of the violator as a result of the violation, whether the violation was  
32 committed willfully, and the prior record of the violator in complying or failing to  
33 comply with laws, rules, or orders applicable to the violator. Each day during which  
34 a violation occurs shall constitute a separate offense. The penalty shall be payable to  
35 the Board. The Board shall remit the clear proceeds of penalties provided for in this  
36 subsection to the Civil Penalty and Forfeiture Fund in accordance with G.S.  
37 115C-457.2.
- 38 Payment of the civil penalty under this section shall be in addition to payment of  
39 any other penalty for a violation of the criminal laws of this State. Nothing in this  
40 subsection shall prevent the Board from negotiating a mutually acceptable agreement  
41 with any person as to the status of the person's license or certificate or as to any civil  
42 penalty.
- 43 "§ 143-143.14. ~~Notice and hearing.~~ Hearings; rules.

1 (a) License suspensions, revocations, and renewal refusals are subject to the  
2 provisions of Chapter 150B of the General Statutes.

3 (b) If the Board finds that an applicant has not met the requirements for licensure,  
4 the Board shall refuse to issue the applicant a license and shall notify the applicant in  
5 writing of the denial and the grounds for the denial. The application may also be  
6 denied for any reason for which a license may be suspended or revoked or not  
7 renewed under G.S. 143-143.13. Within 30 days after receipt of a notification that an  
8 application for a license has been denied, the applicant may make a written request  
9 for a review by a member of the Department staff designated by the ~~chairman~~ chair  
10 of the Board to determine the reasonableness of the Board's action. The review shall  
11 be completed without undue delay, and the applicant shall be notified promptly in  
12 writing as to the outcome of the review. Within 30 days after service of the  
13 notification as to the outcome, the applicant may make a written request for a  
14 hearing under Article 3A of Chapter 150B of the General Statutes if the applicant  
15 disagrees with the outcome.

16 (c) The Board may adopt rules for hearings and prehearing conferences under this  
17 Article, and the rules may include provisions for prefiled evidence, the use of  
18 evidence, testimony of parties, prehearing statements, prehearing conference  
19 procedures, settlement conference procedures, discovery, subpoenas, sanctions,  
20 motions, intervention, consolidation of cases, continuances, and the rights and  
21 responsibilities of parties and witnesses.

22 "~~§ 143-143.15. Set-up and tie-down~~ Set-up requirements.

23 (a) Manufactured homes shall be set up ~~and anchored~~ in accordance with the  
24 standards adopted by the Commissioner.

25 (b) ~~In the event that~~ If a manufactured home is insured against damage caused by  
26 windstorm and subsequently sustains windstorm damage ~~of a nature~~ that indicates the  
27 manufactured home was not ~~anchored or tied down~~ set up in the manner required by  
28 this section, the insurer issuing the ~~homeowner's~~ insurance policy on the  
29 manufactured home shall not be relieved from meeting the obligations specified in  
30 the insurance policy with respect to such damage on the basis that the ~~mobile~~  
31 manufactured home was not properly ~~anchored or tied down.~~ set up.

32 "~~§ 143-143.16. Warranties.~~

33 Each manufacturer, dealer and supplier of manufactured homes shall warrant each  
34 new manufactured home sold in this State ~~and the setup of each such manufactured~~  
35 ~~home~~ in accordance with the warranty requirements prescribed by this section for a  
36 period of at least 12 months, measured from the date of delivery of the manufactured  
37 home to the buyer. The warranty requirements for each manufacturer, dealer,  
38 supplier and set-up contractor of manufactured homes are as follows:

39 (1) The manufacturer warrants that all structural elements, plumbing  
40 systems, heating, cooling and fuel burning systems, electrical  
41 systems, and any other components included by the manufacturer  
42 are manufactured and installed free from substantial ~~defect.~~  
43 defects.

44 (2) The dealer warrants:

- 1 a. That any modifications or alterations made to the  
2 manufactured home by the dealer or authorized by the  
3 dealer are free from substantial defects. Alterations or  
4 modifications made by a dealer shall relieve the  
5 manufacturer of warranty responsibility as to the item  
6 altered or modified and any ~~damage resulting therefrom.~~  
7 resulting damage.
- 8 b. That ~~set-up operations~~ a setup performed by the dealer on  
9 the manufactured home ~~are~~ is performed in compliance with  
10 ~~applicable standards adopted by the Commissioner for the~~  
11 ~~installation of manufactured homes.~~ the Code.
- 12 c. ~~That, during the course of setup~~ That the setup and  
13 transportation of the manufactured home ~~performed~~ by the  
14 dealer, ~~substantial defects do not occur to the manufactured~~  
15 ~~home.~~ dealer did not result in substantial defects.

16 (3) The supplier warrants that any warranties generally offered in the  
17 ordinary sale of his product to consumers shall be extended to  
18 buyers of manufactured homes. The manufacturer's warranty shall  
19 remain in effect notwithstanding the existence of a supplier's  
20 warranty.

21 (4) The set-up contractor warrants that ~~set-up operations~~ are  
22 ~~performed~~ the manufactured home is set up in compliance with  
23 ~~applicable standards adopted by the Commissioner for the~~  
24 ~~installation of manufactured homes,~~ the Code and that ~~during the~~  
25 ~~course of set-up operations performed on the manufactured home,~~  
26 ~~substantial defects do not occur to the manufactured home.~~ the  
27 setup did not result in any substantial defects.

28 **"§ 143-143.17. Presenting claims for warranties and substantial defects.**

29 (a) Whenever a claim for warranty service or about a substantial defect is made to  
30 a licensee, it shall be handled as provided by in this Article. ~~A~~ The licensee shall  
31 make a record ~~shall be made~~ of the name and address of each claimant and the date,  
32 substance, and disposition of each claim about a substantial defect. The licensee may  
33 request that a claim be in writing, but must nevertheless record it as provided above,  
34 and may not delay service pending receipt of the written claim.

35 (b) When the licensee notified is not the responsible party, he shall in writing  
36 immediately notify the claimant ~~of that fact, and shall also in writing immediately~~  
37 ~~notify~~ and the responsible party of the claim. When a responsible party is asked to  
38 remedy defects, it may not fail to remedy those defects because another party may  
39 also be responsible. Nothing ~~herein shall prevent such~~ in this section prevents a party  
40 from obtaining compensation by way of contribution or subrogation from another  
41 responsible party in accordance with any other provision of law or contract.

42 (c) Within the time limits provided in this Article, the licensee shall either resolve  
43 the claim or determine that it is not justified. At any time a licensee determines that a  
44 claim for warranty service is not justified in whole or in part he shall immediately

1 notify the claimant in writing that the claim or part of the claim is rejected and why,  
2 and shall inform the claimant that he is entitled to complain to the Board, for which  
3 a complete mailing address shall be provided. ~~Within five working days of its receipt~~  
4 ~~of a complaint, the Board shall send a complete copy thereof to the Attorney General~~  
5 ~~and to the Commissioner of Insurance.~~

6 "§ 143-143.18. Warranty service.

7 (a) When a service agreement exists between or among a manufacturer, dealer and  
8 supplier to provide warranty service, the agreement shall specify which party is to  
9 remedy warranty defects. Every ~~such~~ service agreement shall be in writing. Nothing  
10 contained in such an agreement shall relieve the responsible party, as provided by  
11 this Article, of responsibility to perform warranty service. However, any licensee  
12 undertaking by such agreement to perform the warranty service obligations of another  
13 shall thereby himself become responsible both to that other licensee and to the buyer  
14 for his failure adequately to perform as agreed.

15 (b) When no service agreement exists for warranty service, the responsible party as  
16 designated by ~~the provisions of~~ this Article is responsible for remedying the warranty  
17 defect.

18 (c) A substantial defect shall be remedied within 45 days ~~of~~ after the receipt of  
19 written notification from the claimant. If no written notification is given, the defect  
20 shall be remedied within 45 days ~~of~~ after the mailing of notification by the Board,  
21 unless the claim is unreasonable or bona fide reasons exist for not remedying the  
22 defect within the 45-day period. The responsible party shall respond to the claimant  
23 in writing with a copy to the Board stating its reasons for not promptly remedying the  
24 defect and stating what further action is contemplated by the responsible party.  
25 Notwithstanding the foregoing provisions of this subsection, defects, which constitute  
26 an imminent safety hazard to life and health shall be remedied within five working  
27 days of receipt of the written notification of the warranty claim. An imminent safety  
28 hazard to life and health shall include but not be limited to (i) inadequate heating in  
29 freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock, leaking gas; or  
30 (iv) major structural failure. The Board may suspend this five-day time period in the  
31 event of widespread defects or damage resulting from adverse weather conditions or  
32 other natural catastrophes.

33 (d) When the person remedying the defect is not the responsible party as  
34 designated by the provisions of this Article, he shall be entitled to reasonable  
35 compensation paid to him by the responsible party. Conduct ~~which~~ that coerces or  
36 requires a nonresponsible party to perform warranty service is a violation of this  
37 Article.

38 (e) Warranty service shall be performed at the site at which the ~~mobile~~  
39 manufactured home is initially delivered to the buyer, except for components which  
40 can be removed for service without substantial expense or inconvenience to the  
41 buyer.

42 (f) Any dealer, manufacturer or supplier ~~shall have the right to~~ may complain to  
43 the Board when warranty service obligations under this Article are not being  
44 enforced.

1 "§ 143-143.19. Dealer alterations.

2 (a) No alteration or modification shall be made to a manufactured home by a  
3 dealer after shipment from the manufacturer's plant, unless such alteration or  
4 modification is authorized by this Article or the manufacturer. The dealer shall  
5 ensure that all authorized alterations and modifications are performed, if so required,  
6 by qualified persons as defined in subsection (d). An unauthorized alteration or  
7 modification performed by a ~~manufactured home~~ dealer or his agent or employee  
8 shall place primary warranty responsibility for the altered or modified item upon the  
9 dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered  
10 or modified item, he shall be entitled to recover damages in the amount of his cost  
11 and attorney's fee from the dealer.

12 (b) An unauthorized alteration or modification of a manufactured home by the  
13 owner or his agent shall relieve the manufacturer of responsibility to remedy defects  
14 caused by such alteration or modification. A statement to this effect, together with a  
15 warning specifying those alterations or modifications which should be performed only  
16 by qualified personnel in order to preserve warranty protection, shall be displayed  
17 clearly and conspicuously on the face of the warranty. Failure to display such  
18 statement shall result in warranty responsibility on the manufacturer.

19 (c) The Board is authorized to ~~promulgate~~ adopt rules in accordance with Chapter  
20 150B of the General Statutes ~~which that~~ define the alterations or modifications which  
21 must be made by qualified personnel. The Board may require qualified personnel  
22 only for those alterations and modifications which could substantially impair the  
23 structural integrity or safety of the manufactured home.

24 (d) In order to be designated as a person qualified to alter or modify a  
25 manufactured home, a person must comply with State licensing or competency  
26 requirements in skills relevant to performing alterations or modifications on  
27 manufactured homes.

28 "§ 143-143.20. Disclosure of manner used in determining length of manufactured  
29 homes.

30 In any advertisement or other communication regarding the length of a  
31 manufactured home, a manufacturer or dealer shall not include the coupling  
32 mechanism in describing the length of the home.

33 "§ 143-143.21: Repealed by Session Laws 1993, c. 409, s. 6, and applicable to  
34 purchase agreements executed on or after that date.

35 "~~§ 143-143.21A. Refund of buyer deposit.~~ Purchase agreements; buyer cancellations.

36 (a) ~~A dealer shall record the following information in a retail~~ A purchase  
37 agreement for a manufactured ~~home:~~ home shall include all of the following:

- 38 (1) A description of the manufactured home and all accessories  
39 included in the ~~purchase;~~ purchase.
- 40 (2) The purchase price for the home and all ~~accessories;~~ accessories.
- 41 (3) The amount of ~~deposit;~~ deposit or other payment toward or  
42 payment of the purchase price of the manufactured home and  
43 accessories that is made by the buyer.
- 44 (4) The date the retail purchase agreement is ~~signed; and~~ signed.

- 1 (5) The estimated terms of financing the purchase, if any, including  
2 the estimated interest rate, number of years financed, and monthly  
3 payment.
- 4 (6) The buyer's signature.
- 5 (7) The dealer's signature.
- 6 (b) ~~A dealer must present to the buyer and obtain his signature to a retail~~  
7 ~~purchase agreement at the time the deposit is received.~~ The purchase agreement  
8 shall contain, in immediate proximity to the space reserved for the signature of the  
9 buyer and in at least ten point, all upper-case Gothic type, ~~a statement in~~  
10 ~~substantially~~ the following form: statement:
- 11 'I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS  
12 PURCHASE ~~PRIOR TO~~ BEFORE MIDNIGHT OF THE THIRD  
13 BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS  
14 AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION  
15 MUST BE IN WRITING. IF I ~~ATTEMPT TO~~ CANCEL THE  
16 PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND  
17 THAT THE DEALER ~~HAS NO~~ MAY NOT HAVE ANY  
18 OBLIGATION TO ~~REFUND THE ENTIRE AMOUNT OF MY~~  
19 ~~DEPOSIT.~~ 'GIVE ME BACK ALL OF THE MONEY THAT I PAID  
20 THE DEALER.'
- 21 (c) ~~The~~ At the time the deposit or other payment toward or payment for the  
22 purchase price is received by the dealer, the dealer must shall give to the buyer a  
23 copy of the purchase agreement along with and a completed form in duplicate,  
24 captioned 'Notice of Cancellation', 'Cancellation,' which shall be attached to the  
25 purchase agreement, be easily detachable, and ~~shall explain in plain English~~ the  
26 buyer's right to cancel the ~~agreement purchase~~ and how that right can be exercised.
- 27 (d) ~~A dealer~~ The dealer shall refund to a buyer the full amount of a deposit on  
28 the purchase of a manufactured home return the deposit or other payment toward or  
29 payment for the purchase price to the buyer if the buyer cancels the purchase before  
30 midnight of the third business day after the date the buyer signed the purchase  
31 agreement. In order to make an effective cancellation, the buyer must notify the  
32 dealer, in writing, of the buyer's intent to cancel the purchase agreement. To make  
33 the cancellation effective, the buyer shall give the dealer written notice of the buyer's  
34 cancellation of the purchase. The dealer shall make the refund promptly and, in any  
35 event, return the deposit or other payment toward or payment for the purchase price  
36 to the buyer within 15 business days from after receipt of the notice of cancellation.  
37 For purposes of this section, 'business day' ~~shall mean Monday through Saturday,~~  
38 ~~excluding~~ means any day except Sunday and legal holidays.
- 39 (e) If the buyer cancels the purchase ~~agreement~~ after the three-day cancellation  
40 period, but before the ~~home is delivered to the buyer, then, sale is completed, and if:~~
- 41 (1) ~~If the~~ The manufactured home is in the dealer's inventory, the  
42 dealer may retain from the deposit or other payment received from  
43 the buyer actual damages up to a maximum of ten percent (10%)  
44 of the purchase price; or

1           (2) ~~If the~~ The manufactured home is specially ordered from the  
2 manufacturer for the buyer, the dealer may retain actual damages  
3 up to the full amount of the buyer's ~~deposit.~~ deposit or other  
4 payment received from the buyer.

5 **"§ 143-143.22. Inspection of service records.**

6 The Board ~~is authorized to~~ may inspect the ~~pertinent~~ service records of a  
7 manufacturer, dealer, supplier or set-up contractor relating to a written warranty  
8 claim or complaint made to the Board against ~~such~~ the manufacturer, dealer,  
9 supplier, or set-up contractor. Every licensee shall send to the Board upon request  
10 within 10 days a ~~true~~ copy of every document or record pertinent to any complaint or  
11 claim for service.

12 **"§ 143-143.23. Other remedies not excluded.**

13 Nothing in this ~~Article nor~~ Article, rules adopted by the Board, or any decision by  
14 action of the Board shall limit any right or remedy available to the buyer ~~at common~~  
15 ~~law or under any other statute, nor limit~~ or any power or duty of the Attorney  
16 General.

17 **"§ 143-143.24. Engaging in business without license a Class 1 misdemeanor.**

18 If any person shall unlawfully act as a manufactured home manufacturer, dealer,  
19 ~~salesman,~~ salesperson, or set-up contractor without first obtaining a license from the  
20 ~~North Carolina Manufactured Housing~~ Board, as provided in this Article, he shall be  
21 guilty of a Class 1 misdemeanor.

22 **"§ 143-143.25. Staff support for Board.**

23 The Manufactured Housing Building Division of the Department shall provide  
24 clerical and other staff services required by the Board; and shall administer and  
25 enforce all provisions of this Article and all rules adopted under this Article, subject  
26 to the direction of the Board; except for powers and duties delegated by this Article  
27 to local units of government, other State agencies, or to any persons."

28 Section 2. Article 9B of Chapter 143 of the General Statutes reads as  
29 rewritten:

30 "ARTICLE 9B.

31 "Uniform Standards Code for Manufactured Homes.

32 **"§ 143-144. Short title.**

33 This Article shall be known and may be cited as 'The Uniform Standards ~~Code~~ for  
34 Manufactured Homes Act.'

35 **"§ 143-145. Definitions.**

36 The following definitions apply in this Article:

37 ~~Unless clearly indicated otherwise by context, the following words when used in~~  
38 ~~this Article, for the purpose of this Article, shall have the meanings respectively~~  
39 ~~ascribed to them in this section:~~

40           (1) ~~"Certificate of compliance" means a certificate issued by an~~  
41 ~~inspection department approved and licensed by the Council as~~  
42 ~~being competent which certificate shall be valid only within the~~  
43 ~~jurisdiction of the inspection department and on which certificate~~  
44 ~~shall be recorded:~~



- 1 a. ~~The inspection department issuing such certificate;~~
- 2 b. ~~The date of issue;~~
- 3 c. ~~The serial or other identification number of such~~
- 4 ~~manufactured home and the name of the manufacturer;~~
- 5 d. ~~A certification that such manufactured home was on the day~~
- 6 ~~of inspection so opened that its entire structural, electrical,~~
- 7 ~~heating, plumbing and air conditioning systems could be~~
- 8 ~~closely observed and inspected;~~
- 9 e. ~~A certification that said manufactured home complies in full~~
- 10 ~~with the standards and rules and regulations prescribed in~~
- 11 ~~this Article.~~

12 Act. -- The National Manufactured Housing Construction and

13 Safety Standards Act of 1974, 42 U.S.C. § 5401, et seq., federal

14 regulations adopted under the Act, and any laws enacted by the

15 United States Congress that supersede or supplement the Act.

16 (2) ~~"Commissioner" means the Commissioner. -- The Commissioner of~~

17 ~~Insurance of the State of North Carolina. Carolina or an~~

18 ~~authorized designee of the Commissioner.~~

19 (3) ~~"Competent" shall mean competent to technically evaluate, test,~~

20 ~~and inspect in accordance with the standards, rules and regulations~~

21 ~~prescribed in this Article: the structural features, the plumbing,~~

22 ~~heating, electrical and air conditioning systems and the materials~~

23 ~~used in the construction of a manufactured home.~~

24 (4) ~~"Council" means the North Carolina State Building Code Council.~~

25 ~~HUD. -- The United States Department of Housing and Urban~~

26 ~~Development or any successor agency.~~

27 (5) ~~"Inspection department" means a Inspection department. -- A~~

28 ~~North Carolina city or county building inspection department~~

29 ~~authorized by Chapter 160 160A or Chapter 153 153A of the~~

30 ~~General Statutes.~~

31 (6) ~~"Label of compliance" shall mean a permanent label or seal~~

32 ~~permanently attached to a manufactured home at completion of~~

33 ~~construction thereof which is issued by any independent, solvent,~~

34 ~~and trustworthy person approved and licensed by the Council as~~

35 ~~being competent and as having and utilizing initial and follow-up~~

36 ~~manufacturing inspection services which provide the highest degree~~

37 ~~of quality control, and on which seal or label shall be recorded:~~

- 38 a. ~~The person issuing such label or seal and the serial number~~
- 39 ~~of the label or seal;~~
- 40 b. ~~The serial or other identification number of said~~
- 41 ~~manufactured home;~~
- 42 e. ~~A certification that said manufactured home was evaluated,~~
- 43 ~~tested, and inspected in accordance with the standards and~~
- 44 ~~rules and regulations prescribed in this Article.~~

1                    Label. -- The form of certification required by HUD to be  
2                    permanently affixed to each transportable section of each  
3                    manufactured home manufactured for sale to a purchaser in the  
4                    United States to indicate that the manufactured home conforms to  
5                    all applicable federal construction and safety standards.

6                    (7) ~~"Manufactured home" means a~~ Manufactured home. -- A structure,  
7                    transportable in one or more sections, which in the traveling mode  
8                    is eight body feet or more in width, or 40 body feet or more in  
9                    length, or, when erected on site, is 320 or more square feet; and  
10                   which is built on a permanent chassis and designed to be used as a  
11                   dwelling, with or without permanent foundation when connected  
12                   to the required utilities, including the plumbing, heating, air  
13                   conditioning and electrical systems contained therein.  
14                   'Manufactured home' includes any structure that meets all of the  
15                   requirements of this subsection except the size requirements and  
16                   with respect to which the manufacturer voluntarily files a  
17                   certification required by the Secretary of ~~the United States~~  
18                   ~~Department of Housing and Urban Development~~ HUD and  
19                   complies with the standards established under the ~~National~~  
20                   ~~Manufactured Housing Construction and Safety Standards Act of~~  
21                   ~~1974, 42 U.S.C. §5401, et seq. Act.~~

22                   For manufactured homes built ~~prior to~~ before June 15, 1976,  
23                   'manufactured home' means a portable manufactured housing unit  
24                   designed for transportation on its own chassis and placement on a  
25                   temporary or semipermanent foundation having a measurement of  
26                   over 32 feet in length and over eight feet in width. 'Manufactured  
27                   home' also means a double-wide manufactured home, which is two  
28                   or more portable manufactured housing units designed for  
29                   transportation on their own chassis that connect on site for  
30                   placement on a temporary or semipermanent foundation having a  
31                   measurement of over 32 feet in length and over eight feet in width.

32                   (8) ~~"Person" means any corporation, partnership, association,~~  
33                   ~~voluntary organization or governmental agency of the United~~  
34                   ~~States or any state therein and does not mean an individual natural~~  
35                   ~~person.~~

36 **"§ 143-146. Statement of policy; rule-making power.**

37                   (a) Manufactured homes, because of the manner of their construction, assembly  
38                   and use and that of their systems, components and appliances (including heating,  
39                   plumbing and electrical systems) like other finished products having concealed vital  
40                   parts may present hazards to the health, life and safety of persons and to the safety of  
41                   property unless properly manufactured. In the sale of manufactured homes, there is  
42                   also the possibility of defects not readily ascertainable when inspected by purchasers.  
43                   It is the policy and purpose of this State to provide protection to the public against  
44                   those possible hazards, and for that purpose to forbid the manufacture and sale of

1 new manufactured homes, which are not so constructed as to provide reasonable  
2 safety and protection to their owners and users. This Article is intended to provide  
3 provides to the Commissioner all necessary authority to enable the State to obtain  
4 approval as a State Administrative Agency under the provisions of the National  
5 ~~Manufactured Housing Construction and Safety Standards Act of 1974. Act.~~

6 ~~(b) The Commissioner shall make and promulgate rules embodying the standards  
7 for construction or manufacture of manufactured homes set by the Department of  
8 Housing and Urban Development under the provisions of the National Manufactured  
9 Housing Construction and Safety Standards Act of 1974, as these standards may be  
10 amended.~~

11 ~~(c) The Council is authorized to make and promulgate reasonable rules and  
12 regulations governing the procedure to be followed by a person or inspection  
13 department seeking to obtain a license pursuant to the provisions of this Article  
14 which shall provide opportunity for hearing before the Council on such application.~~

15 ~~(d) In order to insure the highest degree of quality control in the manufacture of  
16 manufactured homes, the Council is further authorized and empowered to make and  
17 promulgate reasonable rules and regulations governing the initial and follow up  
18 manufacturing inspection practices and procedures to be performed by any person  
19 granted a license to issue a label of compliance pursuant to this Article. In order to  
20 assure uniformity in standards and enforcement, such rules and regulations may also  
21 provide that any such licensee and its operations may be inspected from time to time  
22 by any other person or licensee designated by the Council who shall report the results  
23 of such examination to the Council. In such case the reasonable expense incurred by  
24 the examiner in making such inspection shall be borne by the licensee whose  
25 operations were examined.~~

26 ~~(e) The Commissioner is authorized to promulgate such may adopt rules as are  
27 necessary to carry out the provisions of the Act and this Article, including rules  
28 regarding for consumer complaint procedures, and such other procedures and rules  
29 as are necessary to enable the State to assume responsibility for the enforcement of  
30 the National Manufactured Housing Construction and Safety Standards Act of 1974.  
31 standards and regulations established and adopted by HUD under the Act.~~

32 ~~"§ 143-147. Approval and licensing of persons and inspection departments.~~

33 ~~(a) Any qualified person may make application to the Council for approval for  
34 license to issue labels of compliance. Any inspection department may make  
35 application to the Council for approval for issuing certificates of compliance. The  
36 Council after notice and hearing, if satisfied that such person or inspection  
37 department meets the qualifications prescribed in this Article, shall cause a license to  
38 be issued which license shall be valid for a consecutive period of 12 months and may  
39 be renewed for like consecutive periods on application to and approval by the  
40 Council;~~

41 ~~(b) Any such license issued to a person other than an inspection department may  
42 be suspended or revoked after notice and hearing if such person:~~

43 ~~(1) Is either insolvent, not competent, not independent, or  
44 untrustworthy;~~

- 1           (2) ~~Has made false statements in his application to the Council for~~  
2 ~~license;~~
- 3           (3) ~~Fails or neglects to perform evaluations, testing, or manufacturing~~  
4 ~~inspections in accordance with its proposed plans and procedures~~  
5 ~~submitted to the Council or fails to comply with any applicable~~  
6 ~~rules and regulations promulgated by the Council pursuant to G.S.~~  
7 ~~143-146(d);~~
- 8           (4) ~~Has repeatedly, specifically or by implication authorized the~~  
9 ~~attachment of its label of compliance to manufactured homes and~~  
10 ~~such manufactured homes did not meet the standards and rules~~  
11 ~~and regulations provided by this Article at the time said labels~~  
12 ~~were attached.~~
- 13       (e) ~~Any such license issued to an inspection department may be suspended or~~  
14 ~~revoked after notice and hearing if such department:~~
- 15           (1) ~~Is not competent;~~
- 16           (2) ~~Has issued a certificate of compliance on a manufactured home~~  
17 ~~when such manufactured home was not opened for inspection so~~  
18 ~~that the entire structural, electrical, heating, plumbing and~~  
19 ~~air conditioning systems could be closely observed and inspected;~~
- 20           (3) ~~Has issued a certificate of compliance on a manufactured home~~  
21 ~~and such manufactured home did not at the time of inspection~~  
22 ~~meet the standards and rules and regulations provided by this~~  
23 ~~Article.~~

24 **"§ 143-148. Certain structures excluded from coverage.**

25 The Commissioner may by rule provide for the exclusion of certain structures by  
26 certification in accordance with the ~~National Manufactured Housing Construction~~  
27 ~~and Safety Standards Act of 1974. Act.~~

28 **"§ 143-149. Necessity for obtaining label or certificate for purposes of sale.**

29 No ~~individual natural person, firm, partnership, association or corporation person~~  
30 ~~shall after September 1, 1971, sell or offer for sale any manufactured home in this~~  
31 ~~State, which manufactured home State that does not bear permanently attached~~  
32 ~~thereto a label of compliance or for which manufactured home the individual natural~~  
33 ~~person, firm, partnership, association, or corporation selling or offering to sell such~~  
34 ~~manufactured home does not have a certificate of compliance; provided it shall be~~  
35 ~~have a label. It is a defense to any prosecution for a violation of the provisions of this~~  
36 ~~section if such individual natural person, firm, partnership, association or corporation~~  
37 ~~shall show a person shows that a certificate of title for such the manufactured home~~  
38 ~~as required by G.S. 20-52 was obtained prior to September 1, 1971, before June 15,~~  
39 ~~1976, or produces other satisfactory evidence on file with the North Carolina~~  
40 ~~Department Division of Motor Vehicles that such the manufactured home was~~  
41 ~~manufactured prior to September 1, 1971, before June 15, 1976.~~

42 **"§ 143-150. No electricity to be furnished units not in compliance.**

43 It is unlawful for any person to ~~initially~~ furnish electricity for use in any  
44 manufactured home without first ascertaining that the manufactured home and its

1 electrical supply has been inspected pursuant to G.S. 143-139 by the inspection  
2 authority having jurisdiction and found to comply with the requirements of the State  
3 Electrical Code. The certificate of compliance issued by the inspection jurisdiction  
4 shall be accepted as evidence of compliance.

5 "**§ 143-151. Penalties.**

6 (a) ~~Whoever violates (i) the provisions of this Article; or (ii) Any person who is~~  
7 found by the Commissioner to have violated the provisions of the Act, this Article, or  
8 any rules ~~promulgated~~ adopted under this Article, shall be liable for a civil penalty  
9 not to exceed one thousand dollars (\$1,000) for each violation. Each ~~such~~ violation  
10 shall constitute a separate violation ~~with respect to~~ for each manufactured home or  
11 ~~with respect to~~ for each failure or refusal to allow or perform an act required ~~thereby,~~  
12 ~~except that the~~ by the Act, this Article, or any rules adopted under this Article. The  
13 maximum civil penalty may not exceed one million dollars (\$1,000,000) for any  
14 related series of violations occurring within one year ~~from~~ after the date of the first  
15 violation. In determining the amount of the penalty, the Commissioner shall consider  
16 the degree and extent of harm caused by the violation, the amount of money that  
17 inured to the benefit of the violator as a result of the violation, whether the violation  
18 was willful, and the prior record of the violator in complying or failing to comply  
19 with laws, rules, or orders applicable to the violator. The clear proceeds of civil  
20 penalties provided for in this section shall be remitted to the Civil Penalty and  
21 Forfeiture Fund in accordance with G.S. 115C-457.2.

22 (b) Any individual, ~~corporation,~~ or a director, officer or agent of a corporation  
23 who knowingly and willfully violates the Act, this Article Article, or any rules  
24 ~~promulgated~~ adopted under this Article in a manner ~~which~~ that threatens the health  
25 or safety of any purchaser is guilty of a Class 1 ~~misdemeanor.~~ felony.

26 "**§ 143-151.1. Enforcement.**

27 The Commissioner ~~of Insurance or any inspection department~~ may initiate any  
28 appropriate action or proceeding to prevent, restrain, or correct any violation of the  
29 Act, this Article, or any rules adopted under this Article. The Commissioner, or any  
30 of his deputies or employees, upon showing proper credentials and in the discharge  
31 of their duties ~~pursuant to~~ under this Article, or the ~~National Manufactured Housing~~  
32 ~~Construction and Safety Standards Act of 1974,~~ Act, is authorized at reasonable  
33 hours and without advance notice to enter and inspect all factories, warehouses, or  
34 establishments in ~~the State of North Carolina~~ this State in which manufactured homes  
35 are manufactured, stored or held for sale.

36 "**§ 143-151.2. Fees.**

37 (a) The Commissioner ~~may~~ shall establish a monitoring inspection fee in an  
38 amount ~~established~~ required by the Secretary of ~~Housing and Urban Development.~~  
39 HUD. This monitoring inspection fee shall be an amount paid by each manufactured  
40 home manufacturer in ~~the~~ this State for each manufactured home produced by the  
41 manufacturer in ~~that state.~~ this State.

42 (b) The monitoring inspection fee shall be paid by the manufacturer to the  
43 Secretary of ~~Housing and Urban Development~~ HUD or ~~such~~ the Secretary's agent,  
44 ~~who shall distribute the fees collected from all manufactured home manufacturers~~

1 ~~among the approved and conditionally approved states based on the number of~~  
2 ~~manufactured homes whose first location after leaving the manufacturing plant is on~~  
3 ~~the premises of a distributor, dealer, or purchaser in that state, and the extent of~~  
4 ~~participation of the State in the joint monitoring team program established under the~~  
5 ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~  
6 agent.

7 **"§ 143-151.3. Reports.**

8 Each manufacturer, distributor, and dealer of manufactured homes shall establish  
9 and maintain such records, make such reports, and provide such information as the  
10 Commissioner or the Secretary of ~~Housing and Urban Development~~ HUD may  
11 reasonably require to be able to determine whether ~~such~~ the manufacturer,  
12 distributor, or dealer has acted or is acting in compliance with this Article, or the  
13 ~~National Manufactured Housing Construction and Safety Standards Act of 1974~~ Act  
14 and shall, upon request of a person ~~duly~~ designated by the Commissioner or the  
15 Secretary of ~~Housing and Urban Development~~, HUD, permit ~~such~~ the person to  
16 inspect appropriate books, papers, records and documents relevant to determining  
17 whether ~~such~~ the manufacturer, distributor, or dealer has acted or is acting in  
18 compliance with this Article or the ~~National Manufactured Housing Construction and~~  
19 ~~Safety Standards Act of 1974.~~ Act, and any rules adopted by the Commissioner under  
20 this Article.

21 **"§ 143-151.4. Notification of ~~defects~~ defects and correction procedures.**

22 Every manufacturer of manufactured homes shall ~~furnish~~ provide for notification  
23 ~~of any defect and correction procedures~~ in any manufactured home produced by ~~such~~  
24 ~~the~~ manufacturer ~~and correct such defect~~ in accordance with the Act, this Article,  
25 and any ~~procedures specified~~ rules adopted by the Commissioner.

26 **"§ 143-151.5. Prohibited acts.**

27 (a) No person shall:

- 28 (1) Manufacture for sale, lease, sell, offer for sale or lease, or  
29 introduce or deliver, or import into the United States, any  
30 manufactured home ~~which~~ that is manufactured on or after the  
31 effective date of any applicable manufactured home construction  
32 and safety standard under the Act or this Article and ~~which~~ that  
33 does not comply with ~~such~~ the standard, except as provided in  
34 ~~subsection (b);~~ subsections (b), (c), and (d) of this section.
- 35 (2) Fail or refuse to permit access to or copying of records, or fail to  
36 make reports or provide information, or fail or refuse to permit  
37 entry or inspection, as required under the Act or this Article;  
38 Article.
- 39 (3) Fail to furnish notification of any defect as required by ~~G.S.~~  
40 ~~143-151.4;~~ the Act or this Article.
- 41 (4) Fail to issue a ~~certificate of compliance;~~ label or issue a  
42 ~~certification to the effect that a manufactured home conforms to all~~  
43 ~~applicable manufactured home construction and safety standards;~~  
44 label if ~~such~~ the person in the exercise of due care has reason to

- 1 know that ~~such certification~~ the label is false or misleading in a  
2 material ~~respect;~~ respect.
- 3 (5) Fail to comply with a rule adopted or an order issued by the  
4 Commissioner under this ~~Article;~~ Article.
- 5 (6) Issue a certification pursuant to G.S. 143-148 if ~~such~~ the person in  
6 the exercise of due care has reason to know that ~~such~~ the  
7 certification is false or misleading in a material respect.
- 8 (b) (1) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this  
9 section does not apply to the sale, the offer for sale, or the  
10 introduction or delivery of any manufactured home after the first  
11 purchase of it in good faith for purposes other than resale.
- 12 (2) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this  
13 section does not apply to any person who establishes that he did  
14 not have reason to know in the exercise of due care that ~~such~~ the  
15 manufactured home was not in conformity with applicable  
16 manufactured home construction and safety ~~standards;~~ standards.  
17 ~~or~~
- 18 (c) Subdivision (a)(1) of this section shall not apply to any person who, ~~prior to~~  
19 ~~such~~ before the first purchase, holds a certificate of compliance issued by the  
20 manufacturer or importer of ~~such~~ the manufactured home to the effect that ~~such~~  
21 ~~mobile~~ the manufactured home conforms to all applicable manufactured home  
22 construction and safety standards, unless ~~such~~ the person knows that ~~such~~ the  
23 manufactured home does not so conform.
- 24 "§§ 143-151.6, 143-151.7: Reserved for future codification purposes."
- 25 Section 3. Article 9D of Chapter 143 of the General Statutes is repealed.
- 26 Section 4. G.S. 58-2-55 reads as rewritten:
- 27 "§ 58-2-55. **Designated hearing officers.**
- 28 In any contested case under ~~Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of~~  
29 ~~this Chapter,~~ Chapter or Article 9A or Article 9B of Chapter 143 of the General  
30 Statutes, the Commissioner may designate a member of his staff to serve as a hearing  
31 officer. When the Commissioner is unable or elects not to hear a contested case and  
32 elects not to designate a hearing officer to hear a contested case, he shall apply to the  
33 director of the Office of Administrative Hearings for the designation of an  
34 administrative law judge to preside at the hearing of a contested case. Upon receipt  
35 of the application, the Director shall, without undue delay, assign an administrative  
36 law judge to hear the case."
- 37 Section 5. Structures built before the effective date of the Act shall not  
38 be affected by any changes made in this Article.
- 39 Section 6. This act is effective when it becomes law.



# SB 941: Manufactured Home Law Changes

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** April 21, 1999  
**Version:** 1st

**Introduced by:** Sen. Warren  
**Summary by:** Linwood Jones  
Committee Counsel

**Senate Bill 941** makes several changes to the laws governing manufacturing housing, as follows. Stylistic and grammatical changes are made throughout the bill. In addition, the bill makes the following changes.

**Section 1.** Section 1 makes the following amendments to the law regulating manufactured housing licensees:

**143-143.8.** References to "mobile homes" are changed to "manufactured homes".

**143-143.9.** Definitions are added for "license" and "licensee." "Setup" is redefined to eliminate a portion of the definition that defines what "setup" operations include and exclude.

**143-143.10.** A provision is added that unexpended funds of the Board (whose funds are already kept in a separate fund apart from the General Fund), do not revert to the General Fund.

**143-143.11.** The provision allowing a licensee whose license has lapsed to renew within one year by payment of the renewal fee with proof that he or she has not engaged in the manufactured housing business since the lapse and is otherwise eligible for registration is amended to provide that the applicant must pay the renewal fee.

The requirement for passage of an exam based on the Manufactured Housing Regulations and code enforcement provisions is rewritten. As rewritten, the Board may require a person to pass the exam, and the exam may cover the Code, the laws on manufactured housing, and other relevant subject matter.

**143-143.IIA.** This new section requires an applicant to inform the Board of changes in his or her address within 10 days, and allows the Board to serve notice on a licensee personally or by first-class mail at the address provided by the licensee. Notice is deemed delivered four days after mailing.

**143-143.IIB.** This new section allows the Board to require up to 8 hours of continuing education for licensees. The Board can establish various fees (up to specified amounts) for various aspects of continuing education, including course approval, course approval renewal, and course sponsor fees. The Board may charge licensees up to \$50 for each course or activity submitted to the Board for approval. The Board can adopt rules governing the contents, etc. of courses. These rules can include a provision for hardship waivers of continuing education requirements. Failure to complete the continuing education requirements results in a lapse of the license.



**143-143.13.** This section is amended to allow the Board to revoke, suspend, or deny a license for failure to appear for a prehearing conference with the Board after proper notice. Failure to appear for the hearing after proper notice is already grounds for discipline.

**143-143.14.** This section adds language that if the Board finds an applicant has not met the requirements for licensure, the Board shall not issue a license and shall notify the applicant of the denial and the grounds for it. This section also allows the Board to adopt rules for hearings and prehearing conferences, including provisions on discovery, motions, sanctions, continuances, etc.

**143-143.15.** References to “anchoring down” a manufactured home are changes to “setting up” the manufactured home.

**143-143.17.** This section is amended to eliminate the requirement that the Board forward to the Attorney General and the Commissioner of Insurance a copy of each warranty service complaint filed by consumers. (Note: The Board is housed within and staffed by the Department of Insurance).

**143-143.21A.** This section provides that the following must be included in a manufactured home purchase agreement in addition to the information already required by law: the amount of any payment made by the buyer towards the purchase of the home or accessories (current law refers only to the amount of the “deposit”) and the buyer’s and dealer’s signatures. (Current law already requires the buyer’s signature). This section also rewrites the required disclosure statement concerning buyer cancellation and refund rights.

**Section 2** makes the following changes to the law governing the standards code for manufactured home construction.

**143-145.** Several definitions are deleted and several are added.

**143-146.** Several provisions authorizing the adoption of rules are deleted. The existing authority of the Commissioner to adopt rules to carry out this law is retained.

**143-147.** This section, relating to licenses to individuals or inspection departments to issue labels of HUD compliance to manufactured homes, is repealed. *Note:* This section will be amended to add an inadvertently omitted provision.

**143-149.** This section makes stylistic changes and moves the exemption date for the sale of manufactured homes without a HUD label of compliance from homes manufactured prior to September 1, 1971 to those manufactured prior to June 15, 1976.

**143-151.** This section adds language requiring the Commissioner, in assessing a civil penalty for a violation of these laws, to look at certain factors (such as the extent of harm caused and whether the violation was willful) in determining the amount of the penalty.

**143-151.2** This section is amended to provide that the Commissioner shall establish a fee (current law says he “may”) for monitoring in the amount required by HUD. This section also repeals language that purports to direct HUD on how to distribute the fee revenue.

**Section 3** repeals Article 9D of Chapter 143 of the General Statutes. Article 9D is entitled “*Enforcement of Building Code Insulation and Energy Standards.*”

**Section 4** amends one of the general hearing laws of the Department of Insurance to include Article 9B of Chapter 143. This provision relates to the Commissioner designating staff members as hearing officers in contested cases and referring cases to OAH for a hearing.

**Section 5** provides that structures built before the effective date of this bill are not affected by the bill’s provisions.

**Section 6** makes this act effective when it becomes law.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 941

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_

S941-ARN-002

Date \_\_\_\_\_, 1999

Comm. Sub.   
Amends Title   
First Edition

Sen.

1  
2 moves to amend the bill on page 18, line 32 by inserting the  
3 following at the end of that line:  
4 "Structures built under previous standards.";  
5  
6 and on page 19, between lines 23 and 24, by inserting the following:  
7  
8 "The legal status of any structure built before the effective date  
9 of the Act shall not be affected by any changes made in this Article  
10 by the General Assembly."  
11  
12  
13

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 933

Short Title: Adult Care Homes/Transfers.

(Public)

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Sponsors: Senators Kinnaird; Carter, Garrou, Lucas, and Phillips.

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Referred to: Commerce.

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April 14, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT PERTAINING TO THE RIGHTS OF ADULT CARE HOME  
3 RESIDENTS WITH RESPECT TO TRANSFER OR DISCHARGE FROM THE  
4 FACILITY.

5 The General Assembly of North Carolina enacts:

6 Section 1. Effective January 1, 2000, G.S. 131D-21 is amended by adding  
7 the following new subdivision to read:

8 "Each facility shall treat its residents in accordance with the provisions of this  
9 Article. Every resident shall have the following rights:

10 ...

11 (17) To not be transferred or discharged from a facility except as  
12 provided under G.S. 131D-21.2."

13 Section 2. Effective January 1, 2000, Article 3 of Chapter 131D of the  
14 General Statutes is amended by adding the following new section to read:

15 "§ 131D-21.2. Conditions for transfer or discharge from facility.

16 (a) A facility shall not transfer or discharge a resident except under one or more of  
17 the following conditions:

18 (1) The transfer or discharge is necessary, in the opinion of the  
19 resident's physician, to meet the resident's welfare and the  
20 resident's welfare cannot be met in the facility.

21 (2) The transfer or discharge is appropriate because, in the opinion of  
22 the resident's physician, the resident's health has improved  
23 sufficiently so that the resident no longer needs the services  
24 provided by the facility.

- 1           (3)   The safety of individuals in the facility is endangered.  
2           (4)   The health of individuals in the facility would be otherwise  
3                   endangered. The threat to the health of individuals shall be  
4                   determined by a licensed physician.  
5           (5)   Except as provided in this subdivision, the resident has failed, after  
6                   reasonable and appropriate notice, to pay for a stay at the facility.  
7                   Reasonable and appropriate notice includes notice by a third-party  
8                   payor of denial of a claim for payment. A resident may not be  
9                   transferred for nonpayment if the resident has submitted to a third-  
10                   party payor all paperwork necessary for payment to be made.  
11           (6)   The transfer is otherwise required by State or federal law.  
12           (7)   The facility ceases to operate.

13       If the transfer or discharge is due to a significant change in the resident's condition  
14       but is not an emergency requiring immediate transfer or discharge, then prior to  
15       transfer or discharge the facility shall conduct an assessment to determine if a new  
16       care plan would allow the facility to meet the resident's needs.

17       The facility shall include the resident's record documentation of any conditions  
18       that result in the transfer or discharge of the resident.

19       (b) Before a facility transfers or discharges a resident, the facility shall:

- 20           (1)   Notify the resident and, if known, a family member or legal  
21                   representative of the resident, of the transfer or discharge and the  
22                   reasons for the move in writing and in a language and manner that  
23                   is understandable to the resident, family member, or legal  
24                   representative. Notice shall be provided at least 30 days in advance  
25                   of the transfer or discharge in order to ensure orderly transfer or  
26                   discharge, except in the case of jeopardy to the health or safety of  
27                   the resident or others in the facility.  
28           (2)   Record the reasons for the transfer or discharge in the resident's  
29                   record.  
30           (3)   Include in the notice all of the following:  
31                   a.   The effective date of the transfer or discharge.  
32                   b.   The location to which the resident is transferred or  
33                   discharged.  
34                   c.   A statement that the resident has the right to appeal the  
35                   action pursuant to rules adopted by the Social Services  
36                   Commission, and that the facility must allow the resident to  
37                   remain in the facility until resolution of the appeal, unless  
38                   otherwise provided by law.  
39                   d.   The name, address, and telephone number of the State long-  
40                   term care ombudsman.  
41                   e.   The name, address, and telephone number of the  
42                   Governor's Advocacy Council for Persons with Disabilities.  
43           (4)   Provide sufficient preparation and orientation to residents to  
44                   ensure safe and orderly transfer or discharge from the facility.

1     (c) As used in this section, the term 'transfer or discharge' includes movement of a  
2 resident to a bed outside of the facility, whether that bed is in the same physical plan  
3 or not. 'Transfer or discharge' does not refer to movement of a resident to a bed  
4 within the same facility."

5             Section 2. The Social Services Commission may adopt temporary rules to  
6 implement this act.

7             Section 3. This act is effective when it becomes law and applies to  
8 transfer or discharge of residents occurring on and after January 1, 2000.



# SENATE BILL 933: Adult Care Homes/Transfers.

## BILL ANALYSIS

**Committee:** Senate Judiciary I  
**Date:** April 22, 1999  
**Version:** First Edition

**Introduced by:** Senator Kinnaird  
**Summary by:** O. Walker Reagan,  
Committee Co-Counsel

**SUMMARY:** *Senate Bill 933 would amend the Adult Care Home Residents Bill of Rights to include a right not to be transferred or discharged from an adult care home except in accordance with the law, and would establish the law for conditions for transfer or discharge from an adult care home.*

**CURRENT LAW:** Current statutory law does not address the rights of an adult care home or a resident of an adult care home relative to the transfer or discharge of the resident from the home. Most legal rights of the resident in this regard are presently matters of contract law. G.S. 131D-21 sets out residents rights relative to adult care homes, but these rights are silent as to transfer or discharge from an facility.

**BILL ANALYSIS:** Section 1 of Senate Bill 933 would create a right in residents of adult care homes not to be transfer or discharged from an adult care home except in accordance with G.S. 131D-21.2 as enacted in Section 2 of this bill.

Section 2 adds a new section as G.S. 131D-21.2, effective January 1, 2000 that 'spells out the resident's rights relative to transfer or discharge. Under this provision, a resident can only be transferred or discharged for the following reasons:

1. Transfer or discharge is necessary for the resident's welfare that can't be meet at the facility as determined by the resident's doctor.
2. The resident's condition, as determined by the resident's doctor, has improved to the extent that the resident no longer needs the services of the facility.
3. The safety of individuals in the facility is endangered.
4. The health of individuals in the facility as determined by a doctor would otherwise be endangered.
5. The resident has failed to pay for staying at the facility after reasonable notice, except where the resident has submitted all necessary paperwork for third party payment and the payment has not been denied.
6. The transfer is required by State or federal law.
7. The facility ceases to operate.

The facility is required to do an assessment to determine if a new plan of care would meet the resident's needs and the resident's record should be documented for the conditions resulting in the transfer or discharge.

# SENATE BILL 933

Page 2

Before transfer or discharge, notice shall be given to the resident, the resident's family or legal representative at least 30 days prior to the release, except for emergency or health and safety reasons. The notice shall include the date of the transfer or discharge, where the resident will be going, a statement explaining the resident's right to appeal to the Social Services Commission, and the name and phone number of the State long-term care ombudsman and Governor's Advocacy Council on Persons with Disabilities.

The terms "transfer or discharge" mean movement to a bed outside the facility, not a transfer within the facility.

**EFFECTIVE DATE:** The bill is effective when it becomes law but doesn't apply to transfer or discharge of residents until January 1, 2000.

S933-SMRU-001



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 993

Short Title: Managed Care/Collateral Source.

(Public)

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Sponsors: Senator Odom.

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Referred to: Commerce.

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April 15, 1999

1 A BILL TO BE ENTITLED

2 AN ACT TO PERMIT MANAGED CARE INSURED, ENROLLEES AND  
3 HEALTH CARE PROVIDERS TO RECOVER FROM COLLATERAL  
4 SOURCES.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 50 of Chapter 58 of the General Statutes is amended  
7 by adding the following new section to read:

8 "**§ 58-50-57. Recovery from collateral sources permitted.**

9 (a) No preferred provider contract issued under this Article or Article 65 of this  
10 Chapter shall restrict the right of an insured to pursue claims against collateral  
11 sources of recovery, including, but not limited to, motor vehicle liability insurance  
12 claims, medical payments claims, uninsured or underinsured motorist claims and civil  
13 actions arising in tort. If an insured elects to pursue a claim against a collateral  
14 source, any health care provider under contract as a preferred provider who treats  
15 the insured for injuries related to the claim may recover, from the collateral source,  
16 the difference between the usual and customary charges for the provider's services  
17 and the amount paid to the provider pursuant to the preferred provider contract.

18 (b) The difference due the health care provider under subsection (a) of this  
19 section shall be subject to the lien created by Article 9, Chapter 44 of the General  
20 Statutes."

21 Section 2. Article 67 of Chapter 58 of the General Statutes is amended  
22 by adding the following new section to read:

23 "**§ 58-67-86. Recovery from collateral sources permitted.**

1 (a) No health care plan written by a health maintenance organization shall restrict  
2 the right of an enrollee to pursue claims against collateral sources of recovery,  
3 including, but not limited to, motor vehicle liability insurance claims, medical  
4 payments claims, uninsured or underinsured motorist claims, and civil actions arising  
5 in tort. If an enrollee elects to pursue a claim against a collateral source, any health  
6 care provider under contract to the plan who treats the enrollee for injuries related to  
7 the claim may recover, from the collateral source, the difference between the usual  
8 and customary charges for the provider's services and the amount paid to the  
9 provider by the plan.

10 (b) The difference due the health care provider under subsection (a) of this  
11 section shall be subject to the lien created by Article 9, Chapter 44 of the General  
12 Statutes."

13 Section 3. This act is effective when it becomes law and applies to  
14 preferred provider contracts entered into on and after July 1, 1999, and to health  
15 benefit plans written by health maintenance organizations that are delivered, issued  
16 for delivery, or renewed on and after July 1, 1999. For purposes of this act, renewal  
17 of a health benefit plan is presumed to occur on each anniversary of the date on  
18 which coverage was first effective on the person or persons covered by the health  
19 benefit plan.



# SENATE BILL 993: Managed Care/Collateral Source

## BILL ANALYSIS

**Committee:** Commerce Committee  
**Date:** April 22, 1999  
**Version:** First Draft Version

**Introduced by:** Senator Odom  
**Summary by:** Esther Manheimer  
Committee Counsel

**BILL ANALYSIS:** Senate Bill 993 would allow health care providers, under contract as a preferred provider or under a health maintenance organization (HMO) health benefit plan, to recover, from a collateral source, the difference between the usual and customary charges for the provider's services and the amount paid to the provider under the preferred provider contract or HMO plan. For example, if a person is involved in an automobile accident where they recover damages from the other driver, and they received medical treatment from their HMO doctor, the doctor may recover the difference between his or her usual and customary charges for the treatment and the amount actually paid to the doctor by the HMO. In addition, Senate Bill 993 would prohibit preferred provider contracts and HMO plans from restricting the right of the insured to pursue claims against a collateral source. Finally, the bill would subject the difference due the health care provider to the lien created in Article 9 of Chapter 44. Under Article 9, the lien may NOT exceed 50% of the damages recovered by the plaintiff in the suit against the collateral source.

**This act is effective when it becomes law and applies to preferred provider contracts entered into on or after July 1, 1999, and health benefit plans delivered, issued, or renewed on or after July 1, 1999.**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1008

Short Title: Extend Univ. Service Deadline.

(Public)

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Sponsors: Senator Hoyle.

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Referred to: Commerce.

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April 15, 1999

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO EXTEND THE TIME FOR THE NORTH CAROLINA UTILITIES  
3 COMMISSION TO ADOPT FINAL RULES REGARDING UNIVERSAL  
4 SERVICE.  
5 The General Assembly of North Carolina enacts:  
6           Section 1. G.S. 62-110(f1) reads as rewritten:  
7       "(f1) Except as provided in subsection (f2) of this section, the Commission is  
8 authorized, following notice and an opportunity for interested parties to be heard, to  
9 issue a certificate to any person applying to provide local exchange or exchange  
10 access services as a public utility as defined in G.S. 62-3(23)a.6., without regard to  
11 whether local telephone service is already being provided in the territory for which  
12 the certificate is sought, provided that the person seeking to provide the service  
13 makes a satisfactory showing to the Commission that (i) the person is fit, capable, and  
14 financially able to render such service; (ii) the service to be provided will reasonably  
15 meet the service standards that the Commission may adopt; (iii) the provision of the  
16 service will not adversely impact the availability of reasonably affordable local  
17 exchange service; (iv) the person, to the extent it may be required to do so by the  
18 Commission, will participate in the support of universally available telephone service  
19 at affordable rates; and (v) the provision of the service does not otherwise adversely  
20 impact the public interest. In its application for certification, the person seeking to  
21 provide the service shall set forth with particularity the proposed geographic territory  
22 to be served and the types of local exchange and exchange access services to be  
23 provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate  
24 under this section shall, until otherwise determined by the Commission, file and

1 maintain with the Commission a complete list of the local exchange and exchange  
2 access services to be provided and the prices charged for those services, and shall be  
3 subject to such reporting requirements as the Commission may require.

4 Any certificate issued by the Commission pursuant to this subsection shall not  
5 permit the provision of local exchange or exchange access service until July 1, 1996,  
6 unless the Commission shall have approved a price regulation plan pursuant to G.S.  
7 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996.  
8 In the event a price regulation plan becomes effective prior to July 1, 1996, the  
9 Commission is authorized to permit the provision of local exchange or exchange  
10 access service by a competing local provider in the franchised area of such local  
11 exchange company.

12 The Commission is authorized to adopt rules it finds necessary (i) to provide for  
13 the reasonable interconnection of facilities between all providers of  
14 telecommunications services; (ii) to determine when necessary the rates for such  
15 interconnection; (iii) to provide for the reasonable unbundling of essential facilities  
16 where technically and economically feasible; (iv) to provide for the transfer of  
17 telephone numbers between providers in a manner that is technically and  
18 economically reasonable; (v) to provide for the continued development and  
19 encouragement of universally available telephone service at reasonably affordable  
20 rates; and (vi) to carry out the provisions of this subsection in a manner consistent  
21 with the public interest, which will include a consideration of whether and to what  
22 extent resale should be permitted.

23 Local exchange companies and competing local providers shall negotiate the rates  
24 for local interconnection. In the event that the parties are unable to agree within 90  
25 days of a bona fide request for interconnection on appropriate rates for  
26 interconnection, either party may petition the Commission for determination of the  
27 appropriate rates for interconnection. The Commission shall determine the  
28 appropriate rates for interconnection within 180 days from the filing of the petition.

29 Each local exchange company shall be the universal service provider in the area in  
30 which it is certificated to operate on July 1, 1995, until otherwise determined by the  
31 Commission. In continuing this State's commitment to universal service, the  
32 Commission shall, by December 31, 1996, adopt interim rules that designate the  
33 person that should be the universal service provider and to determine whether  
34 universal service should be funded through interconnection rates or through some  
35 other funding mechanism. By ~~July 1, 1999~~, July 1, 2001, the Commission shall  
36 complete an investigation and adopt final rules concerning the provision of universal  
37 services, the person that should be the universal service provider, and whether  
38 universal service should be funded through interconnection rates or through some  
39 other funding mechanism.

40 The Commission shall make the determination required pursuant to this subsection  
41 in a manner that furthers this State's policy favoring universally available telephone  
42 service at reasonable rates."

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



# SENATE BILL 1008: Extend the Universal Service Deadline

## BILL ANALYSIS

**Committee:** Senate Commerce Committee  
**Date:** April 22, 1999  
**Version:** 1

**Introduced by:** Senator Hoyle  
**Summary by:** Steven Rose  
Committee Counsel

A handwritten signature in black ink, appearing to be "SR", written over a horizontal line.

Senate Bill 1008 amends G.S. 62-110(f1) by extending the date by which the Utilities Commission must adopt final rules concerning the provision of universal telecommunications service. The present deadline is July 1, 1999. The bill extends this to July 1, 2001.

The act is effective when it becomes law.

The 1995 General Assembly enacted Chapter 27 (House Bill 161), which authorized competitive local telecommunications service as well as pricing mechanisms that would be alternative to the traditional rate base method of establishing rates for local telephone service. Chapter 27 required the Commission to adopt interim universal service rules by December 31, 1996, and to adopt final rules for the provision of funding of universal service by July 1, 1998. That date was extended to July 1, 1999 by Session Laws 1998-212.

The Utilities Commission has requested this extension because it lacks crucial information from the Federal Communications Commission as to how much of the costs of universal service will be recovered at the interstate level. In addition, the Commission has been engaged in a number of major telecommunications dockets as a result of the passage of Chapter 27 in 1995.

S1008-SMRL-001

SENATE COMMERCE COMMITTEE  
11:00 A.M., TUESDAY, APRIL 27, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, April 27, 1999. Twenty-three members Of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets. Ms. Tonya Saunders, Senate Page from Clayton, North Carolina, assisted the Committee.

Senator Soles, Chairman, called the meeting to order and the following bills were considered by the Committee:

SB 1143, AN ACT TO PROVIDE FOR THE CONTINUITY OF CONTRACTS UNDER THE MONETARY UNION IN MEMBER STATES OF THE EUROPEAN UNION. Senator Ed Warren, the bill sponsor, explained the legislation. He was assisted by Mr. Tom Duncan, Senior Counselor with First Union Corp. Mr. Duncan said the bill simply says that contracts may continue on their original terms regardless of the change in currency. (See memorandum from Committee Counsel for complete explanation of the bill.)

Senator Larry Shaw moved that SB 1143 be given a favorable report. Motion carried.

SB 580, AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF COMMERCE FOR THE PURPOSE OF ASSISTING THE NORTH CAROLINA GUIDE ON THE INTERNET TO PROMOTE TRAVEL AND TOURISM IN NORTH CAROLINA AND TO AUTHORIZE THE NORTH CAROLINA RESTAURANT ASSOCIATION TO CHARGE A FEE FOR PROPRIETARY LISTINGS IN THE DINING GUIDE. Senator Hoyle, the bill sponsor, explained the legislation. Senator Hoyle said the bill requires an appropriation of \$150,000 to be transferred from the General Fund to the Department of Commerce, to be matched on a one-to-one basis, for the purposes of developing, implementing and maintaining a statewide Internet dining guide. (See attached memorandum from Committee Counsel for more details.)

Senator Lee moved that SB 580 be given a favorable report. Motion carried. The bill was sequentially referred to the Committee on Appropriations/Base Budget.

SB 968, AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF COMPETITIVE BIDDING. Senator Shaw moved the adoption of a Proposed Committee Substitute for SB 968. Motion carried. Senator Shaw explained the legislation and was assisted by Mr. John Leaston, State Purchasing Officer, who spoke in favor of the proposal. The Proposed Committee Substitute provides that the Division of Purchase and Contract review and decide a protest on a contract valued at \$25,000 or more. Further, it provides that the Secretary of Administration shall adopt rules or

criteria governing the review of and decision on a protest on a contract of less than \$25,000 by the agency that awarded the contract.

Senator Shaw moved that the Proposed Committee Substitute for SB 968 be given a favorable report. Motion failed.

SB 785, AN ACT TO AMEND THE LAW REGARDING THE INSPECTION AND REGULATION OF LIQUEFIED PETROLEUM GASES. Senator Albertson, the bill sponsor, said he had introduced the legislation at the request of the Department of Agriculture. It repeals the statutes which prohibit the installation of any unvented propane gas space heater appliance in a manufactured home. In addition it shifts the regulatory authority of propane gas burning appliances intended for domestic use from the Commissioner of Agriculture to the Building Code Council. (See memorandum from Committee Counsel for more details.)

Mr. David Smith with the Standards Division of the N. C. Department of Agriculture spoke in favor of the legislation. Also speaking for the bill was Mr. Ronald Munyon, Executive VP of Jenkins Gas and Oil Company and member of the N. C. Building Code Council.

Mr. Frank Gray, representing the Manufactured Housing Association, opposed the legislation because of concerns of the retailers and manufacturers with regard to moisture in manufactured homes when these unvented heaters are used.

Senator Ballance moved that Senate Bill 785 be given a favorable report. Motion carried.

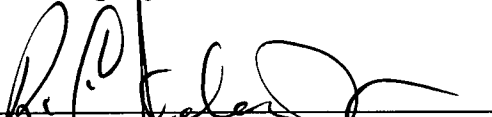
SB 974, AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR VACATION, LEISURE, OR RECREATION PURPOSES. Senator Carter moved the adoption of a Proposed Committee Substitute for SB 974. Motion carried. Mr. Walter Reagan, Committee Counsel, explained the Proposed Committee Substitute. (See memorandum from Mr. Reagan for complete analysis of the bill.) In summary, he said the legislation creates the Vacation Rental Property Act to provide statutory law to govern short-term or vacation rental situations to include special notice requirements in a vacation rental agreement, to define how funds collected in advance for vacation rentals are to be held and applied, to provide for an expedited eviction process for a vacation renter who illegally holds over, to create the duties of landlord and tenants in vacation rental situation, and to define how vacation rentals are affected by mandatory evacuations.

Mr. Tom Miller, Special Deputy Attorney General to the Real Estate Commission, assisted in answering questions from the Committee.



Senator Kerr sent forward an amendment (copy attached) and moved its adoption. Motion carried. Senator Kerr moved that the Proposed Committee Substitute to SB 974, as amended, be given a favorable report and that it be converted into a new Substitute Bill. Motion carried.

The meeting adjourned at 12:30 p.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair, Chair**

Tuesday, April 27, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

**FAVORABLE**

S.B.	580	Internet Dining Guide Funds and Fees	
		Sequential Referral:	Appro/Base Bud.
		Recommended Referral:	None
S.B.	785	Regulation of LP Gas	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	1143	Contracts Continue/Euro. Union	
		Sequential Referral:	None
		Recommended Referral:	None

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

S.B.	420	Clarify MV Dealers Licensing Law	
		Draft Number:	PCS1720
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No
S.B.	941	Manufactured Home Law Changes	
		Draft Number:	PCSA633
		Sequential Referral:	Finance
		Recommended Referral:	None
		Long Title Amended:	No
S.B.	974	Vacation Rental Act	
		Draft Number:	PCS6667
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 6

**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, APRIL 27, 1999  
ROOM 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 580, INTERNET DINING GUIDE FUNDS & FEES (Senator Hoyle)**

**SB 785, REGULATION OF LP GAS (Senator Albertson)**

**SB 794, VACATION RENTAL ACT (Senator Soles)**

**SB 830, AUTO REPAIR WORK DISCLOSURES (Senator B. Miller)**

**SB 993, MANAGED CARE/COLLATERAL SOURCE (Senator Odom)**

**SB 1143, CONTRACTS CONTINUE/EURO. UNION (Senator Warren)**

**ADJOURNMENT**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1143

Short Title: Contracts Continue/Euro. Union.

(Public)

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Sponsors: Senators Warren; Carpenter, Carrington, Cochrane, Dalton, Forrester, Garrou, Garwood, Harris, Horton, Hoyle, Kerr, Kinnaird, Metcalf, Moore, Rand, Robinson, Soles, Weinstein, and Wellons.

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Referred to: Commerce.

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April 15, 1999

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE CONTINUITY OF CONTRACTS UNDER  
3 THE MONETARY UNION IN MEMBER STATES OF THE EUROPEAN  
4 UNION.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. Chapter 53 of the General Statutes is amended by adding a  
7 new Article to read:  
8 "ARTICLE 23.  
9 "Continuity of Contract Under European Monetary Union.  
10 "§ 53-295. Definitions.  
11 The following definitions shall apply in this Article:  
12 (1) Euro. -- The currency of participating member states of the  
13 European Union that adopt a single currency in accordance with  
14 the Treaty on European Union dated February 7, 1992.  
15 (2) European Currency Unit (ECU). -- The currency as defined in the  
16 European Council regulation number 3320/94.  
17 (3) Introduction of the Euro. -- The implementation of economic and  
18 monetary union of member states of the European Union in  
19 accordance with the Treaty on European Union dated February 7,  
20 1992.  
21 "§ 53-296. Continuity of contract.

1 (a) If a subject of medium of payment of a contract, security, or instrument is a  
2 currency that has been substituted or replaced by the euro, the euro shall be a  
3 commercially reasonable substitute and substantial equivalent that may either be  
4 either used in determining the value of that currency, or tendered at the conversion  
5 rate specified in and otherwise calculated in accordance with the regulations adopted  
6 by the council of the European Union.

7 (b) If a subject or medium of payment of a contract, security, or instrument is the  
8 ECU, the euro will be a commercially reasonable substitute and substantial equivalent  
9 that may be either used in determining the value of that currency, or tendered at the  
10 conversion rate specified in and otherwise calculated in accordance with the  
11 regulations adopted by the council of the European Union.

12 (c) Performance of any of the obligations described in subsections (a) or (b) may  
13 be made in the currencies originally designated in the contract, security, or  
14 instrument, so long as the currencies remain legal tender, or in euro, but not in any  
15 other currency, whether or not the currency has been substituted or replaced by the  
16 euro, or is a currency that is considered a denomination of the euro and has a fixed  
17 conversion rate with respect to the euro.

18 **"§ 53-297. Effect of currency substitution on performance.**

19 None of the following shall have the effect of discharging or excusing performance  
20 under any contract, security, or instrument, or give a party the right unilaterally to  
21 alter or terminate any contract, security, or instrument:

22 (1) Introduction of the euro.

23 (2) Tender of euros in connection with any obligation in compliance  
24 with G.S. 53-296.

25 (3) Determination of the value of any obligation in compliance with  
26 G.S. 53-296.

27 (4) Calculation or determination of the subject or medium of payment  
28 of a contract, security, or instrument with reference to an interest  
29 rate or other basis that has been substituted or replaced due to the  
30 introduction of the euro and that is a commercially reasonable  
31 substitute and substantial equivalent.

32 **"§ 53-298. References to ECU in contracts.**

33 (a) References to the ECU in a contract, security, or other instrument that also  
34 refers in substance to the definition of the ECU as set forth in G.S. 53-295 shall be  
35 replaced by references to the euro at a rate of one euro to one ECU.

36 (b) References to the ECU in a contract, security, or instrument without a  
37 definition as set forth in G.S. 53-295 shall be presumed, rebuttable by proof of the  
38 contrary intention of the parties, to be references to the currency basket that is from  
39 time to time used as the unit of account of the European community.

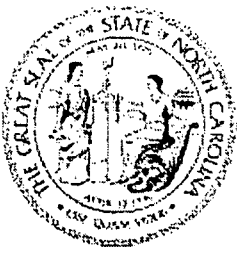
40 **"§ 53-299. Application.**

41 Notwithstanding any other law, this Article shall apply to all contracts, securities,  
42 and instruments, including contracts with respect to commercial transactions.

43 **"§ 53-300. No application to other currency alteration.**

1 In circumstances of currency alteration other than the introduction of the euro, this  
2 Article shall not be interpreted as creating any negative inference or negative  
3 presumption regarding the validity or enforceability of contracts, securities, or  
4 instruments denominated in whole or in part in a currency affected by that  
5 alteration."

6 Section 2. This act is effective when it becomes law and applies to  
7 contracts entered into or issued before, on, or after the effective date.



# SENATE BILL 1143: Contracts Continued/European Union.

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** April 27, 1999  
**Version:** First Edition

**Introduced by:** Senator Warren  
**Summary by:** O. Walker Reagan,  
Committee Co-Counsel

**SUMMARY:** *Senate Bill 1143 would add a new Article 23 to Chapter 53 - Banks, to provide that existing contracts which refer to European currencies that have now or in the future will be replaced with the currency of the European Union, the "euro", are still valid and enforceable despite the currency conversion.*

**CURRENT LAW:** Current law does not address the issue of conversion of foreign currency to a new form.

**BILL ANALYSIS:** Senate Bill 1143 will create a new Article 23 in Chapter 53 to provide that contracts that are based on a currency that is replaced by the "euro" dollar are still valid and enforceable. This bill sets forth the basis for the conversion of the value of the currencies under the contract.

G.S. 53-296 provides that where the currency in a contract is substituted or replaced by the euro, the euro, the currency adopted by the European Union, shall be considered a commercially reasonable substitute and the substantial equivalent in value at the conversion rate calculated in accordance with regulations of the European Union. Where the currency was the ECU, the euro may also be substituted as set forth in this section. This section also permits the original contract currency, if still legal currency, or the euro, to be tendered in compliance with the contract.

G.S. 53-297 provides that none of the following shall excuse performance under any contract:

1. Introduction of the euro.
2. Tender of euros in connection with an obligation under a contract.
3. Determination of the value of an obligation in accordance with G.S. 53-296.
4. Calculation of an interest rate based on a currency replaced by the euro.

G.S. 53-298 provides that references to ECU (European Currency Unit) in a contract refer to euro.

G.S. 53-299 provides that this Article applies to all contracts, securities, and instruments.

G.S. 53-300 makes it clear that the provisions of this Article do not apply to the conversion of any other currency other than to currencies converted to the euro.

**EFFECTIVE DATE:** The bill is effective when it becomes law and applies to contracts entered into before, on, or after the effective date.

S1143-SMRU-001





1 change or modify its proprietary listing for a fee, not to exceed twenty-five dollars  
2 (\$25.00), by providing required information to the North Carolina Restaurant  
3 Association.

4           Section 4. After July 1, 2000, the continued operation and maintenance  
5 of the Internet dining guide shall be determined by and become the responsibility of  
6 the North Carolina Restaurant Association. Links to the web site operated by the  
7 Division of Travel, Film and Sports Development shall be maintained while the  
8 Internet dining guide is in operation.

9           Section 5. This act becomes effective July 1, 1999.



# SENATE BILL 580: Internet Dining Guide Funds and Fees

## *BILL ANALYSIS*

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**Committee:** Commerce Committee  
**Date:** April 22, 1999  
**Version:** First Edition

**Introduced by:** Senator Hoyle  
**Summary by:** Esther Manheimer  
Committee Counsel

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**BILL ANALYSIS:** Senate Bill 580 would require that \$150,000 dollars be transferred from the General Fund to the Department of Commerce, to be matched on a one-to-one basis, for the purposes of developing, implementing, and maintaining a statewide Internet dining guide. Restaurants may participate in the on-line dining guide at no charge for the first two years. After two years, restaurants must pay up to a \$35 dollar set-up fee. Restaurants may modify their listings for a charge of no more than \$25 dollars. After July 1, 2000, the continued operation of the Internet dining guide shall become the responsibility of the NC Restaurant Association.

**This act becomes effective July 1, 1999.**



1 thousand dollars (\$10,000), the report shall also be made promptly thereafter to the  
2 Division of Purchase and Contract."  
3           Section 3. This act becomes effective July 1, 1999, and applies to  
4 purchases on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

S

D

SENATE BILL 968  
Proposed Committee Substitute S968-PCS7670-RN

Short Title: Waiver of Competitive Bidding Modified.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF  
3 COMPETITIVE BIDDING AND TO REQUIRE BID PROTESTS INVOLVING  
4 CONTRACTS OVER A CERTAIN AMOUNT TO BE HANDLED BY THE  
5 DEPARTMENT OF ADMINISTRATION.  
6 The General Assembly of North Carolina enacts:  
7       Section 1. G.S. 143-53(a)(1) reads as rewritten:  
8       "(1) Prescribing the routine and procedures to be followed in  
9       canvassing bids and awarding contracts, and for reviewing  
10       decisions made pursuant thereto, and the decision of the reviewing  
11       body shall be the final administrative review. The Division of  
12       Purchase and Contract shall review and decide a protest on a  
13       contract valued at twenty-five thousand dollars (\$25,000) or more.  
14       The Secretary shall adopt rules or criteria governing the review of  
15       and decision on a protest on a contract of less than twenty-five  
16       thousand dollars (\$25,000) by the agency that awarded the  
17       contract."  
18       Section 2. G.S. 143-53(a)(5) reads as rewritten:  
19       "(5) Prescribing conditions under which purchases and contracts for the  
20       purchase, rental or lease of equipment, materials, supplies or  
21       services may be entered into by means other than competitive  
22       bidding. Notwithstanding the provisions of subsections (a) and (b)  
23       of this section, any waiver of competition for the purchase, rental,

1                   or lease of equipment, materials, supplies, or services shall have  
2                   the prior written approval of the Secretary, if the expenditure  
3                   exceeds ten thousand dollars (\$10,000)."

4                   Section 3. G.S. 143-57 reads as rewritten:

5 **"§ 143-57. Purchases of articles in certain emergencies.**

6                   In case of any emergency or pressing need arising from unforeseen causes  
7 including but not limited to delay by contractors, delay in transportation, breakdown  
8 in machinery, or unanticipated volume of work, the Secretary of Administration shall  
9 have power to obtain or authorize obtaining in the open market any necessary  
10 supplies, materials, equipment, printing or services for immediate delivery to any  
11 department, institution or agency of the State government. A report on the  
12 circumstances of such emergency or need and the transactions thereunder shall be  
13 made a matter of record promptly thereafter. If the expenditure exceeds ten  
14 thousand dollars (\$10,000), the report shall also be made promptly thereafter to the  
15 Division of Purchase and Contract."

16                   Section 4. This act becomes effective July 1, 1999. Section 1 applies to  
17 bid protests filed on or after that date. Sections 2 and 3 of this act apply to contracts  
18 awarded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 785

Short Title: Regulation of LP Gas.

(Public)

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Sponsors: Senators Albertson; Clodfelter, Cooper, Dannelly, Horton, Hoyle, Kerr, Martin of Pitt, Martin of Guilford, Perdue, and Warren.

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Referred to: Commerce.

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April 7, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING THE INSPECTION AND  
3 REGULATION OF LIQUEFIED PETROLEUM GASES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 119-58 reads as rewritten:

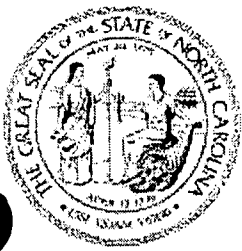
6 "§ 119-58. Unlawful acts.

7 (a) It shall be an unlawful act for any person to:

- 8 (1) Sell any liquefied petroleum gas burning appliance designed or  
9 built for domestic use ~~which~~ that has not been approved by the  
10 American Gas Association, Inc., the Underwriters Laboratory, Inc.,  
11 or other laboratory approved by the ~~Commissioner of Agriculture;~~  
12 Building Code Council.
- 13 (2) ~~Install any unvented space heating appliance in a manufactured~~  
14 ~~home as defined in G.S. 143-145(7);~~
- 15 (3) ~~Install any unvented space heating appliance in a sleeping room~~  
16 ~~that has an input of over 30 BTU per cubic feet of enclosure;~~
- 17 (4) Fill a consumer tank or container in excess of 85 percent (85%) of  
18 its water capacity, or to fill a tank or container on the premises of  
19 a consumer that is not equipped with a fill tube or gauge;  
20 provided, ~~said~~ the tank or container may be filled by weight if the  
21 tank or container is weighed before and after ~~filling;~~ filling.
- 22 (5) Disconnect an appliance from a gas supply line without capping or  
23 plugging ~~said~~ the line before leaving the ~~premises;~~ premises.

- 1           (6) Turn on the gas after reestablishing an interrupted service without  
2           first having checked and closed all gas ~~outlets;~~ outlets.
- 3           (7) Violate any provisions of this Article or any rules ~~and regulations~~  
4           ~~promulgated thereunder.~~ adopted pursuant to this Article.
- 5       (b) Every supply tank or container with its regulating equipment connected in a  
6 service system, shall be identified while in service by the supplier with an attached  
7 tag, ~~label~~ label, or other marking that includes the name of the person supplying  
8 liquefied petroleum gas to ~~said~~ the system, and it shall be unlawful for any person,  
9 other than ~~said~~ the supplier or the owner of the system, to disconnect, interrupt or fill  
10 ~~said~~ the system with liquefied petroleum gas without the consent of ~~said~~ the supplier.  
11 ~~Provided, if~~ If another registered supplier is requested by the consumer to connect ~~his~~  
12 service and is given permission by the consumer to do so, the new supplier shall  
13 notify the former supplier before disconnecting the former service and connecting the  
14 new service and shall cap or plug all disconnected equipment outlets and leave ~~said~~  
15 the equipment in a condition consistent with this Article and the rules ~~and~~  
16 ~~regulations promulgated thereunder.~~ adopted pursuant to this Article."
- 17           Section 2. This act is effective when it becomes law and applies to  
18 liquefied petroleum gas burning appliances installed on and after that date.





# SENATE BILL 785: Regulation of LP Gas

## BILL ANALYSIS

**Committee:** Commerce Committee  
**Date:** April 27, 1999  
**Version:** First Edition

**Introduced by:** Senator Albertson  
**Summary by:** Esther Manheimer  
Committee Counsel

**BILL ANALYSIS:** Senate Bill 785 seeks to repeal G.S. 119-58(a)(2) and G.S. 119-58(a)(3). G.S. 119-58(a)(2) prohibits the installation of any unvented propane gas space heating appliance in a manufactured home. G.S. 119-58(a)(3) prohibits the installation of any unvented propane gas space heating appliance in a sleeping room that has an input of over 30 BTU. The subsection regarding "sleeping rooms" prohibits the installation of propane unvented heaters in sleeping rooms of every type of building or structure, not just manufactured homes. Note that both subsections are referring to **propane gas heaters** and not any other type of gas heater. In other words, it is lawful to install, for example, natural gas unvented heaters in manufactured homes so long as the installation complies with the guidelines of the Department of Insurance.

In addition, Senate Bill 785 would shift the regulatory authority of propane gas burning appliances intended for domestic use from the Commissioner of Agriculture to the Building Code Council.

This act is effective when it becomes law and applies to LP gas (propane) burning appliances installed on or after that date.

## BACKGROUND:

### Current Regulatory Structure.

Currently, the Building Code Council and the Manufactured Housing Board, under the administrative supervision of the Department of Insurance, are authorized to adopt rules regulating buildings and structures and manufactured homes. The Building Code Council regulates buildings and structures and the Manufactured Housing Board regulates manufactured homes (e.g., mobile homes) prior to their installation. **The Building Code Council would, under the current law, have jurisdiction to adopt rules regulating unvented gas heaters in all types of homes (including manufactured homes). Under current law (G.S. 143-138(b)), the Building Code Council "may include...rules governing...heating appliances...."**



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 919-872-2740 • Fax 919-872-4626

April 26, 1999

Hon. R.C. Soles  
 North Carolina Senate  
 Room 2022, Legislative Office Building  
 Raleigh, NC. 27601

Re: Senate Bill 785-Unvented LP Gas Heaters

Dear Senator Soles:

The North Carolina Manufactured Housing Institute is the trade association for manufactured home retailers, manufacturers, suppliers and finance and insurance companies. NCMHI Board of Directors has voted unanimously to oppose Senate Bill 785, which would allow the sale of unvented gas heaters in manufactured homes.

Following the introduction of Senate Bill 785, NCMHI heard from a number of retailers and manufacturers across the state with concerns about problems caused by unvented gas heaters. On Monday, April 19, 1999, we had a lengthy meeting with representatives from the Propane Gas Association, at which we discussed our concerns.

NCMHI's opposition to this bill based on the following:

1. The National Building Code for manufactured homes does not allow unvented gas heaters in initial construction. Sales occur only in the "after market".
2. Modern day manufactured homes are extremely "tight" due to insulation and building code requirements 65%-70% of the homes sold today require that the furnace operate in order to ensure that the air exchange rate is healthy.
3. If the furnace system is off, and an unvented gas heater is used, air quality and moisture problems often result.

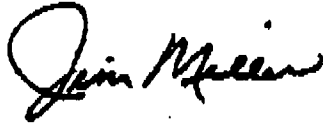
For all of these reasons, we respectfully request that the General Assembly consider authorizing a study of the use of unvented gas heaters, either by a legislative study commission or by the Building Code Council. NCMHI has the same concern for unvented heaters supplied by natural gas, as well as by LP gas.

Hon. R.C. Soles  
April 26, 1999  
Page 2

NCMHI believes that such a study would reveal whether or not the sale of unvented gas heaters is in the best interest of North Carolina citizens buying and living in manufactured housing.

Thank you for your attention to our concerns.

Sincerely yours,



Jim Miller  
President

JM:lvb

**STEDMAN HOUSING MART, INC.**

Rt., 24 Box 135  
Fayetteville, NC 28306  
Ph. (910) 423-1151  
Fax (910) 423-2836

*Corporate Headquarters*  
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Ph. (910) 483-9127  
Fax (910) 678-8010

P.O. Box 877  
Racford, NC 28376  
Ph. (910) 875-5907  
Fax (910) 875-5987

SENT TO: \_\_\_\_\_  
COMPANY \_\_\_\_\_  
SENT FROM: Sany LOCATION Fay.  
NUMBER OF PAGES INCLUDING COVER PAGE: 5  
SPECIAL INSTRUCTIONS:

*Cl Sany Melvin Support the  
Manufactured Housing institute view  
Concerning Unvented L.P. Gas Heaters*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 974\*

Short Title: Vacation Rental Act.

(Public)

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Sponsors: Senator Soles.

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Referred to: Commerce.

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR  
3 VACATION, LEISURE, OR RECREATION PURPOSES.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter  
6 to read:

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"Chapter 42A.

"Vacation Rental Act.

"ARTICLE 1.

"Vacation Rentals.

"§42A-1. Title.

This Chapter shall be known as the North Carolina Vacation Rental Act.

"§ 42A-2. Purpose and scope of act.

The General Assembly finds that the growth of the tourism industry in North Carolina has led to a greatly expanded market of privately owned residences that are rented to tourists for vacation, leisure, and recreational purposes. Rental transactions conducted by the owners of these residences or licensed real estate brokers acting on their behalf present unique situations not normally found in the rental of primary residences for long terms, and therefore make it necessary for the General Assembly to enact laws regulating the competing interests of landlords, real estate brokers, and tenants.

"§ 42A-3. Application; exemptions.

1 (a) The provisions of this Chapter shall apply to any person, partnership,  
2 corporation, limited liability company, association, or other business entity who acts  
3 as a landlord or real estate broker engaged in the rental or management of residential  
4 property for vacation rental as defined in this Chapter.

5 (b) The provisions of this Chapter shall not apply to:

6 (1) Lodging provided by hotels, motels, tourist camps, and other places  
7 subject to regulation under Chapter 72 of the General Statutes.

8 (2) Rentals to persons temporarily renting a dwelling unit when  
9 traveling away from their home for business or employment  
10 purposes.

11 (3) Rentals to persons having no other place of permanent residence.

12 "§ 42A-4. Definitions.

13 The following definitions apply in this Chapter:

14 (1) Residential property. -- An apartment, condominium, single family  
15 home, town house, cottage, or other property that is devoted to  
16 residential use or occupancy by one or more persons for a definite  
17 or indefinite period.

18 (2) Vacation rental. -- The rental of residential property for vacation,  
19 leisure, or recreation purposes for fewer than 90 days by a person  
20 who has a place of permanent residence to which he or she intends  
21 to return.

22 (3) Vacation rental agreement. -- A written agreement between a  
23 landlord or his or her real estate broker and a tenant in which the  
24 tenant agrees to rent residential property belonging to the landlord  
25 for a vacation rental.

26 "ARTICLE 2.

27 "Vacation Rental Agreements.

28 "§ 42A-10. Written agreement required.

29 (a) A landlord or real estate broker and tenant shall execute a vacation rental  
30 agreement for all vacation rentals subject to the provisions of this Chapter. No  
31 vacation rental agreement shall be valid and enforceable unless the tenant has  
32 accepted the agreement as evidenced by one of the following:

33 (1) The tenant's signature on the agreement.

34 (2) The tenant's payment of any monies to the landlord or real estate  
35 broker after the tenant's receipt of the agreement.

36 (3) The tenant's possession of the property after the tenant's receipt of  
37 the agreement.

38 (b) Any landlord or real estate broker who executes a vacation rental agreement  
39 that does not conform to the provisions of this Chapter or fails to execute a vacation  
40 rental agreement shall be guilty of an unfair trade practice in violation of G.S. 75-1.1,  
41 and shall be prohibited from commencing an expedited eviction proceeding as  
42 provided in Article 4 of this Chapter.

43 "§ 42A-11. Vacation rental agreements.

1 (a) A vacation rental agreement executed under this Chapter shall contain the  
2 following notice on its face which shall be set forth in a clear and conspicuous  
3 manner that distinguishes it from other provisions of the agreement: THIS IS A  
4 VACATION RENTAL AGREEMENT UNDER THE NORTH CAROLINA  
5 VACATION RENTAL ACT. THE RIGHTS AND OBLIGATIONS OF THE  
6 PARTIES TO THIS AGREEMENT ARE DEFINED BY LAW AND INCLUDE  
7 UNIQUE PROVISIONS PERMITTING THE DISBURSEMENT OF RENT AND  
8 EXPEDITED EVICTION OF TENANTS. YOUR SIGNATURE ON THIS  
9 AGREEMENT, PAYMENT OF MONEY, OR POSSESSION OF THE PROPERTY  
10 IS CONCLUSIVE PROOF OF YOUR ACCEPTANCE OF THE AGREEMENT  
11 AND YOUR INTENT TO USE THIS PROPERTY FOR A VACATION RENTAL.

12 (b) The vacation rental agreement shall contain provisions separate from the  
13 requirements of subsection (a) of this section which shall describe the following as  
14 permitted or required by this Chapter:

- 15 (1) The manner in which funds shall be received, deposited, and  
16 disbursed in advance of the tenant's occupancy of the property.
- 17 (2) The imposition of any nonrefundable charges.
- 18 (3) The applicability of expedited eviction procedures.
- 19 (4) A description of the obligations of the landlord and tenant as  
20 provided by this Chapter.

21 "ARTICLE 3.

22 "Handling and Accounting of Funds.

23 "§ 42A-15. Trust account uses.

24 A landlord or real estate broker may require a tenant to pay all or part of any  
25 required rent, security deposit, or other fees permitted by law in advance of the  
26 commencement of a tenancy under this Chapter if advance payments are expressly  
27 authorized in the vacation rental agreement. If the tenant is required to make any  
28 advance payments, other than a security deposit, whether the payment is  
29 denominated as rent or otherwise, the landlord or real estate broker shall deposit the  
30 advance payments in a trust or escrow account that conforms to the requirements of  
31 G.S. 93A-6(a)(12) no later than three banking days after the receipt of the advance  
32 payments. Advance payments deposited in a trust account shall not earn interest  
33 unless the landlord and tenant agree in the vacation rental agreement that the  
34 payments may be deposited in an interest-bearing account. The landlord and tenant  
35 shall also provide in the agreement to whom the accrued interest shall be disbursed.

36 "§ 42A-16. Advance payments uses.

37 (a) A landlord or real estate broker shall disburse no more than fifty percent  
38 (50%) of the gross rent received from the tenant prior to the occupancy of the  
39 property by the tenant, but may disburse any nonrefundable fees to third parties to  
40 pay for goods, services, or benefits procured by the landlord or real estate broker for  
41 the benefit of the tenant if the disbursement is expressly authorized in the vacation  
42 rental agreement. The remaining funds shall be maintained in a trust account and  
43 may not be disbursed until the occurrence of one of the following:

1           (1) The commencement of the tenancy, at which time the remaining  
2           funds may be disbursed in accordance with the terms of the  
3           agreement.

4           (2) The tenant commits a material breach, at which time the landlord  
5           may retain an amount sufficient to defray the actual damages  
6           suffered by the landlord as a result of the breach.

7           (3) The landlord or real estate broker refunds the money to the tenant.

8           (b) Funds collected for sales or occupancy taxes and tenant security deposits shall  
9           not be disbursed from the trust or escrow account prior to occupancy of the property  
10           by the tenant, except as a refund to the tenant.

11           (c) The tenant's execution of a vacation rental agreement in which he or she  
12           agrees to the advance disbursement of payments shall not constitute a waiver or loss  
13           of any of the tenant's rights to reimbursement of such payments if the tenant is  
14           lawfully entitled to reimbursement.

15           **"§ 42A-17. Accounting; reimbursement; nonrefundable fees.**

16           (a) A vacation rental agreement shall identify the name and address of the bank  
17           or savings and loan association in which the tenant's security deposit and other  
18           advance payments are held in a trust or escrow account, and the landlord or real  
19           estate broker shall provide the tenant with an accounting of such deposit and  
20           payments if the tenant makes a reasonable request for an accounting prior to the  
21           tenant's occupancy of the property.

22           (b) If, at the time the tenant is to begin occupancy of the property, the landlord or  
23           real estate broker cannot provide the property in a fit and habitable condition or  
24           substitute a reasonably comparable property in such condition, the landlord or real  
25           estate broker shall refund to the tenant all payments made by the tenant, except any  
26           nonrefundable fees permitted in subsection (c) of this section.

27           (c) A vacation rental agreement may provide that the following fees shall be  
28           nonrefundable:

29           (1) A fee, the amount of which shall be provided in the agreement,  
30           reasonably calculated to cover the costs of processing the tenant's  
31           reservation, transfer, or cancellation of a vacation rental.

32           (2) A fee equaling the actual cost of services, goods, or benefits to be  
33           rendered to the tenant by a third party.

34           **"§ 42A-18. Applicability of the Residential Tenant Security Deposit Act.**

35           (a) Except as may otherwise be provided in this Chapter, all funds collected from  
36           a tenant and not identified in the vacation rental agreement as occupancy or sales  
37           taxes, nonrefundable fees, or advance rent payments shall be considered a tenant  
38           security deposit and shall be subject to the provisions of the Residential Tenant  
39           Security Deposit Act. In addition to the permitted uses of tenant security deposit  
40           monies as provided in G.S. 42-51, a landlord or real estate broker may, after the  
41           termination of a tenancy under this Chapter, deduct from any tenant security deposit  
42           the amount of any telephone calls or other utility charges left unpaid by the tenant at  
43           the conclusion of the tenancy. The landlord or real estate broker shall apply, account



1 for, or refund tenant security deposit monies as provided in G.S. 42-51 within 45 days  
2 following the conclusion of the tenancy.

3 (b) A vacation rental agreement shall not contain language compelling or  
4 permitting the automatic forfeiture of all or part of a tenant security deposit in case of  
5 breach of contract by the tenant, and no such forfeiture shall be allowed. The  
6 vacation rental agreement shall provide that a tenant security deposit may be applied  
7 to actual damages to the residential property caused by the tenant.

8 **"§ 42A-19. Transfer of property subject to a vacation rental agreement.**

9 (a) The grantee of residential property voluntarily transferred by a landlord who  
10 has entered into a vacation rental agreement for the use of the property shall take his  
11 or her title subject to the vacation rental agreement if the vacation rental is to begin  
12 and end not later than 180 days after the grantee's interest in the property is recorded  
13 in the office of the register of deeds. The landlord or real estate broker shall  
14 disclose to the grantee the tenant's name and address and shall provide the grantee  
15 with a copy of the vacation rental agreement. Within 10 days after the recording of  
16 the grantee's interest in the property, the grantee shall:

17 (1) Notify the tenant in writing of the property transfer, the grantee's  
18 name and address, and the date the grantee's interest was  
19 recorded.

20 (2) Advise the tenant of his or her right to occupy the property subject  
21 to the terms of the vacation rental agreement.

22 (3) Advise the tenant of his or her right to receive a refund of any  
23 payments made by him or her.

24 If the vacation rental is to end more than 180 days after the recording of the  
25 grantee's interest, the tenant shall have no right to enforce the terms of the agreement  
26 unless the grantee has agreed in writing to honor such terms, but the tenant shall be  
27 entitled to a refund of any advance payments made by him or her.

28 (b) If, prior to the tenant's occupancy of the property, the landlord's interest in the  
29 property is involuntarily transferred to another, the landlord shall refund to the  
30 tenant within 60 days after the transfer any advance payments made by the tenant.

31 (c) The failure of a landlord to comply with the provisions of this section shall  
32 constitute an unfair trade practice in violation of G.S. 75-1.1.

33 **"ARTICLE 4.**

34 **"Expedited Eviction Proceedings.**

35 **"§ 42A-23. Grounds for eviction.**

36 (a) Any tenant who leases residential property under this Chapter for 30 days or  
37 less may be evicted and removed from the property in an expedited eviction  
38 proceeding as provided in this Article if the tenant does one of the following:

39 (1) Holds over possession after his or her tenancy has expired.

40 (2) Has committed a material breach of the terms of the vacation  
41 rental agreement that, according to the terms of the agreement,  
42 results in the termination of his or her tenancy.

43 (3) Fails to pay rent as required by the agreement.

1           (4) Has obtained possession of the property by fraud or  
2           misrepresentation.

3           (b) Only the right to possession, including abandoned property, damages to the  
4 property, rights to setoffs for breach of contract, and other similar rights shall be  
5 relevant in an expedited eviction proceeding. All other issues related to the rental  
6 of the residential property shall be presented in a separate civil action.

7 **"§ 42A-24. Expedited eviction.**

8           (a) Before commencing an expedited eviction proceeding, the landlord or real  
9 estate broker shall give the tenant at least four hours' notice, either orally or in  
10 writing, to quit the premises. If reasonable efforts to personally give oral or written  
11 notice have failed, written notice may be given by posting the notice on the front  
12 door of the property.

13           (b) An expedited eviction proceeding shall commence with the filing of a  
14 complaint and issuance of summons in the county where the property is located. If  
15 the office of the clerk of superior court is closed, the complaint shall be filed with,  
16 and the summons issued by, a magistrate. The service of the summons and complaint  
17 for expedited eviction shall be made by a sworn law enforcement officer on the  
18 tenant personally or by posting a copy of the summons and complaint on the front  
19 door of the property. Return of service shall be promptly made by the law  
20 enforcement officer to the magistrate. A hearing on the expedited eviction shall be  
21 held before a magistrate in the county where the property is located not sooner than  
22 12 hours after service upon the tenant and no later than 48 hours after such service.

23           (c) The complaint for expedited eviction shall allege and the landlord or real  
24 estate broker shall prove the following at the hearing:

25               (1) The vacation rental is for a term of 30 days or less.

26               (2) The tenant entered into and accepted a vacation rental agreement  
27 that conforms to the provisions of this Chapter.

28               (3) The tenant breached a material term of the agreement.

29               (4) The landlord or real estate broker has given notice to the tenant to  
30 vacate as a result of the breach.

31 The rules of evidence shall not apply in an expedited eviction proceeding, and the  
32 court shall allow any reasonably reliable and material statements, documents, or other  
33 exhibits to be admitted as evidence.

34           (d) If the court finds for the landlord or real estate broker, the court shall  
35 immediately enter a written order stating the time when the tenant shall vacate the  
36 property, but in no case shall the time be less than 2 hours or more than 8 hours after  
37 service of the order on the tenant. The court's order shall be served on the tenant at  
38 the hearing. If the tenant does not appear at the hearing or leaves before the order is  
39 served, the order shall be served by posting it on the front door of the property by  
40 the landlord, real estate broker, or any sworn law enforcement officer.

41 **"§ 42A-25. Appeal.**

42           A tenant or landlord may appeal a court order issued pursuant to G.S. 42A-24(d)  
43 to district court. A tenant may petition the district court to stay the eviction order  
44 and shall post a cash or secured bond with the court. The amount of the bond shall

1 be an estimate of the rent that will become due while the tenant is prosecuting the  
2 appeal, reasonable damages that the landlord may suffer, including damage to  
3 property and damages arising from the inability of the landlord or real estate broker  
4 to honor other vacation rental agreements due to the tenant's possession of the  
5 property, and the costs of the appeal to the landlord or real estate broker.

6 **"§ 42A-26. Violation of court order.**

7 If a tenant fails to remove personal property from a residential property subject to  
8 a vacation rental after the court has entered an order of eviction, the landlord or real  
9 estate broker shall have the same rights as provided in G.S. 42-36.2(b) as if the sheriff  
10 had not removed the tenant's property. The failure of a tenant or the guest of a  
11 tenant to vacate a residential property in accordance with a court order issued  
12 pursuant to G.S. 42A-24(d) shall constitute a criminal trespass under G.S. 14-159.13.

13 **"§ 42A-27. Penalties for abuse.**

14 A landlord or real estate broker shall undertake to evict a tenant pursuant to an  
15 expedited eviction proceeding only when he or she has a good faith belief that  
16 grounds for eviction exists under the provisions of this Chapter. Otherwise, the  
17 landlord or real estate broker shall be guilty of an unfair trade practice under G.S.  
18 75-1.1 and a Class 1 misdemeanor.

19 **"ARTICLE 5.**

20 **"Landlord and Tenant Duties.**

21 **"§ 42A-31. Landlord to provide fit premises.**

22 A landlord of a residential property used for a vacation rental shall:

- 23 (1) Comply with all current applicable building and housing codes.  
24 (2) Make all repairs and do whatever is reasonably necessary to put  
25 and keep the property in a fit and habitable condition.  
26 (3) Keep all common areas of the property in safe condition.  
27 (4) Maintain in good and safe working order and reasonably and  
28 promptly repair all electrical, plumbing, sanitary, heating,  
29 ventilating, and other facilities and appliances supplied by him or  
30 her upon written notification from the tenant that repairs are  
31 needed.  
32 (5) Provide operable smoke detectors. The landlord shall replace or  
33 repair the smoke detectors if the landlord is notified by the tenant  
34 in writing that replacement or repair is needed. The landlord shall  
35 annually place new batteries in a battery-operated smoke detector,  
36 and the tenant shall replace the batteries as needed during the  
37 tenancy. Failure of the tenant to replace the batteries as needed  
38 shall not be considered negligence on the part of the tenant or  
39 landlord.

40 **"§ 42A-32. Tenant to maintain dwelling unit.**

41 The tenant of a residential property used for a vacation rental:

- 42 (1) Keep that part of the property which he or she occupies and uses  
43 as clean and safe as the conditions of the property permit and

- 1 cause no unsafe or unsanitary conditions in the common areas and  
2 remainder of the property that he or she uses.
- 3 (2) Dispose of all ashes, rubbish, garbage, and other waste in a clean  
4 and safe manner.
- 5 (3) Keep all plumbing fixtures in the property or used by the tenant as  
6 clean as their condition permits.
- 7 (4) Not deliberately or negligently destroy, deface, damage, or remove  
8 any part of the property or render inoperable the smoke detector  
9 provided by the landlord or knowingly permit any person to do so.
- 10 (5) Comply with all obligations imposed upon the tenant by current  
11 applicable building and housing codes.
- 12 (6) Be responsible for all damage, defacement, or removal of any  
13 property inside the property that is in his or her exclusive control  
14 unless the damage, defacement, or removal was due to ordinary  
15 wear and tear, acts of the landlord or his or her agent, defective  
16 products supplied or repairs authorized by the landlord, acts of  
17 third parties not invitees of the tenant, or natural forces.
- 18 (7) Notify the landlord of the need for replacement of or repairs to a  
19 smoke detector. The landlord shall annually place new batteries in  
20 a battery-operated smoke detector, and the tenant shall replace the  
21 batteries as needed during the tenancy. Failure of the tenant to  
22 replace the batteries as needed shall not be considered negligence  
23 on the part of the tenant or the landlord.

24 "ARTICLE 6.

25 "General Provisions.

26 "§ 42A-36. Mandatory evacuations.

27 If State or local authorities order a mandatory evacuation of an area that includes  
28 a residential property subject to a vacation rental, the tenant in possession of the  
29 property shall comply with the evacuation order and, upon compliance, shall be  
30 entitled to a refund from the landlord of the prorated rent for each day that the  
31 tenant was unable to occupy the property because of the evacuation order. The  
32 tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of  
33 the property, the tenant refused insurance offered by the landlord or real estate  
34 broker that would have compensated him or her for losses or damages resulting from  
35 loss of use of the property due to a mandatory evacuation order; or (ii) the tenant  
36 purchased insurance offered by the landlord or real estate broker. The insurance  
37 offered shall be provided by an insurance company duly authorized by the North  
38 Carolina Department of Insurance, and the cost of the insurance shall not exceed  
39 eight percent (8%) of the gross rent charged for the vacation rental.

40 "§ 42A-37. Late fees.

41 The provisions of Chapter 42 pertaining to the imposition of late fees shall not  
42 apply to vacation rentals under this Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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S974-CSSG/RU-001  
PROPOSED COMMITTEE SUBSTITUTE  
SENATE 974  
THIS IS A DRAFT 26-APR-99 23:28:28  
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Vacation Rental Act.

( )

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Sponsors:

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Referred to:

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR  
3 VACATION, LEISURE, OR RECREATION PURPOSES.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. The General Statutes are amended by adding a  
6 new Chapter to read:  
7  
8 "Chapter 42A.  
9 "Vacation Rental Act.  
10 "ARTICLE 1.  
11 "Vacation Rentals.  
12 "§42A-1. Title.  
13 This Chapter shall be known as the North Carolina Vacation  
14 Rental Act.  
15 "§ 42A-2. Purpose and scope of act.  
16 The General Assembly finds that the growth of the tourism  
17 industry in North Carolina has led to a greatly expanded market  
18 of privately owned residences that are rented to tourists for  
19 vacation, leisure, and recreational purposes. Rental  
20 transactions conducted by the owners of these residences or

1 licensed real estate brokers acting on their behalf present  
2 unique situations not normally found in the rental of primary  
3 residences for long terms, and therefore make it necessary for  
4 the General Assembly to enact laws regulating the competing  
5 interests of landlords, real estate brokers, and tenants.

6 "§ 42A-3. Application; exemptions.

7 (a) The provisions of this Chapter shall apply to any person,  
8 partnership, corporation, limited liability company, association,  
9 or other business entity who acts as a landlord or real estate  
10 broker engaged in the rental or management of residential  
11 property for vacation rental as defined in this Chapter.

12 (b) The provisions of this Chapter shall not apply to:

13 (1) Lodging provided by hotels, motels, tourist camps,  
14 and other places subject to regulation under  
15 Chapter 72 of the General Statutes.

16 (2) Rentals to persons temporarily renting a dwelling  
17 unit when traveling away from their home for  
18 business or employment purposes.

19 (3) Rentals to persons having no other place of  
20 permanent residence.

21 "§ 42A-4. Definitions.

22 The following definitions apply in this Chapter:

23 (1) Residential property. -- An apartment,  
24 condominium, single family home, townhouse,  
25 cottage, or other property that is devoted to  
26 residential use or occupancy by one or more persons  
27 for a definite or indefinite period.

28 (2) Vacation rental. -- The rental of residential  
29 property for vacation, leisure, or recreation  
30 purposes for fewer than 90 days by a person who has  
31 a place of permanent residence to which he or she  
32 intends to return.

33 (3) Vacation rental agreement. -- A written agreement  
34 between a landlord or his or her real estate broker  
35 and a tenant in which the tenant agrees to rent  
36 residential property belonging to the landlord for  
37 a vacation rental.

38 "ARTICLE 2.

39 "Vacation Rental Agreements.

40 "§ 42A-10. Written agreement required.

41 (a) A landlord or real estate broker and tenant shall execute a  
42 vacation rental agreement for all vacation rentals subject to the  
43 provisions of this Chapter. No vacation rental agreement shall

1 be valid and enforceable unless the tenant has accepted the  
2 agreement as evidenced by one of the following:

- 3           (1) The tenant's signature on the agreement.  
4           (2) The tenant's payment of any monies to the landlord  
5               or real estate broker after the tenant's receipt of  
6               the agreement.  
7           (3) The tenant's possession of the property after the  
8               tenant's receipt of the agreement.

9           (b) Any landlord or real estate broker who executes a vacation  
10 rental agreement that does not conform to the provisions of this  
11 Chapter or fails to execute a vacation rental agreement shall be  
12 guilty of an unfair trade practice in violation of G.S. 75-1.1,  
13 and shall be prohibited from commencing an expedited eviction  
14 proceeding as provided in Article 4 of this Chapter.

15 "§ 42A-11. Vacation rental agreements.

16           (a) A vacation rental agreement executed under this Chapter  
17 shall contain the following notice on its face which shall be set  
18 forth in a clear and conspicuous manner that distinguishes it  
19 from other provisions of the agreement: 'THIS IS A VACATION  
20 RENTAL AGREEMENT UNDER THE NORTH CAROLINA VACATION RENTAL ACT.  
21 THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THIS AGREEMENT ARE  
22 DEFINED BY LAW AND INCLUDE UNIQUE PROVISIONS PERMITTING THE  
23 DISBURSEMENT OF RENT AND EXPEDITED EVICTION OF TENANTS. YOUR  
24 SIGNATURE ON THIS AGREEMENT, PAYMENT OF MONEY, OR POSSESSION OF  
25 THE PROPERTY IS CONCLUSIVE PROOF OF YOUR ACCEPTANCE OF THE  
26 AGREEMENT AND YOUR INTENT TO USE THIS PROPERTY FOR A VACATION  
27 RENTAL.'

28           (b) The vacation rental agreement shall contain provisions  
29 separate from the requirements of subsection (a) of this section  
30 which shall describe the following as permitted or required by  
31 this Chapter:

- 32           (1) The manner in which funds shall be received,  
33               deposited, and disbursed in advance of the tenant's  
34               occupancy of the property.  
35           (2) The imposition of any nonrefundable charges.  
36           (3) The applicability of expedited eviction procedures.  
37           (4) A description of the obligations of the landlord  
38               and tenant as provided by this Chapter.

39                               "ARTICLE 3.

40                               "Handling and Accounting of Funds.

41 "§ 42A-15. Trust account uses.

42           A landlord or real estate broker may require a tenant to pay  
43 all or part of any required rent, security deposit, or other fees  
44 permitted by law in advance of the commencement of a tenancy

1 under this Chapter if advance payments are expressly authorized  
2 in the vacation rental agreement. If the tenant is required to  
3 make any advance payments, other than a security deposit, whether  
4 the payment is denominated as rent or otherwise, the landlord or  
5 real estate broker shall deposit the advance payments in a trust  
6 or escrow account in an insured bank or savings and loan  
7 association in North Carolina no later than three banking days  
8 after the receipt of the advance payments. Advance payments  
9 deposited in a trust account shall not earn interest unless the  
10 landlord and tenant agree in the vacation rental agreement that  
11 the payments may be deposited in an interest-bearing account.  
12 The landlord and tenant shall also provide in the agreement to  
13 whom the accrued interest shall be disbursed.

14 "§ 42A-16. Advance payments uses.

15 (a) A landlord or real estate broker shall not disburse an  
16 amount greater than fifty percent (50%) of the gross rent prior  
17 to the occupancy of the property by the tenant, but may disburse  
18 any nonrefundable fees to third parties to pay for goods,  
19 services, or benefits procured by the landlord or real estate  
20 broker for the benefit of the tenant if the disbursement is  
21 expressly authorized in the vacation rental agreement. The  
22 remaining funds shall be maintained in a trust account and may  
23 not be disbursed until the occurrence of one of the following:

24 (1) The commencement of the tenancy, at which time the  
25 remaining funds may be disbursed in accordance with  
26 the terms of the agreement.

27 (2) The tenant commits a material breach, at which time  
28 the landlord may retain an amount sufficient to  
29 defray the actual damages suffered by the landlord  
30 as a result of the breach.

31 (3) The landlord or real estate broker refunds the  
32 money to the tenant.

33 (b) Funds collected for sales or occupancy taxes and tenant  
34 security deposits shall not be disbursed from the trust or escrow  
35 account prior to occupancy of the property by the tenant, except  
36 as a refund to the tenant.

37 (c) The tenant's execution of a vacation rental agreement in  
38 which he or she agrees to the advance disbursement of payments  
39 shall not constitute a waiver or loss of any of the tenant's  
40 rights to reimbursement of such payments if the tenant is  
41 lawfully entitled to reimbursement.

42 "§ 42A-17. Accounting; reimbursement; nonrefundable fees.

43 (a) A vacation rental agreement shall identify the name and  
44 address of the bank or savings and loan association in which the



1 tenant's security deposit and other advance payments are held in  
2 a trust or escrow account, and the landlord or real estate broker  
3 shall provide the tenant with an accounting of such deposit and  
4 payments if the tenant makes a reasonable request for an  
5 accounting prior to the tenant's occupancy of the property.

6 (b) If, at the time the tenant is to begin occupancy of the  
7 property, the landlord or real estate broker cannot provide the  
8 property in a fit and habitable condition or substitute a  
9 reasonably comparable property in such condition, the landlord  
10 or real estate broker shall refund to the tenant all payments  
11 made by the tenant, except any nonrefundable fees permitted in  
12 subsection (c) of this section.

13 (c) A vacation rental agreement may provide that the following  
14 fees shall be nonrefundable:

15 (1) A fee, the amount of which shall be provided in the  
16 agreement, reasonably calculated to cover the costs  
17 of processing the tenant's reservation, transfer,  
18 or cancellation of a vacation rental.

19 (2) A fee equaling the actual cost of services, goods,  
20 or benefits to be rendered to the tenant by a third  
21 party.

22 "§ 42A-18. Applicability of the Residential Tenant Security  
23 Deposit Act.

24 (a) Except as may otherwise be provided in this Chapter, all  
25 funds collected from a tenant and not identified in the vacation  
26 rental agreement as occupancy or sales taxes, nonrefundable  
27 fees, or advance rent payments shall be considered a tenant  
28 security deposit and shall be subject to the provisions of the  
29 Residential Tenant Security Deposit Act, as codified in Article 6  
30 of Chapter 42. In addition to the permitted uses of tenant  
31 security deposit monies as provided in G.S. 42-51, a landlord or  
32 real estate broker may, after the termination of a tenancy under  
33 this Chapter, deduct from any tenant security deposit the amount  
34 of any telephone calls or other utility charges that are the  
35 obligation of the tenant under the vacation rental agreement and  
36 are left unpaid by the tenant at the conclusion of the tenancy.  
37 The landlord or real estate broker shall apply, account for, or  
38 refund tenant security deposit monies as provided in G.S. 42-51  
39 within 45 days following the conclusion of the tenancy.

40 (b) A vacation rental agreement shall not contain language  
41 compelling or permitting the automatic forfeiture of all or part  
42 of a tenant security deposit in case of breach of contract by the  
43 tenant, and no such forfeiture shall be allowed. The vacation

1 rental agreement shall provide that a tenant security deposit may  
2 be applied to actual damages caused by the tenant.

3 "§ 42A-19. Transfer of property subject to a vacation rental  
4 agreement.

5 (a) The grantee of residential property voluntarily transferred  
6 by a landlord who has entered into a vacation rental agreement  
7 for the use of the property shall take his or her title subject  
8 to the vacation rental agreement if the vacation rental is to  
9 begin and end not later than 180 days after the grantee's  
10 interest in the property is recorded in the office of the  
11 register of deeds. The landlord or real estate broker shall  
12 disclose to the grantee the tenant's name and address and shall  
13 provide the grantee with a copy of the vacation rental agreement.  
14 Within 10 days after the recording of the grantee's interest in  
15 the property, the grantee shall:

16 (1) Notify the tenant in writing of the property  
17 transfer, the grantee's name and address, and the  
18 date the grantee's interest was recorded.

19 (2) Advise the tenant of his or her right to occupy the  
20 property subject to the terms of the vacation  
21 rental agreement.

22 (3) Advise the tenant of his or her right to receive a  
23 refund of any payments made by him or her.

24 If the vacation rental is to end more than 180 days after the  
25 recording of the grantee's interest, the tenant shall have no  
26 right to enforce the terms of the agreement unless the grantee  
27 has agreed in writing to honor such terms, but the tenant shall  
28 be entitled to a refund of any advance payments made by him or  
29 her.

30 (b) If, prior to the tenant's occupancy of the property, the  
31 landlord's interest in the property is involuntarily transferred  
32 to another, the landlord shall refund to the tenant within 60  
33 days after the transfer any advance payments made by the tenant.

34 (c) The failure of a landlord to comply with the provisions of  
35 this section shall constitute an unfair trade practice in  
36 violation of G.S. 75-1.1.

37 "ARTICLE 4.

38 "Expedited Eviction Proceedings.

39 "§ 42A-23. Grounds for eviction.

40 (a) Any tenant who leases residential property under this  
41 Chapter for 30 days or less may be evicted and removed from the  
42 property in an expedited eviction proceeding as provided in this  
43 Article if the tenant does one of the following:

- 1           (1) Holds over possession after his or her tenancy has  
2           expired.
- 3           (2) Has committed a material breach of the terms of the  
4           vacation rental agreement that, according to the  
5           terms of the agreement, results in the termination  
6           of his or her tenancy.
- 7           (3) Fails to pay rent as required by the agreement.
- 8           (4) Has obtained possession of the property by fraud or  
9           misrepresentation.
- 10       (b) Only the right to possession, including abandoned  
11 property, damages to the property, rights to setoffs for breach  
12 of contract, and other similar rights shall be relevant in an  
13 expedited eviction proceeding. All other issues related to the  
14 rental of the residential property shall be presented in a  
15 separate civil action.
- 16 "§ 42A-24. Expedited eviction.
- 17       (a) Before commencing an expedited eviction proceeding, the  
18 landlord or real estate broker shall give the tenant at least  
19 four hours' notice, either orally or in writing, to quit the  
20 premises. If reasonable efforts to personally give oral or  
21 written notice have failed, written notice may be given by  
22 posting the notice on the front door of the property.
- 23       (b) An expedited eviction proceeding shall commence with the  
24 filing of a complaint and issuance of summons in the county where  
25 the property is located. If the office of the clerk of superior  
26 court is closed, the complaint shall be filed with, and the  
27 summons issued by, a magistrate. The service of the summons and  
28 complaint for expedited eviction shall be made by a sworn law  
29 enforcement officer on the tenant personally or by posting a copy  
30 of the summons and complaint on the front door of the property.  
31 Return of service shall be promptly made by the law enforcement  
32 officer to the magistrate. A hearing on the expedited eviction  
33 shall be held before a magistrate in the county where the  
34 property is located not sooner than 12 hours after service upon  
35 the tenant and no later than 48 hours after such service.
- 36       (c) The complaint for expedited eviction shall allege and the  
37 landlord or real estate broker shall prove the following at the  
38 hearing:
- 39           (1) The vacation rental is for a term of 30 days or  
40           less.
- 41           (2) The tenant entered into and accepted a vacation  
42           rental agreement that conforms to the provisions of  
43           this Chapter.

1           (3) The tenant committed one or more of the acts listed  
2           in G.S. 42A-23(a) as grounds for eviction.

3           (4) The landlord or real estate broker has given notice  
4           to the tenant to vacate as a result of the breach.

5 The rules of evidence shall not apply in an expedited eviction  
6 proceeding, and the court shall allow any reasonably reliable and  
7 material statements, documents, or other exhibits to be admitted  
8 as evidence.

9       (d) If the court finds for the landlord or real estate broker,  
10 the court shall immediately enter a written order stating the  
11 time when the tenant shall vacate the property, but in no case  
12 shall the time be less than 2 hours or more than 8 hours after  
13 service of the order on the tenant. The court's order shall be  
14 served on the tenant at the hearing. If the tenant does not  
15 appear at the hearing or leaves before the order is served, the  
16 order shall be served by delivering the order to the tenant or by  
17 posting the order on the front door of the property by the  
18 landlord, real estate broker, or any sworn law enforcement  
19 officer.

20 "§ 42A-25. Appeal.

21 A tenant or landlord may appeal a court order issued pursuant  
22 to G.S. 42A-24(d) to district court. A tenant may petition the  
23 district court to stay the eviction order and shall post a cash  
24 or secured bond with the court. The amount of the bond shall be  
25 an estimate of the rent that will become due while the tenant is  
26 prosecuting the appeal, reasonable damages that the landlord may  
27 suffer, including damage to property and damages arising from the  
28 inability of the landlord or real estate broker to honor other  
29 vacation rental agreements due to the tenant's possession of the  
30 property, and the costs of the appeal to the landlord or real  
31 estate broker.

32 "§ 42A-26. Violation of court order.

33 If a tenant fails to remove personal property from a  
34 residential property subject to a vacation rental after the court  
35 has entered an order of eviction, the landlord or real estate  
36 broker shall have the same rights as provided in G.S. 42-36.2(b)  
37 as if the sheriff had not removed the tenant's property. The  
38 failure of a tenant or the guest of a tenant to vacate a  
39 residential property in accordance with a court order issued  
40 pursuant to G.S. 42A-24(d) shall constitute a criminal trespass  
41 under G.S. 14-159.13.

42 "§ 42A-27. Penalties for abuse.

43 A landlord or real estate broker shall undertake to evict a  
44 tenant pursuant to an expedited eviction proceeding only when he

1 or she has a good faith belief that grounds for eviction exists  
2 under the provisions of this Chapter. Otherwise, the landlord or  
3 real estate broker shall be guilty of an unfair trade practice  
4 under G.S. 75-1.1 and a Class 1 misdemeanor.

5 "ARTICLE 5.

6 "Landlord and Tenant Duties.

7 "§ 42A-31. Landlord to provide fit premises.

8 A landlord of a residential property used for a vacation rental  
9 shall:

- 10 (1) Comply with all current applicable building and  
11 housing codes.
- 12 (2) Make all repairs and do whatever is reasonably  
13 necessary to put and keep the property in a fit and  
14 habitable condition.
- 15 (3) Keep all common areas of the property in safe  
16 condition.
- 17 (4) Maintain in good and safe working order and  
18 reasonably and promptly repair all electrical,  
19 plumbing, sanitary, heating, ventilating, and other  
20 facilities and major appliances supplied by him or  
21 her upon written notification from the tenant that  
22 repairs are needed.
- 23 (5) Provide operable smoke detectors. The landlord  
24 shall replace or repair the smoke detectors if the  
25 landlord is notified by the tenant in writing that  
26 replacement or repair is needed. The landlord  
27 shall annually place new batteries in a battery-  
28 operated smoke detector, and the tenant shall  
29 replace the batteries as needed during the tenancy.  
30 Failure of the tenant to replace the batteries as  
31 needed shall not be considered negligence on the  
32 part of the tenant or landlord.

33 These duties shall not be waived; however, the landlord and  
34 tenant may make additional covenants not inconsistent herewith in  
35 the vacation rental agreement.

36 "§ 42A-32. Tenant to maintain dwelling unit.

37 The tenant of a residential property used for a vacation rental  
38 shall:

- 39 (1) Keep that part of the property which he or she  
40 occupies and uses as clean and safe as the  
41 conditions of the property permit and cause no  
42 unsafe or unsanitary conditions in the common areas  
43 and remainder of the property that he or she uses.

- 1           (2) Dispose of all ashes, rubbish, garbage, and other  
2           waste in a clean and safe manner.
- 3           (3) Keep all plumbing fixtures in the property or used  
4           by the tenant as clean as their condition permits.
- 5           (4) Not deliberately or negligently destroy, deface,  
6           damage, or remove any part of the property or  
7           render inoperable the smoke detector provided by  
8           the landlord or knowingly permit any person to do  
9           so.
- 10          (5) Comply with all obligations imposed upon the tenant  
11          by current applicable building and housing codes.
- 12          (6) Be responsible for all damage, defacement, or  
13          removal of any property inside the property that is  
14          in his or her exclusive control unless the damage,  
15          defacement, or removal was due to ordinary wear and  
16          tear, acts of the landlord or his or her agent,  
17          defective products supplied or repairs authorized  
18          by the landlord, acts of third parties not invitees  
19          of the tenant, or natural forces.
- 20          (7) Notify the landlord of the need for replacement of  
21          or repairs to a smoke detector. The landlord shall  
22          annually place new batteries in a battery-operated  
23          smoke detector, and the tenant shall replace the  
24          batteries as needed during the tenancy. Failure of  
25          the tenant to replace the batteries as needed shall  
26          not be considered negligence on the part of the  
27          tenant or the landlord.

28          These duties shall not be waived; however, the landlord and  
29          tenant may make additional covenants not inconsistent herewith in  
30          the vacation rental agreement.

31                                "ARTICLE 6.

32                                "General Provisions.

33          "§ 42A-36. Mandatory evacuations.

34          If State or local authorities order a mandatory evacuation of  
35          an area that includes a residential property subject to a  
36          vacation rental, the tenant in possession of the property shall  
37          comply with the evacuation order and, upon compliance, shall be  
38          entitled to a refund from the landlord of the prorated rent for  
39          each day that the tenant was unable to occupy the property  
40          because of the evacuation order. The tenant shall not be  
41          entitled to a refund if: (i) prior to the tenant taking  
42          possession of the property, the tenant refused insurance offered  
43          by the landlord or real estate broker that would have compensated  
44          him or her for losses or damages resulting from loss of use of

1 the property due to a mandatory evacuation order; or (ii) the  
2 tenant purchased insurance offered by the landlord or real estate  
3 broker. The insurance offered shall be provided by an insurance  
4 company duly authorized by the North Carolina Department of  
5 Insurance, and the cost of the insurance shall not exceed eight  
6 percent (8%) of the gross rent charged for the vacation rental.

7 "§ 42A-37. Late fees.

8 The provisions of Chapter 42 pertaining to the imposition of  
9 late fees shall not apply to vacation rentals under this  
10 Chapter."

11 Section 2. This act shall become effective January 1,  
12 2000, and applies to rental agreements entered into on or after  
13 that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE \_\_\_\_\_

S. B. No. SB 974-CSSG-RV-001

Amendment No. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.) KERR

Sen.)

1 moves to amend the bill on page 2, line S 20 + 21

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING BETWEEN THE LINES:

4 "(A) RENTALS FOR WHICH NO MORE THAN  
5 NOMINAL CONSIDERATION IS GIVEN." ; AND

7 ON PAGE 3, LINE 9,

8 BY DELETING THE WORDS "LANDLORD OR"

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

SIGNED [Signature]

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_





# SENATE BILL 974: Vacation Rental Act.

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** April 27, 1999  
**Version:** Proposed Committee Substitute  
S974-CSSG-001

**Introduced by:** Senator Soles  
**Summary by:** O. Walker Reagan,  
Committee Co-Counsel

**SUMMARY:** *The Proposed Committee Substitute for Senate Bill 974 would create the Vacation Rental Property Act to provide statutory law to govern short-term or vacation rental situations to include special notice requirements in a vacation rental agreement, to define how funds collected in advance for vacation-rentals are to be held and applied, to provide for an expedited eviction process for a vacation renter who illegally holds over, to create the duties of landlord and tenants in vacation rental situations, and to define how vacation rentals are affected by mandatory evacuations.*

**CURRENT LAW:** Current law in this area is governed primarily by common law and general contract law. Statutes applicable to realtors and the rules of the Real Estate Licensing Board govern realtors involved in vacation rentals. Because of a recent Supreme Court case there is confusion about how all these common laws and statutory laws fit together.

**BILL ANALYSIS:** Article 1 of the new act sets out the applicability of the bill and the relevant definitions. This Article makes the Act applicable to landlords and their brokers who rent residential property to tenants for short-term leases of 90 days or less for vacation or recreation purposes when the tenant has another permanent residence. Excluded from coverage by the Act are hotels and motels regulated under Chapter 72 and temporary rentals for business or employment purposes.

Article 2 requires that all vacation rentals be by a vacation rental agreement. This type of rental agreement must detail how funds deposited are held and applied, what charges are nonrefundable, how the expedited eviction procedures work, and a description of the landlord and tenant's obligations under the law. Failure by the landlord to get a valid vacation rental agreement executed constitutes an unfair and deceptive trade practice and makes the expedited eviction process unenforceable.

Article 3 sets out how money paid in advance by tenants is to be handled by the landlord or realtor. This Article requires that funds be placed in a trust account in a North Carolina bank. This Article permits up to 50% of the gross rent to be disbursed prior to occupancy. The remainder of the advance funds are to be held until occupancy, the tenant breaches, or the money is refunded. The landlord must give the tenant the name and address of the bank holding the deposits and an accounting of the funds when requested. Security deposits are to be governed by the Residential Tenant Security Deposit Act and may be applied to physical damage to the property, unpaid rent, or unpaid bills incurred by the tenant but charged to the landlord. This Article also provides that if the property is sold, any vacation rental agreements entered into by the landlord for rental periods within 180 days of closing must be honored by the new buyer. The seller is required to give the buyer notice of all rentals and a copy of all rental agreements.

# SENATE BILL 974

Page 2

Article 4 sets forth the procedures for an expedited eviction of a tenant that holds over beyond the term of the tenant's rental, fails to pay the rent or materially breaches the agreement. This process shall apply where the rental was for a period of 30 days or less. Upon four hours advance notice to leave the premise, the landlord may initiate an expedited eviction process. This matter is to be heard before a magistrate no less than 12 hours or more than 48 hours after service of the summons and complaint on the tenant or posting on the property. If the magistrate finds that the tenant is in violation of the vacation rental agreement the magistrate shall order the tenant to vacate within no less than 2 hours or more than 8 hours. A copy of the order to vacate the premises must be served on the tenant or posted on the property either by the landlord, the realtor, or a law enforcement officer. The tenant may appeal the magistrate's order by seeking a stay upon posting a bond. A landlord who abuses this expedited eviction process shall be guilty of a Class 1 misdemeanor and subject to a claim for unfair and deceptive trade practices.

Article 5 establishes the duties of landlords and tenants in vacation rental situations. This provision changes the common law and reverses the recent NC Supreme Court case of Conley v. Ingram, NC (1999) which held that the landlord owed no duty to the tenant to insure the fitness or habitability of the premises. This Article is similar to the duties and responsibilities of landlords and tenants set forth in the Residential Rental Agreement Act. The landlord must keep the property in a fit and habitable condition, repair and maintain the utilities and major appliances, and provide and maintain smoke detectors. The tenant keep the premises clean, dispose of all trash and garbage, not destroy or deface the premises, notify the landlord of needed repairs, and notify the landlord if the smoke detector does not work.

Article 6 provides that in the event of a declared evacuation, if the tenant vacates the premises the tenant will be entitled to a prorated refund of the rent unless the tenant has obtained insurance to cover the risk, or refused coverage when offered by the landlord prior to the tenancy.

**EFFECTIVE DATE:** The act becomes effective January 1, 2000 and applies to vacation rental agreements entered into on or after that date.

S974-SMRU-00

VISITOR REGISTRATION SHEET

①

COMMERCE  
Name of Committee

4-27-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Dwight Spencer	Tactical Political Consultant
Bernard Allen	508
Gregg Hancock	EGHS
J. Carole Teague	Co-op Council of NC
Ephraim Davis	Electric Cities
Jim Magall	Midnight Realty OBAR
Alexandria Mansur	NC Assoc. of REALTORS
Kim J. Johnson	JENKINS REALTORS, INC.
Barbara Conner	Order Banks Assn of Realtors
S.R. Buddy Rudek	Margaret Rudek & Assoc. Realtors
Jan Foy	AAA Carolinas
Bill Lowe	NC Justice Center
Phillip Fisher	NC Real Estate Commission
Tom J. Duncan	WCSR
Mark Mason	Capital Group

VISITOR REGISTRATION SHEET

②

Commerce

4-27-99

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Deborah Matheson	AP
[Signature]	NCLM at Azon
FRANK REYER	NCRMA
Paul Stock	NC Bankers
McNeil Chestnut	Asst. AG. Reg. Comm. BKS.
[Signature]	NC AFI
[Signature]	NCSSA
David Ferrell	H, M <sup>c</sup> CC+C PA.
Tom Miller	NCRFC
Alan Heise	Athens Office
EDDIE CALDWELL	H, M <sup>c</sup> CC+C, PA
Stella Boswell	NCATL
Alida Gregory	Poyner & Spruill
Katherine Miller	Harry Kaplan
Bill McAulay	PSNC

VISITOR REGISTRATION SHEET

③

Name of Committee Commerce

Date 4-27-99

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

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Ronald Murray	Jenkins Gas & Oil Co. Inc. / NCPGA
WALTER PRICE	CHARLOTTE CHAMBER
MARGARET THOMPSON	NCCCO
Arlene Bejaeger	NCCBT
Leven Stahl	Coca-Cola
Andy Harris	Coca-Cola
Pat McNamara	Coca-Cola
Steve Robinson	Coca-Cola
John Leaston	P&C
Alison Patient	Coca-Cola
David Elliott	DOT
Jim Edwards	DMV Enforcement
Ruth Sappie	NCDOT
FIM CROSS	DMV ENFORCEMENT
RW Kyle	Kyle Law Firm

VISITOR REGISTRATION SHEET

④

Commerce

4-27-99

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Sivakirany	NC Life Underwriters
Melissa Lovell	DOJ
Frank Gray	N. C. Manufacturing Housing
Bill Scobbin	NC EAR ASSOC
Alton Day	N. C. PROPANE ASSOC.
Charlie Diehl	NC Outdoor Adv. Assoc.
Duke Simpson	CAROLINAS AG
N. DAVID SMITH	NC DEPT. OF AGR. & CONSUMER SERVICES
MICHAEL S BOGGS	NC PROPANE GAS ASSOCIATION
Bill Cooper, Jr.	COOPER OIL COMPANY, INC.
Harold VanDerVeen	VanDerVeen Gas Co Inc

SENATE COMMERCE COMMITTEE  
2:00 P.M. WEDNESDAY, APRIL 28, 1999  
ROOM 1124, STATE LEGISLATIVE BUILDING  
MINUTES

The Senate Commerce Committee met at 2:00 p.m. on Wednesday, April 28, 1999, in Room 1124 of the State Legislative Building. Twenty members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles, Chairman, called the meeting to order. The following bills were considered by the Committee:

SB 830, AN ACT TO REGULATE AUTO REPAIRS. Senator Reeves moved the adoption of the Proposed Committee Substitute to SB 830. Motion carried. Senator Miller, the bill sponsor, explained the legislation. He said it requires a written work order for all major auto repair; a written estimate of the cost of the repairs, only work authorized by the owner of the automobile may be done or reimbursed; warranties for all labor and parts must be spelled out and consumers are to be given the opportunity to see any parts that were replaced. (See attached Summary of the bill.)

Senator Hoyle sent forward an amendment (See attached Amendment #1.) and moved its adoption. Motion carried. Senator Hoyle sent forward a second amendment (See attached Amendment #2.) and moved its adoption. Motion carried.

Miss Jane Pinsky, representing the AAA Motor Club (representing 750,000 members) spoke in support of SB 830. Mr. Alan Hirsch, representing the Attorney General's Office, also spoke in favor of the bill.

Mr. Eddie Caldwell, representing the N. C. Service Station Association and the Independent Garage Owners' Association, spoke strongly in opposition to the bill. He indicated that others who were not represented at the meeting opposing the legislation were NCCBI, the Federation of Independent Businesses, the Towers and the Auto Dealers Association.

Senator Hoyle moved that the Proposed Committee Substitute for SB 830, as amended, be given a favorable report and that it be converted into a new Committee Substitute. Motion carried.

SB 570, UPDATE CONSUMER FINANCE ACT. Senator Hoyle moved the adoption of a Proposed Committee Substitute for SB 570. Motion carried. Discussion of the Proposed Committee Substitute was postponed until a subsequent meeting of the Committee.

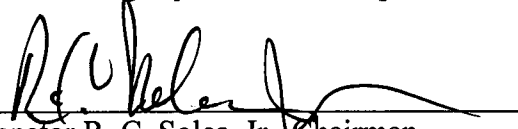
SB 641, AN ACT TO REQUIRE FINANCIAL INSTITUTIONS TO INFORM CUSTOMERS OPENING JOINT ACCOUNTS WITH RIGHT OF SURVIVORSHIP THAT THE FUNDS HELD IN THE ACCOUNT WILL NOT PASS BY INHERITANCE TO THE HEIRS OF THE DECEASED JOINT OWNER OR BE CONTROLLED BY THE DECEASED JOINT OWNER'S WILL. Senator Robinson, the bill sponsor, explained the legislation. Senator Forrester sent forward an amendment and moved its adoption. (Copy attached.) Motion carried.

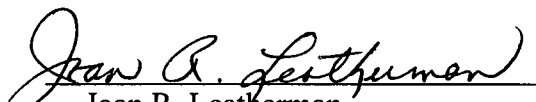
Discussion of SB 641, as amended, was postponed until a subsequent meeting of the Committee.

SB 968, AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF COMPETITIVE BIDDING. Senator Shaw, the bill sponsor, asked that the bill be reconsidered by the Committee and discussion of the legislation followed. Senator Rand sent forward an amendment and moved its adoption (copy attached). Motion carried.

Further discussion of SB968, as amended, was postponed until a subsequent meeting of the Committee.

The meeting adjourned at 3:00 p.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant



**SENATE COMMERCE COMMITTEE  
AGENDA  
Thursday, April 28, 1999  
Room 1124  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 570, UPDATE CONSUMER FINANCE ACT (Senator Hoyle)**

**SB 830, AUTO REPAIR WORK DISCLOSURES (Senator Miller)**

**ADJOURNMENT**

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair, Chair**

Wednesday, April 28, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

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

S.B.	<b>830</b>	Auto Repair Work Disclosures	
		Draft Number:	PCS6671
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 830

Short Title: Auto Repair Work Disclosures.

(Public)

---

Sponsors: Senators Miller, Ballance; Lucas and Reeves.

---

Referred to: Commerce.

---

April 12, 1999

1 A BILL TO BE ENTITLED

2 AN ACT TO REGULATE AUTO REPAIRS.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 20 of the General Statutes is amended by adding a  
5 new Article to read:

6 "ARTICLE 15B.

7 "North Carolina Motor Vehicle Repair Act.

8 "§ 20-354. Short title.

9 This act shall be known and may be cited as the 'North Carolina Motor Vehicle  
10 Repair Act.'

11 "§ 20-354A. Scope and application.

12 This act shall apply to all motor vehicle repair shops in North Carolina, except:

13 (1) Any motor vehicle repair shop of a municipal, county, State, or  
14 federal government when carrying out the functions of the  
15 government.

16 (2) Any person who engages solely in the repair of any of the  
17 following:

18 a. Motor vehicles that are owned, maintained, and operated  
19 exclusively by that person for that person's own use.

20 b. For-hire vehicles which are rented for periods of 30 days or  
21 less.

22 (3) Any person who repairs only motor vehicles which are operated  
23 principally for agriculture or horticultural pursuits on farms,  
24 groves, or orchards and which are operated on the highways of this

1 State only incidentally en route to or from the farms, groves, or  
2 orchards.

3 (4) Motor vehicle auctions or persons performing motor vehicle  
4 repairs solely for motor vehicle auctions.

5 **"§ 20-354B. Definitions.**

6 **As used in this act:**

7 (1) 'Customer' means the person who signs the written repair estimate  
8 or any other person whom the person who signs the written repair  
9 estimate designates on the written repair estimate as a person who  
10 may authorize repair work.

11 (2) 'Division' means the Division of Motor Vehicles.

12 (3) 'Employee' means an individual who is employed full time or part  
13 time by a motor vehicle repair shop and performs motor vehicle  
14 repairs.

15 (4) 'Final estimate' means the last estimate approved by the customer,  
16 either in writing or orally, as evidenced by the written repair  
17 estimate.

18 (5) 'Minor repair service' includes any of the following:

19 a. Repairing and changing tires.

20 b. Lubricating vehicles.

21 c. Cleaning, adjusting, and replacing spark plugs.

22 d. Changing oil and oil filters.

23 e. Replacing, adjusting, repairing, or servicing hoses and air  
24 filters.

25 f. Changing or otherwise servicing any of the following:

26 1. Coolant.

27 2. Automatic door lamp switch.

28 3. Battery, battery ground cable, battery hold-down  
29 strap, battery positive cable, and battery-to-starter  
30 relay cable.

31 4. Fan and alternator drive belts.

32 5. Fuses.

33 6. Headlamp foot dimmer.

34 7. Horns.

35 8. Ignition coil output wire.

36 9. Light bulbs and headlamps.

37 10. Ornamental accessories.

38 11. Power steering pump belt.

39 12. Wheels, except alignment.

40 13. Windshield washer tank.

41 14. Wiper blades.

42 15. Any other minor service which the Division has  
43 designated by rule may be performed by persons  
44 without skills and knowledge required of motor

1 vehicle mechanics and helpers. No service shall be  
2 considered as minor if the Division finds that the  
3 performance of the service requires mechanical  
4 expertise or has given rise to a high incidence of  
5 fraud or deceptive practices.

6 (6) 'Motor vehicle' means any automobile, truck, bus, recreational  
7 vehicle, motorcycle, motor scooter, or other motor powered  
8 vehicle, but does not include trailers, mobile homes, travel trailers,  
9 or trailer coaches without independent motive power, or watercraft  
10 or aircraft.

11 (7) 'Motor vehicle repair' means all maintenance of and modification  
12 and repairs to motor vehicles, and the diagnostic work incident to  
13 those repairs, including, but not limited to, the rebuilding or  
14 restoring of rebuilt vehicles, body work, painting, warranty work,  
15 and other work customarily undertaken by motor vehicle repair  
16 shops.

17 (8) 'Motor vehicle repair shop' means any person who, for  
18 compensation, engages or attempts to engage in the repair of motor  
19 vehicles owned by other persons and includes, but is not limited to:

20 a. Mobile motor vehicle repair shops.

21 b. Motor vehicle and recreational vehicle dealers.

22 c. Garages.

23 d. Service stations.

24 e. Self-employed individuals.

25 f. Truck stops.

26 g. Paint and body shops.

27 h. Brake, muffler, or transmission shops.

28 i. Shops doing glasswork.

29 Any person who engages solely in the maintenance or repair of the coach portion  
30 of a recreational vehicle is not a motor vehicle repair shop.

31 **"§ 20-354C. Written motor vehicle repair estimate and disclosure statement required.**

32 (a) When any customer requests a motor vehicle repair shop to perform repair  
33 work on a motor vehicle, the cost of which repair work will exceed one hundred  
34 dollars (\$100.00) to the customer, the shop shall prepare a written repair estimate,  
35 which is a form setting forth the estimated cost of repair work, including diagnostic  
36 work, before effecting any diagnostic work or repair. The written repair estimate  
37 shall also include the following items:

38 (1) The name, address, and telephone number of the motor vehicle  
39 repair shop.

40 (2) The name, address, and telephone number of the customer.

41 (3) The date and time of the written repair estimate.

42 (4) The year, make, model, odometer reading, and registration tag  
43 number of the motor vehicle.

44 (5) The proposed work completion date.

- 1           (6) A general description of the customer's problem or request for
- 2           repair work or service relating to the motor vehicle.
- 3           (7) A statement as to whether the customer is being charged according
- 4           to a flat rate or an hourly rate, or both.
- 5           (8) The estimated cost of repair.
- 6           (9) The charge for making a repair price estimate or, if the charge
- 7           cannot be predetermined, the basis on which the charge will be
- 8           calculated.
- 9           (10) The customer's intended method of payment.
- 10          (11) The name and telephone number of another person who may
- 11          authorize repair work, if the customer desires to designate another
- 12          person.
- 13          (12) A statement indicating what, if anything, is guaranteed in
- 14          connection with the repair work and the time and mileage period
- 15          for which the guarantee is effective.
- 16          (13) A statement allowing the customer to indicate whether replaced
- 17          parts should be saved for inspection or return.
- 18          (14) A statement indicating the daily charge for storing the customer's
- 19          motor vehicle after the customer has been notified that the repair
- 20          work has been completed. However, no storage charges shall
- 21          accrue or be due and payable for a period of three working days
- 22          from the date of the notification.

23    (b) If the cost of repair work will exceed one hundred dollars (\$100.00), the shop  
 24 shall present to the customer a written notice conspicuously disclosing, in a separate,  
 25 blocked section, only the following statement, in capital letters of at least 12-point  
 26 type:

27  
 28 'PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW,  
 29 AND SIGN:

30  
 31 I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A  
 32 WRITTEN ESTIMATE IF MY FINAL BILL WILL EXCEED \$100.00.

33  
 34 \_\_\_\_\_ I REQUEST A WRITTEN ESTIMATE.

35  
 36 \_\_\_\_\_ I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE  
 37 REPAIR COSTS DO NOT EXCEED \$ \_\_\_\_\_ . THE SHOP MAY  
 38 NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL  
 39 APPROVAL.

40  
 41 \_\_\_\_\_ I DO NOT REQUEST A WRITTEN ESTIMATE.

42  
 43 SIGNED \_\_\_\_\_ DATE \_\_\_\_\_ ,

1 (c) The information required by subdivisions (a)(8) and (9) need not be provided  
2 if the customer waives in writing his or her right to receive a written estimate.

3 (d) Except as provided in subsection (e) of this section, a copy of the written repair  
4 estimate required by subsection (a) of this section and the disclosure statement  
5 required by subsection (b) of this section shall be given to the customer before repair  
6 work is begun. The disclosure statement may be provided on the same form as the  
7 written repair estimate.

8 (e) If the customer leaves his or her motor vehicle at a motor vehicle repair shop  
9 during hours when the shop is not open or if the customer permits the shop or  
10 another person to deliver the motor vehicle to the shop, there shall be an implied  
11 partial waiver of the written estimate; however, upon completion of the diagnostic  
12 work necessary to estimate the cost of repair, the shop shall notify the customer as  
13 required by G.S. 20-354E(a).

14 (f) Nothing in this section shall be construed to require a motor vehicle repair  
15 shop to give a written estimate price if the motor vehicle repair shop does not agree  
16 to perform the requested repair.

17 **§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of**  
18 **rights prohibited.**

19 (a) No motor vehicle repair shop shall charge for making a repair price estimate  
20 unless, prior to making the price estimate, the shop does both of the following:

21 (1) Disclose to the customer the amount of the charge or, if the  
22 amount cannot be determined, the basis on which the charge will  
23 be calculated.

24 (2) Obtains authorization on the written repair estimate to prepare an  
25 estimate. No motor vehicle repair shop shall impose or threaten to  
26 impose any charge which is clearly excessive in relation to the  
27 work involved in making the price estimate.

28 (b) It shall be unlawful for any motor vehicle repair shop to require that any  
29 person waive his or her rights provided in this Article as a precondition to the repair  
30 of his or her vehicle by the shop.

31 **§ 20-354E. Notification of charges in excess of repair estimate; unlawful charges;**  
32 **refusal to return vehicle prohibited; inspection of parts.**

33 (a) In the event that any of the following apply, the customer shall be promptly  
34 notified by telephone, telegraph, mail, or other means of the additional repair work  
35 and estimated cost of the additional repair work:

36 (1) The written repair estimate contains only an estimate for diagnostic  
37 work necessary to estimate the cost of repair and such diagnostic  
38 work has been completed.

39 (2) A determination is made by a motor vehicle repair shop that the  
40 actual charges for the repair work will exceed the written estimate  
41 by more than ten dollars (\$10.00) or ten percent (10%), whichever  
42 is greater, but not to exceed fifty dollars (\$50.00).

43 (3) An implied partial waiver exists for diagnostic work and the  
44 diagnostic work has been completed.

1 When a customer is notified, he or she shall, orally or in writing, authorize, modify,  
2 or cancel the order for repair.

3 (b) If a customer cancels the order for repair after being advised that a repair  
4 which he or she has authorized cannot be accomplished within the previously  
5 authorized estimate, the shop shall expeditiously reassemble the motor vehicle in a  
6 condition reasonably similar to the condition in which it was received unless either of  
7 the following apply:

8 (1) The customer waives reassembly.

9 (2) The reassembled vehicle would be unsafe.

10 After cancellation of the repair order, the shop may charge for the cost of  
11 teardown, the cost of parts and labor to replace items that were destroyed by  
12 teardown, and the cost to reassemble the component or the vehicle, provided the  
13 customer was notified of these possible costs in the estimate prior to commencement  
14 of the diagnostic work.

15 (c) It shall be unlawful for a motor vehicle repair shop to charge more than the  
16 written estimate plus ten dollars (\$10.00) or ten percent (10%), whichever is greater,  
17 but not to exceed fifty dollars (\$50.00), unless the motor vehicle repair shop has  
18 obtained authorization to exceed the written estimate in accordance with subsection  
19 (a) of this section.

20 (d) It shall be unlawful for any motor vehicle repair shop to fail to return any  
21 customer's motor vehicle because the customer has refused to pay for unauthorized  
22 repairs or because the customer has refused to pay for repair charges in excess of the  
23 final estimate in violation of this section.

24 (e) Upon request made at the time the repair work is authorized by the customer,  
25 the customer is entitled to inspect parts removed from his or her vehicle or, if the  
26 shop has no warranty arrangement or exchange parts program with a manufacturer,  
27 supplier, or distributor, have them returned to him or her.

28 **"§ 20-354F. Invoice required of motor vehicle repair shop.**

29 The motor vehicle repair shop shall provide each customer, upon completion of  
30 any repair, with a legible copy of an invoice for such repair. The invoice may be  
31 provided on the same form as the written repair estimate and shall include the  
32 following information:

33 (1) The current date and odometer reading of the motor vehicle.

34 (2) A statement indicating what was done to correct the problem or a  
35 description of the service provided.

36 (3) An itemized description of all labor, parts, and merchandise  
37 supplied and the costs thereof, indicating what is supplied to the  
38 customer without cost or at a reduced cost because of a shop or  
39 manufacturer's warranty.

40 (4) A statement identifying any replacement part as being used,  
41 rebuilt, or reconditioned, as the case may be.

42 (5) A statement indicating what, if anything, is guaranteed in  
43 connection with the repair work and the time and mileage period  
44 for which the guarantee is effective.



1           (6) The registration number from the certificate issued by the Division  
2           pursuant to this Article.

3 **"§ 20-354G. Motor vehicle repair shop records.**

4       (a) Each motor vehicle repair shop shall maintain repair records which shall  
5 include written repair estimates and repair invoices. A customer's records shall be  
6 available to the customer for inspection and copying for a period of at least 12  
7 months. A reasonable charge may be made for copying if copying facilities are  
8 available. The customer may not remove the original records from the premises.

9       (b) Motor vehicle repair shops shall allow Division personnel to inspect or copy  
10 these records during regular business hours.

11 **"§ 20-354H. Required disclosure; signs; notice to customers.**

12       (a) The Division shall prescribe, by rule, the specifications for a sign to be posted  
13 by all motor vehicle repair shops in a manner conspicuous to the public. The sign  
14 shall contain the toll-free telephone number of the Division for consumer information  
15 and assistance and shall inform customers that they may request, at the time the work  
16 order is taken, the return or inspection of all parts that have been replaced during the  
17 motor vehicle repair.

18       (b) All motor vehicle repair shops required to register under the provisions of this  
19 Article shall include the registration number from the certificate issued by the  
20 Division in any advertisements, announcements, or listings relating to motor vehicle  
21 repair which are placed in a newspaper, magazine, or directory.

22 **"§ 20-354I. Unlawful acts and practices.**

23       It shall be a violation of this Article for any motor vehicle repair shop or employee  
24 of a motor vehicle repair shop to do any of the following:

25           (1) Make or charge for repairs which have not been expressly or  
26           impliedly authorized by the customer.

27           (2) Misrepresent that repairs have been made to a motor vehicle.

28           (3) Misrepresent that certain parts and repairs are necessary to repair a  
29           vehicle.

30           (4) Misrepresent that the vehicle being inspected or diagnosed is in a  
31           dangerous condition or that the customer's continued use of the  
32           vehicle may be harmful or cause great damage to the vehicle.

33           (5) Fraudulently alter any customer contract, estimate, invoice, or  
34           other document.

35           (6) Fraudulently misuse any customer's credit card.

36           (7) Make or authorize in any manner or by any means whatever any  
37           written or oral statement which is untrue, deceptive, or misleading,  
38           and which is known, or which by the exercise of reasonable care  
39           should be known, to be untrue, deceptive, or misleading.

40           (8) Make false promises of a character likely to influence, persuade, or  
41           induce a customer to authorize the repair, service, or maintenance  
42           of a motor vehicle.

43           (9) Substitute used, rebuilt, salvaged, or straightened parts for new  
44           replacement parts without notice to the motor vehicle owner and

1 to his or her insurer if the cost of repair is to be paid pursuant to  
2 an insurance policy and the identity of the insurer or its claims  
3 adjuster is disclosed to the motor vehicle repair shop.

4 (10) Cause or allow a customer to sign any work order that does not  
5 state the repairs requested by the customer or the automobile's  
6 odometer reading at the time of repair.

7 (11) Fail or refuse to give to a customer a copy of any document  
8 requiring the customer's signature upon completion or cancellation  
9 of the repair work.

10 (12) Willfully depart from or disregard accepted practices and  
11 professional standards.

12 (13) Have repair work subcontracted without the knowledge or consent  
13 of the customer unless the motor vehicle repair shop or employee  
14 demonstrates that the customer could not reasonably have been  
15 notified.

16 (14) Rebuild or restore a rebuilt vehicle without the knowledge of the  
17 owner in a manner that does not conform to the original vehicle  
18 manufacturer's established repair procedures or specifications and  
19 allowable tolerances for the particular model and year.

20 (15) Perform any other act that is a violation of this Article or that  
21 constitutes fraud or misrepresentation.

22 **"§ 20-354J. Remedies.**

23 Any customer injured by a violation of this Article may bring an action in the  
24 appropriate court for relief. The prevailing party in that action may be entitled to  
25 damages plus court costs and reasonable attorneys' fees. The customer may also  
26 bring an action for injunctive relief in the appropriate court."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 830  
Proposed Committee Substitute S830-PCS6668-LK

Short Title: Auto Repair Work Disclosures.

(Public)

Sponsors:

Referred to:

April 12, 1999

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO REGULATE AUTO REPAIRS.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. Chapter 20 of the General Statutes is amended by adding a  
5 new Article to read:  
6 "ARTICLE 15B.  
7 "North Carolina Motor Vehicle Repair Act.  
8 "§ 20-354. Short title.  
9 This act shall be known and may be cited as the 'North Carolina Motor Vehicle  
10 Repair Act.'  
11 "§ 20-354A. Scope and application.  
12 This act shall apply to all motor vehicle repair shops in North Carolina, except:  
13 (1) Any motor vehicle repair shop of a municipal, county, State, or  
14 federal government when carrying out the functions of the  
15 government.  
16 (2) Any person who engages solely in the repair of any of the  
17 following:  
18 a. Motor vehicles that are owned, maintained, and operated  
19 exclusively by that person for that person's own use.  
20 b. For-hire vehicles which are rented for periods of 30 days or  
21 less.  
22 (3) Any person who repairs only motor vehicles which are operated  
23 principally for agriculture or horticultural pursuits on farms,

1 groves, or orchards and which are operated on the highways of this  
2 State only incidentally en route to or from the farms, groves, or  
3 orchards.

4 (4) Motor vehicle auctions or persons performing motor vehicle  
5 repairs solely for motor vehicle auctions.

6 (5) Any motor vehicle repair shop when performing only minor repair  
7 services.

8 **"§ 20-354B. Definitions.**

9 As used in this act:

10 (1) 'Customer' means the person who signs the written repair estimate  
11 or any other person whom that person designates as a person who  
12 may authorize repair work.

13 (2) 'Division' means the Division of Motor Vehicles.

14 (3) 'Employee' means an individual who is employed full time or part  
15 time by a motor vehicle repair shop and performs motor vehicle  
16 repairs.

17 (4) 'Final estimate' means the last estimate approved by the customer,  
18 either in writing or orally, as evidenced by the written repair  
19 estimate.

20 (5) 'Minor repair service' includes any of the following:

21 a. Repairing and changing tires.

22 b. Lubricating vehicles.

23 c. Cleaning, adjusting, and replacing spark plugs.

24 d. Changing oil and oil filters.

25 e. Replacing, adjusting, repairing, or servicing hoses and air  
26 filters.

27 f. Changing or otherwise servicing any of the following:

28 1. Coolant.

29 2. Automatic door lamp switch.

30 3. Battery, battery ground cable, battery hold-down  
31 strap, battery positive cable, and battery-to-starter  
32 relay cable.

33 4. Fan and alternator drive belts.

34 5. Fuses.

35 6. Headlamp foot dimmer.

36 7. Horns.

37 8. Ignition coil output wire.

38 9. Light bulbs and headlamps.

39 10. Ornamental accessories.

40 11. Power steering pump belt.

41 12. Wheels, except alignment.

42 13. Windshield washer tank.

43 14. Wiper blades.

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15. Any other minor service which the Division has designated by rule may be performed by persons without skills and knowledge required of motor vehicle mechanics and helpers. No service shall be considered as minor if the Division finds that the performance of the service requires mechanical expertise or has given rise to a high incidence of fraud or deceptive practices.
- (6) 'Motor vehicle' means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.
- (7) 'Motor vehicle repair' means all maintenance of and modification and repairs to motor vehicles, and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops.
- (8) 'Motor vehicle repair shop' means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:
- a. Mobile motor vehicle repair shops.
  - b. Motor vehicle and recreational vehicle dealers.
  - c. Garages.
  - d. Service stations.
  - e. Self-employed individuals.
  - f. Truck stops.
  - g. Paint and body shops.
  - h. Brake, muffler, or transmission shops.
  - i. Shops doing glasswork.
- Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.
- § 20-354C. Written motor vehicle repair estimate and disclosure statement required.**
- (a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed one hundred dollars (\$100.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed. However, no storage charges shall accrue

1 or be due and payable for a period of three working days from the date of the  
2 notification.

3 (b) The information required by subsection (a) need not be provided if the  
4 customer waives in writing his or her right to receive a written estimate.

5 (c) Except as provided in subsection (e) of this section, a copy of the written repair  
6 estimate required by subsection (a) of this section shall be given to the customer  
7 before repair work is begun.

8 (d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop  
9 during hours when the shop is not open or if the customer permits the shop or  
10 another person to deliver the motor vehicle to the shop, there shall be an implied  
11 partial waiver of the written estimate; however, upon completion of the diagnostic  
12 work necessary to estimate the cost of repair, the shop shall notify the customer as  
13 required by G.S. 20-354E(a).

14 (e) Nothing in this section shall be construed to require a motor vehicle repair  
15 shop to give a written estimate price if the motor vehicle repair shop does not agree  
16 to perform the requested repair.

17 **§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of**  
18 **rights prohibited.**

19 (a) Before proceeding with preparing an estimate the shop shall do both of the  
20 following:

21 (1) Disclose to the customer the amount, if any, of the charge for  
22 preparing the estimate.

23 (2) Obtains a written authorization to prepare an estimate if there is a  
24 charge for that estimate. No motor vehicle repair shop shall  
25 impose or threaten to impose any charge which is clearly excessive  
26 in relation to the work involved in making the price estimate.

27 (b) It shall be unlawful for any motor vehicle repair shop to require that any  
28 person waive his or her rights provided in this Article as a precondition to the repair  
29 of his or her vehicle by the shop.

30 **§ 20-354E. Notification of charges in excess of repair estimate; unlawful charges;**  
31 **refusal to return vehicle prohibited; inspection of parts.**

32 (a) In the event that any of the following apply, the customer shall be promptly  
33 notified by telephone, telegraph, mail, or other means of the additional repair work  
34 and estimated cost of the additional repair work:

35 (1) The written repair estimate contains only an estimate for diagnostic  
36 work necessary to estimate the cost of repair and such diagnostic  
37 work has been completed.

38 (2) A determination is made by a motor vehicle repair shop that the  
39 actual charges for the repair work will exceed the written estimate  
40 by more than ten percent (10%).

41 (3) An implied partial waiver exists for diagnostic work and the  
42 diagnostic work has been completed.

43 When a customer is notified, he or she shall, orally or in writing, authorize, modify,  
44 or cancel the order for repair.

1 (b) If a customer cancels the order for repair after being advised that a repair  
2 which he or she has authorized cannot be accomplished within the previously  
3 authorized estimate, the shop shall expeditiously reassemble the motor vehicle in a  
4 condition reasonably similar to the condition in which it was received unless either of  
5 the following apply:

6 (1) The customer waives reassembly.

7 (2) The reassembled vehicle would be unsafe.

8 After cancellation of the repair order, the shop may charge for the cost of  
9 teardown, the cost of parts and labor to replace items that were destroyed by  
10 teardown, and the cost to reassemble the component or the vehicle, provided the  
11 customer was notified of these possible costs in the estimate prior to commencement  
12 of the diagnostic work.

13 (c) It shall be unlawful for a motor vehicle repair shop to charge more than the  
14 written estimate plus ten percent (10%), unless the motor vehicle repair shop has  
15 obtained authorization to exceed the written estimate in accordance with subsection  
16 (a) of this section.

17 (d) It shall be unlawful for any motor vehicle repair shop to fail to return any  
18 customer's motor vehicle because the customer has refused to pay for unauthorized  
19 repairs or because the customer has refused to pay for repair charges in excess of the  
20 final estimate in violation of this section. Violation of this subsection shall constitute  
21 a Class 2 misdemeanor.

22 (e) Upon request made at the time the repair work is authorized by the customer,  
23 the customer is entitled to inspect parts removed from his or her vehicle or, if the  
24 shop has no warranty arrangement or exchange parts program with a manufacturer,  
25 supplier, or distributor, have them returned to him or her.

26 **"§ 20-354F. Invoice required of motor vehicle repair shop.**

27 The motor vehicle repair shop shall provide each customer, upon completion of  
28 any repair, with a legible copy of an invoice for such repair. The invoice shall  
29 include the following information:

30 (1) A statement indicating what was done to correct the problem or a  
31 description of the service provided.

32 (2) An itemized description of all labor, parts, and merchandise  
33 supplied and the costs thereof, indicating what is supplied to the  
34 customer without cost or at a reduced cost because of a shop or  
35 manufacturer's warranty.

36 (3) A statement identifying any replacement part as being used,  
37 rebuilt, or reconditioned, as the case may be.

38 **"§ 20-354G. Required disclosure; signs; notice to customers.**

39 (a) A sign, at least 24 inches on each side, shall be posted in a manner  
40 conspicuous to the public. The sign shall contain:

41 (1) That if the cost of repairs will exceed one hundred dollars  
42 (\$100.00) that the consumer has a right to a written estimate and  
43 may waive the right to the written estimate.

1           (2) The toll-free telephone number of the Division for consumer  
2           information and assistance.

3           (3) That the consumer may request, at the time the work order is  
4           taken, the return or inspection of all parts that have been replaced  
5           during the motor vehicle repair.

6       (b) All motor vehicle repair shops required to register under the provisions of this  
7 Article shall include the registration number from the certificate issued by the  
8 Division in any advertisements, announcements, or listings relating to motor vehicle  
9 repair which are placed in a newspaper, magazine, or directory.

10 **"§ 20-354H. Unlawful acts and practices.**

11       It shall be a violation of this Article for any motor vehicle repair shop or employee  
12 of a motor vehicle repair shop to do any of the following:

13           (1) Make or charge for repairs which have not been expressly or  
14           impliedly authorized by the customer.

15           (2) Misrepresent that repairs have been made to a motor vehicle.

16           (3) Misrepresent that certain parts and repairs are necessary to repair a  
17           vehicle.

18           (4) Misrepresent that the vehicle being inspected or diagnosed is in a  
19           dangerous condition or that the customer's continued use of the  
20           vehicle may be harmful or cause great damage to the vehicle.

21           (5) Fraudulently alter any customer contract, estimate, invoice, or  
22           other document.

23           (6) Fraudulently misuse any customer's credit card.

24           (7) Make or authorize in any manner or by any means whatever any  
25           written or oral statement which is untrue, deceptive, or misleading,  
26           and which is known, or which by the exercise of reasonable care  
27           should be known, to be untrue, deceptive, or misleading.

28           (8) Make fraudulent promises of a character likely to influence,  
29           persuade, or induce a customer to authorize the repair, service, or  
30           maintenance of a motor vehicle.

31           (9) Substitute used, rebuilt, salvaged, or straightened parts for new  
32           replacement parts without notice to the motor vehicle owner and  
33           to his or her insurer if the cost of repair is to be paid pursuant to  
34           an insurance policy and the identity of the insurer or its claims  
35           adjuster is disclosed to the motor vehicle repair shop.

36           (10) Cause or allow a customer to sign any work order that does not  
37           state the repairs requested by the customer or the automobile's  
38           odometer reading at the time of repair.

39           (11) Fail or refuse to give to a customer a copy of any document  
40           requiring the customer's signature upon completion or cancellation  
41           of the repair work.

42           (12) Willfully depart from or disregard accepted practices and  
43           professional standards.



- 1           (13) Have repair work subcontracted without the knowledge or consent
- 2                   of the customer unless the motor vehicle repair shop or employee
- 3                   demonstrates that the customer could not reasonably have been
- 4                   notified.
- 5           (14) Rebuild or restore a rebuilt vehicle without the knowledge of the
- 6                   owner in a manner that does not conform to the original vehicle
- 7                   manufacturer's established repair procedures or specifications and
- 8                   allowable tolerances for the particular model and year.
- 9           (15) Perform any other act that is a violation of this Article or that
- 10                   constitutes fraud or misrepresentation.

11 "§ 20-354I. Remedies.

12       Any customer injured by a violation of this Article may bring an action in the  
13 appropriate court for relief. The prevailing party in that action may be entitled to  
14 damages plus court costs and reasonable attorneys' fees. The customer may also  
15 bring an action for injunctive relief in the appropriate court."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE April 28, 1999

S. B. No. 830

Amendment No. 1

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.) \_\_\_\_\_  
Sen.) \_\_\_\_\_

1 moves to amend the bill on page 5, line 17-21

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4 " (d) It shall be unlawful for any motor  
5 vehicle repair shop to fail to return  
6 any customer's motor vehicle because  
7 the customer has refused to pay  
8 for repair charges that exceed a  
9 written estimate by more than  
10 ten percent (10%), provided that the  
11 customer has paid the motor vehicle  
12 repair shop the amount of the estimate  
13 ~~and~~ plus the ten percent (10%)."  
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SIGNED [Signature]

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE April 28, 1999

S. B. No. 830

Amendment No. 2

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep. )

Sen. )

1 moves to amend the bill on page 6, line 6-9

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines

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5 and on page 5, line 39

6 by deleting "(a)".

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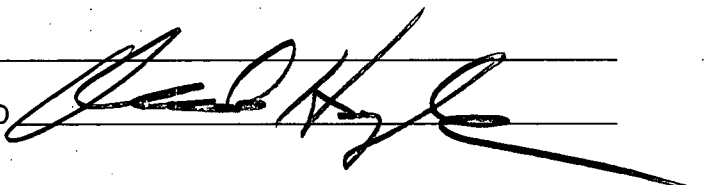
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ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

## **Senate Bill 830- Auto Repair Work Disclosure**

### **What does Senate Bill 830 do ?**

S830 requires

- A written work order for all major auto repair
- A written estimate of the cost of the repairs
- Only work authorized by the owner of the automobile may be done or reimbursed
- Warranties for all labor and parts be spelled out
- Consumers be given the opportunity to see any parts that were replaced

It permits mechanics to charge for diagnostic work and for work to reassemble a car if the owner chooses not to have the repair done.

### **Why do we need Senate Bill 830 ?**

S830 is necessary because complaints about auto repair are the largest group of complaints received by the North Carolina Attorney General's Consumer Protection Division. In 1997, there were 483 and in 1998, there were 427. 1999 is on track to have approximately the same number of complaints. Members of the Attorney General's staff estimate that there are five to ten problems for each complaint they receive that never make it to their office. Complaints about auto repair are also the largest group of complaints received by AAA CAROLINAS. Complaints to both offices come from North Carolinians and visitors to our state.

### **What will it take to implement S830 ?**

All it will take to implement most of S830 is a single piece of paper. In fact, many garages in North Carolina already come very close to meeting the requirements of S830. (See attached)

### **Do any other states have similar laws ?**

Thirty other states have similar laws. Many of them are much stricter than what is proposed in S830.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 570

Short Title: Update Consumer Finance Act.

(Public)

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Sponsors: Senators Hoyle; Ballantine, Carpenter, Carter, Dalton, Forrester, Jordan, Lee, Moore, Odom, Plyler, Purcell, Reeves, Rucho, Soles, and Weinstein.

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Referred to: Commerce.

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March 29, 1999

A BILL TO BE ENTITLED

1  
2 AN ACT TO UPDATE THE NORTH CAROLINA CONSUMER FINANCE ACT  
3 TO REVISE THE COLLECTION OF INTEREST UNDER CERTAIN  
4 CIRCUMSTANCES, TO ALLOW BORROWERS TO CANCEL LOANS  
5 UNDER CERTAIN CONDITIONS, TO RECOGNIZE INADVERTENT LOANS  
6 IN THE LAW RESTRICTING MULTIPLE-OFFICE LOANS, TO REQUIRE  
7 DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR  
8 NEGOTIABLE CHECKS, TO ALLOW LENDERS TO MAINTAIN CERTAIN  
9 RECORDS IN THE FORM OF OPTICAL IMAGE DISKS, TO SPECIFY A  
10 MAXIMUM CHARGE THAT LENDERS MAY ASSESS AT CLOSING, AND  
11 TO REQUIRE LICENSEES TO REPORT ADDITIONAL INFORMATION TO  
12 THE COMMISSIONER.

13 The General Assembly of North Carolina enacts:

14 Section 1. G.S. 53-165(a) reads as rewritten:

15 "(a) 'Amount of the loan' shall mean the aggregate of the cash advance and the  
16 charges authorized either by ~~G.S. 53-173~~. G.S. 53-173 or G.S. 53-176."

17 Section 2. G.S. 53-176 reads as rewritten:

18 "**§ 53-176. Optional rates, maturities and amounts.**

19 In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and  
20 for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in  
21 installments not exceeding ten thousand dollars (\$10,000) and which shall not be  
22 repayable in less than six months or more than 84 months and which shall not be

1 secured by deeds of trust or mortgages on real estate and which are repayable in  
2 substantially equal consecutive monthly payments and to charge and collect interest  
3 in connection therewith which shall not exceed the following actuarial rates:

4 (1) With respect to a loan not exceeding ~~seven thousand five hundred~~  
5 ~~dollars (\$7,500)~~, ten thousand dollars (\$10,000), thirty percent  
6 (30%) per annum on that part of the unpaid principal balance not  
7 exceeding ~~one thousand dollars (\$1,000)~~ two thousand dollars  
8 (\$2,000) and eighteen percent (18%) per annum on the remainder  
9 of the unpaid principal balance. Interest shall be contracted for  
10 and collected at the single simple interest rate applied to the  
11 outstanding balance that would earn the same amount of interest as  
12 the above rates for payment according to schedule.

13 (2) ~~With respect to a loan exceeding seven thousand five hundred~~  
14 ~~dollars (\$7,500), eighteen percent (18%) per annum on the~~  
15 ~~outstanding principal balance.~~

16 In addition to the interest permitted in this section, a licensee may assess at closing  
17 a ~~reasonable credit investigation loan charge as agreed upon by the parties~~, not to  
18 exceed ~~the actual cost of the credit investigation~~, twenty-five dollars (\$25.00);  
19 provided that such charges may not be assessed to the same borrower more than  
20 twice in any 12-month period. ~~The Commissioner of Banks may review charges~~  
21 ~~assessed pursuant to this section and may adopt appropriate rules in accordance with~~  
22 ~~G.S. 53-185.~~ period, and which may be included in the original principal balance of  
23 the loan and shall be earned when the loan is made.

24 The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f),  
25 (g), (h) and (i) shall apply to loans made pursuant to this section.

26 Any licensee under this Article shall have the right to elect to make loans in  
27 accordance with this section by the filing of a written statement to that effect with the  
28 Commissioner and on date of such notification begin making loans regulated by this  
29 section for the following 12 months. Annually after such election a licensee may elect  
30 to make loans in accordance with this section unless the licensee notifies in writing  
31 the Commissioner of its intention to terminate such election.

32 The due date of the first monthly payment shall not be more than 45 days  
33 following the disbursement of funds under any such installment loan. A borrower  
34 under this section may prepay all or any part of a loan made under this section  
35 without penalty. A borrower may cancel a loan within 15 calendar days after  
36 disbursement of the loan proceeds to the borrower without incurring or paying  
37 interest so long as the amount of the loan is returned to or received by the licensee.

38 No individual, partnership, or corporate licensee and no corporation which is the  
39 parent, subsidiary or affiliate of a corporate licensee that is making loans under this  
40 Article except as authorized in this section, shall be permitted to make loans under  
41 the provisions of this section. Any corporate licensee or individual or partnership  
42 licensee that elects to make loans in accordance with the provisions of this section  
43 shall be bound by that election with respect to all of its offices and locations in this  
44 State and all offices and locations in this State of its parent, subsidiary or affiliated

1 corporate licensee, or with respect to all of his or their offices and locations in this  
2 State."

3 Section 3. G.S. 53-179 reads as rewritten:

4 "**§ 53-179. Multiple-office loan limitations.**

5 A licensee shall not grant a loan under this Article in one office to any borrower  
6 who already has a loan in another office operated by the same entity or by an  
7 affiliate, parent, subsidiary or under the same ownership, management or control,  
8 whether partial or ~~complete~~. complete for the purpose, or with the effect, of obtaining  
9 charges in excess of those authorized by this Article. This section shall apply to  
10 intrastate and interstate operations. A licensee shall take every reasonable precaution  
11 to prevent granting loans in violation of this section. Such loans granted inadvertently  
12 ~~resulting in a total liability of three thousand dollars (\$3,000) or less, shall be adjusted~~  
13 ~~to the rates applicable under the Article to a single loan of equivalent amount, and~~  
14 ~~when the total liability on such loans is in excess of three thousand dollars (\$3,000),~~  
15 ~~interest shall be adjusted to simple interest at eight percent (8%) per annum on the~~  
16 ~~entire obligation.~~ shall be adjusted to the rates applicable under this Article to a  
17 single loan of equivalent amount. Such loans granted intentionally with the purpose  
18 to evade this Article shall be adjusted to a simple interest at eight percent (8%) per  
19 annum on the entire obligation."

20 Section 4. G.S. 53-181(a) is amended by adding a new subdivision to  
21 read:

22 "(10) In addition to any disclosures otherwise provided by law, a licensee  
23 soliciting loans using facsimile or negotiable checks shall disclose  
24 the following:

25 'THIS IS A SOLICITATION FOR A LOAN. READ THE  
26 ENCLOSED DISCLOSURES BEFORE SIGNING THIS  
27 AGREEMENT.'

28 This notice shall be printed in not less than 10-point bold  
29 type and shall appear conspicuously on the offer."

30 Section 5. G.S. 53-182(b) reads as rewritten:

31 "(b) Upon payment of any loan in full, a licensee shall cancel and return to the  
32 borrower, within a reasonable length of time, originals or copies of any note,  
33 assignment, mortgage, deed of trust, or other instrument securing such loan, which no  
34 longer secures any indebtedness of the borrower to the licensee."

35 Section 6. G.S. 53-184 reads as rewritten:

36 "**§ 53-184. Securing of information; records and reports; allocations of expense.**

37 (a) Each licensee shall maintain all books and records relating to loans made  
38 under this Article required by the Commissioner of Banks to be kept, and the  
39 Commissioner, his deputy, or duly authorized examiner or agent or employee is  
40 authorized and empowered to examine such records at any reasonable time. Such  
41 books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~  
42 disk, optical disk, or other form of computer, electronic or microfilm media available  
43 for examination on the basis of computer printed reproduction, video display or other  
44 medium acceptable to the Commissioner of Banks; provided, however, that such

1 books and records so kept must be convertible into clearly legible tangible documents  
2 within a reasonable time. Any licensee having more than one licensed office may  
3 maintain such books and records at a location other than the licensed office location  
4 if such location is approved by the Commissioner; provided that, upon such  
5 requirements as may be imposed by the Commissioner of Banks, there shall be  
6 available to the borrower at each licensed location or such other location convenient  
7 to the borrower, as designated by the licensee, complete loan information; and  
8 provided further that such books and records of each licensed office shall be clearly  
9 segregated. When a licensee maintains its books and records outside of North  
10 Carolina, the licensee shall make them available for examination at the place where  
11 they are maintained and shall pay for all reasonable and necessary expenses incurred  
12 by the Commissioner in conducting such examination. Where the data processing for  
13 any licensee is performed by a person other than the licensee, the licensee shall  
14 provide to the Commissioner of Banks a copy of a binding agreement between the  
15 licensee and the data processor which allows the Commissioner of Banks, his deputy,  
16 or duly authorized examiner or agent or employee to examine that particular data  
17 processor's activities pertaining to the licensee to the same extent as if such services  
18 were being performed by the licensee on its own premises; and, notwithstanding the  
19 provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the  
20 licensee shall reimburse the Commissioner of Banks for all costs and expenses  
21 incurred by ~~him~~ the Commissioner in such examination.

22 (b) Each licensee shall file annually with the Commissioner of Banks on or before  
23 the thirty-first day of March for the 12 months' period ending the preceding  
24 December 31, reports on forms prescribed by the Commissioner. Reports shall  
25 disclose in detail and under appropriate headings the assets and liabilities of the  
26 licensee, the ~~income, expense,~~ income from interest and other charges collected for  
27 loans, income from all businesses related to transactions under the act, income from  
28 other noncredit businesses authorized by the Commissioner, all expense from those  
29 businesses, gain, loss, delinquency, bad debt, bad debt recovery, and any other  
30 information as the Commissioner may require. require in order to make meaningful  
31 reports to the public and the General Assembly on the services and financial  
32 condition of the industry. Reports shall be verified by the oath or affirmation of the  
33 owner, manager, president, vice-president, cashier, secretary or treasurer of the  
34 licensee.

35 (c) If a licensee conducts another business or is affiliated with other licensees  
36 under this Article, or if any other situation exists under which allocations of expense  
37 are necessary, the licensee or licensees shall make such allocation according to  
38 appropriate and reasonable accounting principles.

39 (d) Repealed by Session Laws 1997-285, s. 3."

40 Section 7. This act becomes effective October 1, 1999, and applies to  
41 loans made on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 570  
Proposed Committee Substitute S570-PCS4684-LT

Short Title: Update Consumer Finance Act.

(Public)

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Sponsors:

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Referred to:

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March 29, 1999

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO UPDATE THE NORTH CAROLINA CONSUMER FINANCE ACT  
3 TO REVISE THE COLLECTION OF INTEREST UNDER CERTAIN  
4 CIRCUMSTANCES, TO ALLOW BORROWERS TO CANCEL LOANS  
5 UNDER CERTAIN CONDITIONS, TO INCREASE CERTAIN FEES, TO  
6 INCREASE THE LIABILITY AMOUNTS OF INADVERTENT LOANS IN THE  
7 LAW RESTRICTING MULTIPLE-OFFICE LOANS, TO REQUIRE  
8 DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR  
9 NEGOTIABLE CHECKS, TO ALLOW LENDERS TO MAINTAIN CERTAIN  
10 RECORDS IN THE FORM OF OPTICAL IMAGE DISKS, AND TO SPECIFY  
11 A MAXIMUM CHARGE THAT LENDERS MAY ASSESS AT CLOSING.  
12 The General Assembly of North Carolina enacts:  
13           Section 1. G.S. 53-165(a) reads as rewritten:  
14       "(a) 'Amount of the loan' shall mean the aggregate of the cash advance and the  
15 charges authorized either by ~~G.S. 53-173~~ G.S. 53-173 or G.S. 53-176."  
16           Section 2. G.S. 53-168(b) reads as rewritten:  
17       "(b) Investigation of Applicants. -- Upon the receipt of an application, the  
18 Commissioner shall investigate the facts. If the Commissioner determines from such  
19 preliminary investigation that the applicant does not satisfy the conditions set forth in  
20 subsection (a), he shall so notify the applicant who shall then be entitled to an  
21 informal hearing thereon provided he so requests in writing within 30 days after the  
22 Commissioner has caused the above-referred to notification to be mailed to the  
23 applicant. In the event of a hearing, to be held in the offices of the Commissioner of

1 Banks in Raleigh, the Commissioner shall reconsider the application and, after the  
2 hearing, issue a written order granting or denying such application. At the time of  
3 making such application, the applicant shall pay the Banking Department the sum of  
4 ~~two hundred fifty dollars (\$250.00)~~ two hundred seventy-five dollars (\$275.00) as a  
5 fee for investigating the application, which shall be retained irrespective of whether  
6 or not a license is granted the applicant."

7 Section 3. G.S. 53-176 reads as rewritten:

8 "**§ 53-176. Optional rates, maturities and amounts.**

9 In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and  
10 for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in  
11 installments not exceeding ten thousand dollars (\$10,000) and which shall not be  
12 repayable in less than six months or more than 84 months and which shall not be  
13 secured by deeds of trust or mortgages on real estate and which are repayable in  
14 substantially equal consecutive monthly payments and to charge and collect interest  
15 in connection therewith which shall not exceed the following actuarial rates:

16 (1) ~~With rates of thirty percent (30%) per annum on that part of the~~  
17 ~~unpaid principal balance not exceeding two thousand dollars~~  
18 ~~(\$2,000) with respect to a loan not exceeding ten thousand dollars~~  
19 ~~(\$10,000) seven thousand five hundred dollars (\$7,500), thirty~~  
20 ~~percent (30%) per annum on that part of the unpaid principal~~  
21 ~~balance not exceeding one thousand dollars (\$1,000) and eighteen~~  
22 ~~percent (18%) per annum on the remainder of the unpaid~~  
23 ~~principal balance. Interest shall be contracted for and collected at~~  
24 ~~the single simple interest rate applied to the outstanding balance~~  
25 ~~that would earn the same amount of interest as the above rates for~~  
26 ~~payment according to schedule.~~

27 (2) ~~With respect to a loan exceeding seven thousand five hundred~~  
28 ~~dollars (\$7,500), eighteen percent (18%) per annum on the~~  
29 ~~outstanding principal balance.~~

30 In addition to the interest permitted in this section, a licensee may assess at closing  
31 a ~~reasonable credit investigation loan~~ charge ~~as agreed upon by the parties,~~ not to  
32 exceed ~~the actual cost of the credit investigation;~~ twenty-five dollars (\$25.00);  
33 provided that such charges may not be assessed to the same borrower more than  
34 twice in any 12-month period. The Commissioner of Banks may review charges  
35 assessed pursuant to this section and may adopt appropriate rules in accordance with  
36 G.S. 53-185. period, and which may be included in the original principal balance of  
37 the loan and shall be earned when the loan is made.

38 The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f),  
39 (g), (h) and (i) shall apply to loans made pursuant to this section.

40 Any licensee under this Article shall have the right to elect to make loans in  
41 accordance with this section by the filing of a written statement to that effect with the  
42 Commissioner and on date of such notification begin making loans regulated by this  
43 section for the following 12 months. Annually after such election a licensee may elect

1 to make loans in accordance with this section unless the licensee notifies in writing  
2 the Commissioner of its intention to terminate such election.

3 The due date of the first monthly payment shall not be more than 45 days  
4 following the disbursement of funds under any such installment loan. A borrower  
5 under this section may prepay all or any part of a loan made under this section  
6 without penalty. A borrower, no more than twice in a 12-month period with the  
7 same licensee, may cancel a loan within 15 calendar days after disbursement of the  
8 loan proceeds to the borrower without incurring or paying interest so long as the  
9 amount of the loan, minus any fees or charges, is returned to or received by the  
10 licensee.

11 No individual, partnership, or corporate licensee and no corporation which is the  
12 parent, subsidiary or affiliate of a corporate licensee that is making loans under this  
13 Article except as authorized in this section, shall be permitted to make loans under  
14 the provisions of this section. Any corporate licensee or individual or partnership  
15 licensee that elects to make loans in accordance with the provisions of this section  
16 shall be bound by that election with respect to all of its offices and locations in this  
17 State and all offices and locations in this State of its parent, subsidiary or affiliated  
18 corporate licensee, or with respect to all of his or their offices and locations in this  
19 State."

20 Section 4. G.S. 53-179 reads as rewritten:

21 "**§ 53-179. Multiple-office loan limitations.**

22 A licensee shall not grant a loan under this Article in one office to any borrower  
23 who already has a loan in another ~~office~~ office, licensed under this Article, operated  
24 by the same entity or by an affiliate, parent, subsidiary or under the same ownership,  
25 management or control, whether partial or ~~complete~~. complete for the purpose, or  
26 with the effect, of obtaining charges in excess of those authorized by this Article. This  
27 section shall apply to intrastate and interstate operations. A licensee shall take every  
28 reasonable precaution to prevent granting loans in violation of this section. Such  
29 loans granted inadvertently resulting in a total liability of ~~three thousand dollars~~  
30 ~~(\$3,000)~~ six thousand dollars (\$6,000) or less, shall be adjusted to the rates applicable  
31 under the Article to a single loan of equivalent amount, and when the total liability  
32 on such loans is in excess of ~~three thousand dollars (\$3,000)~~, six thousand dollars  
33 (\$6,000), interest shall be adjusted to simple interest at eight percent (8%) per annum  
34 on the entire obligation."

35 Section 5. G.S. 53-181(a) is amended by adding a new subdivision to  
36 read:

37 "(10) In addition to any disclosures otherwise provided by law, a licensee  
38 soliciting loans using facsimile or negotiable checks shall disclose  
39 the following:

40 'THIS IS A SOLICITATION FOR A LOAN. READ THE  
41 ENCLOSED DISCLOSURES BEFORE SIGNING THIS  
42 AGREEMENT.'

43 This notice shall be printed in not less than 10-point bold  
44 type and shall appear conspicuously on the offer."

1 Section 6. G.S. 53-182(b) reads as rewritten:

2 "(b) Upon payment of any loan in full, a licensee shall cancel and return to the  
3 borrower, within a reasonable length of time, originals or copies of any note,  
4 assignment, mortgage, deed of trust, or other instrument securing such loan, which no  
5 longer secures any indebtedness of the borrower to the licensee."

6 Section 7. G.S. 53-184(a) reads as rewritten:

7 "(a) Each licensee shall maintain all books and records relating to loans made  
8 under this Article required by the Commissioner of Banks to be kept, and the  
9 Commissioner, his deputy, or duly authorized examiner or agent or employee is  
10 authorized and empowered to examine such records at any reasonable time. Such  
11 books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~  
12 disk, optical disk, or other form of computer, electronic or microfilm media available  
13 for examination on the basis of computer printed reproduction, video display or other  
14 medium acceptable to the Commissioner of Banks; provided, however, that such  
15 books and records so kept must be convertible into clearly legible tangible documents  
16 within a reasonable time. Any licensee having more than one licensed office may  
17 maintain such books and records at a location other than the licensed office location  
18 if such location is approved by the Commissioner; provided that, upon such  
19 requirements as may be imposed by the Commissioner of Banks, there shall be  
20 available to the borrower at each licensed location or such other location convenient  
21 to the borrower, as designated by the licensee, complete loan information; and  
22 provided further that such books and records of each licensed office shall be clearly  
23 segregated. When a licensee maintains its books and records outside of North  
24 Carolina, the licensee shall make them available for examination at the place where  
25 they are maintained and shall pay for all reasonable and necessary expenses incurred  
26 by the Commissioner in conducting such examination. Where the data processing for  
27 any licensee is performed by a person other than the licensee, the licensee shall  
28 provide to the Commissioner of Banks a copy of a binding agreement between the  
29 licensee and the data processor which allows the Commissioner of Banks, his deputy,  
30 or duly authorized examiner or agent or employee to examine that particular data  
31 processor's activities pertaining to the licensee to the same extent as if such services  
32 were being performed by the licensee on its own premises; and, notwithstanding the  
33 provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the  
34 licensee shall reimburse the Commissioner of Banks for all costs and expenses  
35 incurred by ~~him~~ the Commissioner in such examination."

36 Section 8. This act becomes effective October 1, 1999, and applies to  
37 loans made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 641

Short Title: Joint Account Right of Survivorship.

(Public)

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Sponsors: Senator Robinson.

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Referred to: Commerce.

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March 30, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE FINANCIAL INSTITUTIONS TO INFORM  
3 CUSTOMERS OPENING JOINT ACCOUNTS WITH RIGHT OF  
4 SURVIVORSHIP THAT THE FUNDS HELD IN THE ACCOUNT WILL NOT  
5 PASS BY INHERITANCE TO THE HEIRS OF THE DECEASED JOINT  
6 OWNER OR BE CONTROLLED BY THE DECEASED JOINT OWNER'S  
7 WILL.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 41-2.1 reads as rewritten:

10 "**§ 41-2.1. Right of survivorship in bank deposits created by written agreement.**

11 (a) A deposit account may be established with a banking institution in the names  
12 of two or more persons, payable to either or the survivor or survivors, with incidents  
13 as provided by subsection (b) of this section, when both or all parties have signed a  
14 written agreement, either on the signature card or by separate instrument, expressly  
15 providing for the right of survivorship. At the time an account is established  
16 pursuant to this section, a representative of the banking institution shall orally explain  
17 to each of the persons establishing the account the incidents set forth in subdivision  
18 (3) of subsection (b) of this section and that, upon the death of one joint owner of the  
19 account, the money remaining in the account will not pass by inheritance to the heirs  
20 of the deceased joint owner or be controlled by the deceased joint owner's will.

21 (b) A deposit account established under subsection (a) of this section shall have  
22 the following incidents:

23 (1) Either party to the agreement may add to or draw upon any part  
24 or all of the deposit account, and any withdrawal by or upon the

1 order of either party shall be a complete discharge of the banking  
2 institution with respect to the sum withdrawn.

3 (2) During the lifetime of both or all the parties, the deposit account  
4 shall be subject to their respective debts to the extent that each has  
5 contributed to the unwithdrawn account. In the event their  
6 respective contributions are not determined, the unwithdrawn fund  
7 shall be deemed owned by both or all equally.

8 (3) Upon the death of either or any party to the agreement, the  
9 survivor, or survivors, become the sole owner, or owners, of the  
10 entire unwithdrawn deposit, subject to the following claims listed  
11 below in subdivisions a. through e. upon that portion of the  
12 unwithdrawn deposit which would belong to the deceased had the  
13 unwithdrawn deposit been divided equally between both or among  
14 all the joint tenants at the time of the death of the deceased:

15 a. The allowance of the year's allowance to the surviving  
16 spouse of the deceased;

17 b. The funeral expenses of the deceased;

18 c. The cost of administering the estate of the deceased;

19 d. The claims of the creditors of the deceased; and

20 e. Governmental rights.

21 (4) Upon the death of one of the joint tenants provided herein the  
22 banking institution in which said joint deposit is held shall pay to  
23 the legal representative of the deceased, or to the clerk of the  
24 superior court if the amount is less than two thousand dollars  
25 (\$2,000), the portion of the unwithdrawn deposit made subject to  
26 the claims and expenses as provided in subdivision (3) above, and  
27 may pay the remainder to the surviving joint tenant or joint  
28 tenants. Said legal representative shall hold the portion of said  
29 unwithdrawn deposit paid to him and not use the same for the  
30 payment of the claims and expenses as provided in subdivision (3)  
31 above unless and until all other personal assets of the estate have  
32 been exhausted, and shall then use so much thereof as may be  
33 necessary to pay said claims and expenses. Any part of said  
34 unwithdrawn deposit not used for the payment of said claims and  
35 expenses shall, upon the settlement of the estate, be paid to the  
36 surviving joint tenant or tenants.

37 (c) This section shall be subject to the provisions of law applicable to transfers in  
38 fraud of creditors.

39 (d) This section shall not be deemed exclusive; deposit accounts not conforming  
40 to this section, and other property jointly owned, shall be governed by other  
41 applicable provisions of the law.

42 (e) As used in this section:

- 1 (1) 'Banking institution' includes commercial banks, industrial banks,
- 2 building and loan associations, savings and loan associations, and
- 3 credit unions.
- 4 (2) 'Deposit account' includes both time and demand deposits in
- 5 commercial banks and industrial banks, installment shares, optional
- 6 shares and fully paid share certificates in building and loan
- 7 associations and savings and loan associations, and deposits and
- 8 shares in credit unions.
- 9 (3) 'Unwithdrawn deposit' shall be the amount in the deposit account
- 10 held by the banking institution at the time of the death of the joint
- 11 tenant; provided, however, that the banking institution shall not be
- 12 held responsible for any amount properly paid out of said account
- 13 prior to notice of such death.

14 (f) This section does not repeal or modify any provisions of the law relating to

15 inheritance taxes.

16 (g) A deposit account under subsection (a) of this section may be established by a

17 written ~~agreement~~ agreement, signed by each person establishing the account, in

18 substantially the following form:

19 'We, A representative of the banking institution (or name of the institution) has

20 explained to each of us that upon the death of one joint owner of the account, the

21 money remaining in the account will not pass by inheritance to the heirs of the

22 deceased joint owner or be controlled by the deceased joint owner's will. We, the

23 undersigned, hereby agree that all sums deposited at any time, including sums

24 deposited prior to this date, in the ..... (name of institution) in the joint

25 account of the undersigned, shall be held by us as co-owners with the right of

26 survivorship, regardless of whose funds are deposited in said account and regardless

27 of who deposits the funds in said account. Either or any of us shall have the right to

28 draw upon said account, without limit, and in case of the death of either or any of us

29 the survivor or survivors shall be the sole owner or owners of the entire account.

30 This agreement is governed by the provisions of § 41-2.1 of the General Statutes of

31 North Carolina.

32 Witness our hands and seals, this ..... day of....., 19.... \_\_\_\_\_

33 .....(Seal)

34 .....(Seal)

35 .....(Seal)

36 .....(Seal)''.

37 Section 2. G.S. 53-146.1(a) reads as rewritten:

38 "(a) Any two or more persons may establish a deposit account or accounts by

39 written contract. The deposit account and any balance thereof shall be held for them

40 as joint tenants, with or without right of survivorship, as the contract shall provide;

41 the account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth

42 in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the

43 contract shall set forth that fact as well. Unless the persons establishing the account

44 have agreed with the bank that withdrawals require more than one signature,

1 payment by the bank to, or on the order of, any persons designated in the contract  
 2 authorized by this section shall be a total discharge of the bank's obligation as to the  
 3 amount so paid. Funds in a joint account established with right of survivorship shall  
 4 belong to the surviving joint tenant or tenants upon the death of a joint tenant, and  
 5 the funds shall be subject only to the personal representative's right of collection as  
 6 set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is  
 7 established pursuant to the provisions of that section. Payment by the bank of funds  
 8 in the joint account to a surviving joint tenant or tenants shall terminate the personal  
 9 representative's authority under G.S. 28A-15-10(a)(3) to collect against the bank for  
 10 the funds so paid, but the personal representative's authority to collect such funds  
 11 from the surviving joint tenant or tenants is not terminated. A pledge of such  
 12 account by any owner or owners, unless otherwise specifically agreed upon, shall be a  
 13 valid pledge and transfer of such account, or of the amount so pledged, and shall not  
 14 operate to sever or terminate the joint ownership of all or any part of the account.  
 15 At the time an account is established pursuant to this section, a representative of the  
 16 bank shall orally explain to each of the persons establishing the account that, upon  
 17 the death of one joint owner of the account, the money remaining in the account will  
 18 belong to the surviving joint owners and will not pass by inheritance to the heirs of  
 19 the deceased joint owner or be controlled by the deceased joint owner's will. Persons  
 20 Each person establishing an account under this section shall sign a statement showing  
 21 their that person's election of the right of survivorship in the account, and containing  
 22 language set forth in a conspicuous manner and substantially similar to the following:

23 'BANK (or name of institution)  
 24 JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP  
 25 G.S. 53-146.1

26 We A representative of the bank (or name of institution) has explained to each of  
 27 us and we understand that by establishing a joint account under the provisions of  
 28 North Carolina General Statute 53-146.1 that:

- 29 1. The bank (or name of institution) may pay the money in the  
 30 account to, or on the order of, any person named in the account  
 31 unless we have agreed with the bank that withdrawals require  
 32 more than one signature; and
- 33 2. Upon the death of one joint owner the money remaining in the  
 34 account will belong to the surviving joint owners and will not pass  
 35 by inheritance to the heirs of the deceased joint owner or be  
 36 controlled by the deceased joint owner's will.

37 We DO elect to create the right of survivorship in this account.

38 \_\_\_\_\_  
 39 \_\_\_\_\_

40 Witness our hands and seals, this ..... day of.....

41 .....(Seal)  
 42 .....(Seal)  
 43 .....(Seal)  
 44 .....(Seal).''



1 Section 3. G.S. 54-109.58(a) reads as rewritten:

2 "(a) Shares may be issued to and deposits received from any two or more persons  
3 opening or holding an account or accounts, but no joint tenant, unless a member in  
4 his own right, shall be permitted to vote, obtain loans, or hold office or be required  
5 to pay an entrance or membership fee. The account and any balance thereof shall be  
6 held by them as joint tenants, with or without right of survivorship, as the contract  
7 shall provide; the account may also be held pursuant to G.S. 41-2.1 and have the  
8 incidents set forth in that section, provided, however, if the account is held pursuant  
9 to G.S. 41-2.1 the contract shall set forth that fact as well. Unless the persons  
10 establishing the account have agreed with the credit union that withdrawals require  
11 more than one signature, payment by the credit union to, or on the order of, any  
12 persons holding an account authorized by this section shall be a total discharge of the  
13 credit union's obligations as to the amount so paid. Funds in a joint account  
14 established with right of survivorship shall belong to the surviving joint tenant or  
15 tenants upon the death of a joint tenant, and the funds shall be subject only to the  
16 personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as  
17 provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that  
18 section. Payment by the credit union of funds in the joint account to a surviving joint  
19 tenant or tenants shall terminate the personal representative's authority under G.S.  
20 28A-15-10(a)(3) to collect against the credit union for the funds so paid, but the  
21 personal representative's authority to collect such funds from the surviving joint  
22 tenant or tenants is not terminated. A pledge of such account by any holder or  
23 holders shall, unless otherwise specifically agreed upon, be a valid pledge and transfer  
24 of such account, or of the amount so pledged, and shall not operate to sever or  
25 terminate the joint ownership of all or any part of the account. At the time an  
26 account is established pursuant to this section, a representative of the credit union  
27 shall orally explain to each of the persons establishing the account that, upon the  
28 death of one joint owner of the account, the money remaining in the account will  
29 belong to the surviving joint owners and will not pass by inheritance to the heirs of  
30 the deceased joint owner or be controlled by the deceased joint owner's will. Persons  
31 Each person establishing an account under this section shall sign a statement showing  
32 their that person's election of the right of survivorship in the account, and containing  
33 language set forth in a conspicuous manner and substantially similar to the following:

34 'CREDIT UNION (or name of institution)

35 JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP

36 G.S. 54-109.58

37 We A representative of the credit union (or name of institution) has explained to  
38 each of us and we understand that by establishing a joint account under the  
39 provisions of North Carolina General Statute 54-109.58 that:

40 1. The credit union (or name of institution) may pay the money in  
41 the account to, or on the order of, any person named in the  
42 account unless we have agreed with the credit union that  
43 withdrawals require more than one signature; and

2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We DO elect to create the right of survivorship in this account.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witness our hands and seals, this ..... day of.....

.....(Seal)  
.....(Seal)  
.....(Seal)  
.....(Seal).'"

Section 4. G.S. 54B-129(a) reads as rewritten:

"(a) Any two or more persons may open or hold a withdrawable account or accounts. The withdrawable account and any balance thereof shall be held by them as joint tenants, with or without right of survivorship, as the contract shall provide; the account may also be held pursuant to G.S. 41-2.1 and have incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact as well. Unless the persons establishing the account have agreed with the association that withdrawals require more than one signature, payment by the association to, or on the order of, any persons holding an account authorized by this section shall be a total discharge of the association's obligation as to the amount so paid. Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the association of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the association for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated. A pledge of such account by any holder or holders shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. At the time an account is established pursuant to this section, a representative of the savings and loan association shall orally explain to each of the persons establishing the account that, upon the death of one joint owner of the account, the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will. ~~Persons~~ Each person establishing an account under this section shall sign a statement showing ~~their~~ that person's election of the right of survivorship in the account, and containing language set forth in a conspicuous manner and substantially similar to the following:

‘SAVINGS AND LOAN (or name of institution)  
JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP  
G.S. 54B-129

We A representative of the savings and loan (or name of institution) has explained to each of us and we understand that by establishing a joint account under the provisions of North Carolina General Statute 54B-129 that:

1. The savings and loan association (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have agreed with the association that withdrawals require more than one signature; and
2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner’s will.

We DO elect to create the right of survivorship in this account.

\_\_\_\_\_  
\_\_\_\_\_

Witness our hands and seals, this ..... day of.....,

.....(Seal)  
.....(Seal)  
.....(Seal)  
.....(Seal).”

Section 5. G.S. 54C-165(a) reads as rewritten:

"(a) Any two or more persons may open or hold a withdrawable account or accounts. The withdrawable account and any balance of the account is held by them as joint tenants, with or without right of survivorship, as the contract shall provide. The account may also be held under G.S. 41-2.1 and have incidents set forth in that section, but if the account is held under G.S. 41-2.1, the contract shall set forth that fact as well. Unless the persons establishing the account have agreed with the savings bank that withdrawals require more than one signature, payment by the savings bank to, or on the order of, any persons holding an account authorized by this section is a total discharge of the savings bank’s obligation as to the amount so paid. Funds in a joint account established with the right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds are subject only to the personal representative’s right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established under that section. Payment by the savings bank of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative’s authority under G.S. 28A-15-10(a)(3) to collect against the savings bank for the funds so paid, but the personal representative’s authority to collect the funds from the surviving joint tenant or tenants is not terminated. A pledge of the account by a holder shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of the account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account. At the time an account is established pursuant to this

1 section, a representative of the savings bank shall orally explain to each of the  
2 persons establishing the account that, upon the death of one joint owner of the  
3 account, the money remaining in the account will belong to the surviving joint  
4 owners and will not pass by inheritance to the heirs of the deceased joint owner or be  
5 controlled by the deceased joint owner's will. Persons Each person establishing an  
6 account under this section shall sign a statement showing ~~their~~ that person's election  
7 of the right of survivorship in the account, and containing language set forth in a  
8 conspicuous manner and substantially similar to the following:

9           'SAVINGS BANK (or name of institution) JOINT ACCOUNT  
10                               WITH RIGHT OF SURVIVORSHIP  
11   G.S. 54C-165

12 We A representative of the savings bank (or name of institution) has explained to  
13 each of us and we understand that by establishing a joint account under G.S. 54C-  
14 165 that:

- 15           1. The savings bank (or name of institution) may pay the money in  
16           the account to, or on the order of, any person named in the  
17           account unless we have agreed with the savings bank that  
18           withdrawals require more than one signature; and
- 19           2. Upon the death of one joint owner the money remaining in the  
20           account will belong to the surviving joint owners and will not pass  
21           by inheritance to the heirs of the deceased joint owner or be  
22           controlled by the deceased joint owner's will.

23 We DO elect to create the right of survivorship in this account.

24   \_\_\_\_\_  
25   \_\_\_\_\_  
26   \_\_\_\_\_

26 Witness our hands and seals, this ..... day of.....

27   .....(Seal)  
28   .....(Seal)  
29   .....(Seal)  
30   .....(Seal)."

31           Section 6. This act becomes effective October 1, 1999, and applies to  
32 accounts established on or after that date.

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE April 28, 1999

S. B. No. 641

Amendment No. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.) Yonester  
Sen.) \_\_\_\_\_

1 moves to amend the bill on page 8 between 30 & 31, line 5

2 ( ) WHICH CHANGES THE TITLE

3 by adding the following between those lines:

4  
5 " section 5.1. The Banking Commission  
6 may assess a minimal fee, not to  
7 exceed \$1.00, for each account  
8 created pursuant to this act.  
9

10  
11  
12  
13  
14  
15  
16  
17  
18

SIGNED Yonester

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 968

Short Title: Waiver of Competitive Bidding Modified.

(Public)

---

Sponsors: Senator Shaw of Cumberland.

---

Referred to: Commerce.

---

April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF  
3 COMPETITIVE BIDDING.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 143-53(a) is amended by adding a new subdivision to  
6 read:

7 "(5) Prescribing conditions under which purchases and contracts for the  
8 purchase, rental or lease of equipment, materials, supplies or  
9 services may be entered into by means other than competitive  
10 bidding. Notwithstanding the provisions of subsections (a) and (b)  
11 of this section, any waiver of competition for the purchase, rental,  
12 or lease of equipment, materials, supplies, or services shall have  
13 the prior written approval of the Secretary, if the expenditure  
14 exceeds ten thousand dollars (\$10,000)."

15 Section 2. G.S. 143-57 reads as rewritten:  
16 "§ 143-57. Purchases of articles in certain emergencies.

17 In case of any emergency or pressing need arising from unforeseen causes  
18 including but not limited to delay by contractors, delay in transportation, breakdown  
19 in machinery, or unanticipated volume of work, the Secretary of Administration shall  
20 have power to obtain or authorize obtaining in the open market any necessary  
21 supplies, materials, equipment, printing or services for immediate delivery to any  
22 department, institution or agency of the State government. A report on the  
23 circumstances of such emergency or need and the transactions thereunder shall be  
24 made a matter of record promptly thereafter. If the expenditure exceeds ten

1 thousand dollars (\$10,000), the report shall also be made promptly thereafter to the  
2 Division of Purchase and Contract."

3           Section 3. This act becomes effective July 1, 1999, and applies to  
4 purchases on or after that date.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 968

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_

S968-ARN-002

Date \_\_\_\_\_, 1999

Comm. Sub.  [X]  
Amends Title  []  
PCS Edition - PCS7670-RN

Sen. \_\_\_\_\_

1  
2 moves to amend the bill on page 2, line 3, by adding the following  
3 sentence at the end of said line:  
4  
5 "The Division may levy a fee, not to exceed one dollar (\$1.00),  
6 for review of each waiver application."  
7  
8

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



*Pending committee substitute*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 968  
Proposed Committee Substitute S968-PCS7670-RN

Short Title: Waiver of Competitive Bidding Modified.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF  
3 COMPETITIVE BIDDING AND TO REQUIRE BID PROTESTS INVOLVING  
4 CONTRACTS OVER A CERTAIN AMOUNT TO BE HANDLED BY THE  
5 DEPARTMENT OF ADMINISTRATION.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 143-53(a)(1) reads as rewritten:

8 "(1) Prescribing the routine and procedures to be followed in  
9 canvassing bids and awarding contracts, and for reviewing  
10 decisions made pursuant thereto, and the decision of the reviewing  
11 body shall be the final administrative review. The Division of  
12 Purchase and Contract shall review and decide a protest on a  
13 contract valued at twenty-five thousand dollars (\$25,000) or more.  
14 The Secretary shall adopt rules or criteria governing the review of  
15 and decision on a protest on a contract of less than twenty-five  
16 thousand dollars (\$25,000) by the agency that awarded the  
17 contract."

18 Section 2. G.S. 143-53(a)(5) reads as rewritten:

19 "(5) Prescribing conditions under which purchases and contracts for the  
20 purchase, rental or lease of equipment, materials, supplies or  
21 services may be entered into by means other than competitive  
22 bidding. Notwithstanding the provisions of subsections (a) and (b)  
23 of this section, any waiver of competition for the purchase, rental,

1                   or lease of equipment, materials, supplies, or services shall have  
2                   the prior written approval of the Secretary, if the expenditure  
3                   exceeds ten thousand dollars (\$10,000)."

4                   Section 3. G.S. 143-57 reads as rewritten:

5   "**§ 143-57. Purchases of articles in certain emergencies.**

6   In case of any emergency or pressing need arising from unforeseen causes  
7 including but not limited to delay by contractors, delay in transportation, breakdown  
8 in machinery, or unanticipated volume of work, the Secretary of Administration shall  
9 have power to obtain or authorize obtaining in the open market any necessary  
10 supplies, materials, equipment, printing or services for immediate delivery to any  
11 department, institution or agency of the State government. A report on the  
12 circumstances of such emergency or need and the transactions thereunder shall be  
13 made a matter of record promptly thereafter. If the expenditure exceeds ten  
14 thousand dollars (\$10,000), the report shall also be made promptly thereafter to the  
15 Division of Purchase and Contract."

16                   Section 4. This act becomes effective July 1, 1999. Section 1 applies to  
17 bid protests filed on or after that date. Sections 2 and 3 of this act apply to contracts  
18 awarded on or after that date.

VISITOR REGISTRATION SHEET

①

COMMERCE  
Name of Committee

4-28-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dano Elick	DOJ
George Leggett	DOJ
Ruth Sappie	DOT
J. Ed. Edwards	DMV
Tom Cross	DMV
Ann Case	NORMA
Dick Carlton	NCFSA
Larry Bewley	Bewley and Assoc.
Jumbode	Trade Call & Storage
W.H. Peltz II	NCPMA - NCOS
Evelyn Hawthorne	UNC-CH
Alan Mills	Bailey & Dixon LLP
Jane Pinsky	AAA
Dick Swank	Washington Keenies
Jose V. Acosta	Cummings High School

VISITOR REGISTRATION SHEET

Commune Committee  
Name of Committee

4-28-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Alan Hiss I	Atty Gen's Office
Phil Telfer	Atty Gen's Office
Sam Johnson	Atty
R. L. Zyl	NCADA
Andy Ellen	NCRMA
Frank Proctor	NCRMA
Dale McKeel	Scenic NC
Robert Paschal	Young, Moore & Henderson
John Leastal	PIC
David Marshall	Payne & Spence
Shirley Bellitt	Seni Bob Shaw
Nancy Thompson	UNCCSD
Scott Mowbray	AP
Thomas Bond	NC St Fed of CPA Exam



SENATE COMMERCE COMMITTEE  
11:00 A.M., TUESDAY, MAY 11, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, May 11, 1999. Nineteen members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets. Ms. Katie McKenzie, Senate Page sponsored by Senator Carrington, assisted the Committee.

Senator Soles, Chairman, called the meeting to order and the following bills were considered by the Committee:

HB 674, AN ACT TO ALLOW A FEDERALLY RECOGNIZED INDIAN TRIBE TO PERFORM BUILDING INSPECTIONS AND TO ALLOW CERTIFICATION AND LICENSE REGULATION OF BUILDING INSPECTORS ON TRIBAL LANDS OF FEDERALLY RECOGNIZED INDIAN TRIBES. Representative Haire, the bill sponsor, explained the bill. He said the legislation would reaffirm the power of a federally recognized Indian Tribe (Eastern Band of Cherokee Indians) to adopt the State Building Code and local building rules and would allow the certification and licensure of persons hired or contracted for by the tribe to inspect buildings. (See attached memorandum from Committee Counsel for a complete analysis.)

Senator Carpenter moved that HB 674 be given a favorable report. Motion carried.

HB 1076, AN ACT TO REQUIRE THAT FIRE SERVICE MAINS COMPLY WITH THE NORTH CAROLINA STATE BUILDING CODE. Senator Warren sent forward a technical amendment to the bill (copy attached) and moved its adoption. Motion carried. Representative Cox, bill sponsor, said the legislation requires public utility contractors constructing fire service mains for connection to fire sprinkler systems to run those lines into the building and terminate them at a flange, cap, plug, or valve one foot above the finished floor. (See memorandum from Committee Counsel for explanation.)

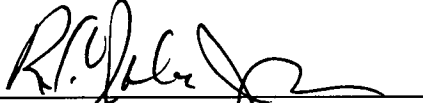
Senator Cochran moved that HB 1076, as amended, be given a favorable report and that it be converted into a Committee Substitute. Motion carried.


HB 899, AN ACT AMENDING CERTAIN REQUIREMENTS FOR LICENSURE OF REAL ESTATE BROKERS AND SALESMEN. Representative Bridgeman, bill sponsor, said the legislation amends the real estate licensing law to require that the salesman and broker real estate course be longer and taken within a shorter period prior to licensure, eliminates the broker exam, clarifies the ethical standard for licensure, and clarifies the Real Estate Commission's rule-making authority for licensing matters and real estate instruction. (See memorandum from Committee Counsel for complete analysis.)

Mr. Larry Outlaw, Director of Education for the Real Estate Licensing Board, assisted in answering questions from the Committee. Ms. Stephanie Mansur, representing the N. C. Association of Realtors, spoke in favor of the legislation.

Senator Lee moved that HB 899 be given a favorable report to be sequentially referred to the Finance Committee.

The meeting adjourned at 12:00 Noon.

  
\_\_\_\_\_  
Senator R. C. Soles, Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, MAY 11, 1999  
Room 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**HB 674 – TRIBAL BUILDING INSPECTIONS (Rep. Haire)**

**HB 899 – REAL ESTATE SALESMAN/BROKER LICENSURE (Rep. Bridgeman)**

**HB 985 - STATE LAND TRANSACTIONS (Rep. Wainwright)**

**HB 1076- FIRE MAINS COMPLY WITH BUILDING CODE (Rep. Cox)**

**ADJOURNMENT**



NORTH CAROLINA GENERAL ASSEMBLY  
SENATE

COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair

Tuesday, May 11, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

**FAVORABLE**

H.B.(CS) 674	Tribal Building Inspections
	Sequential Referral: None
	Recommended Referral: None
H.B. 899	Real Estate Salesman/Broker Licensure
	Sequential Referral: Finance
	Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY  
SENATE

COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair, ~~Chair~~

Wednesday, May 12, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

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

H.B. 1076	Fire Mains Comply with Building Code
	Draft Number: PCS6203
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comment:

*Hand*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

2

HOUSE BILL 674\*  
Committee Substitute Favorable 4/19/99

Short Title: Tribal Building Inspections.

(Public)

Sponsors:

Referred to:

March 29, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW A FEDERALLY RECOGNIZED INDIAN TRIBE TO  
3 PERFORM BUILDING INSPECTIONS AND TO ALLOW CERTIFICATION  
4 AND LICENSE REGULATION OF BUILDING INSPECTORS ON TRIBAL  
5 LANDS OF FEDERALLY RECOGNIZED INDIAN TRIBES.

6 The General Assembly of North Carolina enacts:

7 Section 1. Article 18 of Chapter 153A of the General Statutes is  
8 amended by adding a new section to read:

9 "§ 153A-350.1. Tribal lands.

10 As used in this Part, the term:

11 (1) 'Board of commissioners' includes the Tribal Council of such  
12 tribe."

13 (2) 'County' or 'counties' also means a federally recognized Indian  
14 Tribe, and as to such tribe includes lands held in trust for the tribe.

15 Section 2. G.S. 143-151.8 reads as rewritten:

16 "§ 143-151.8. Definitions.

17 (a) As used in this Article, unless the context otherwise requires:

18 (1) 'Board' means the North Carolina Code Officials Qualification  
19 Board.

20 (2) 'Code' means the North Carolina State Building Code and related  
21 local building rules approved by the Building Code Council  
22 heretofore or hereinafter enacted, adopted or approved pursuant to  
23 G.S. 143-138. G.S. 143-138, and any resolution adopted by a

federally recognized Indian Tribe under G.S. 153A-350.1 in which the Tribe adopts the North Carolina State Building Code and related local building rules.

(3) 'Code enforcement' means the examination and approval of plans and specifications, or the inspection of the manner of construction, workmanship, and materials for construction of buildings and structures and components thereof, or the enforcement of fire code regulations as an employee of the State or local government or as an employee of a federally recognized Indian Tribe employed to perform inspections on tribal lands under G.S. 153A-350.1, or other individual contracting with the State or a local government or a federally recognized Indian Tribe who performs inspections on tribal lands under G.S. 153A-350.1 to conduct inspections, except an employee of the State Department of Labor engaged in the administration and enforcement of those sections of the Code which pertain to boilers and elevators, to assure compliance with the State Building Code and related local building rules.

(4) 'Local inspection department' means the agency or agencies of ~~local government~~ government, or any government agency of a federally recognized Indian Tribe under G.S. 153A-350.1, with authority to make inspections of buildings and to enforce the Code and other laws, ordinances, and rules enacted by the State and the local government or a federally recognized Indian Tribe under G.S. 153A-350.1, which establish standards and requirements applicable to the construction, alteration, repair, or demolition of buildings, and conditions that may create hazards of fire, explosion, or related hazards.

(5) 'Qualified Code-enforcement official' means a person qualified under this Article to engage in the practice of Code enforcement.

(b) For purposes of this Article, the population of a city or county shall be determined according to the most current federal census, unless otherwise specified."

Section 3. G.S. 143-151.12(3) reads as rewritten:

"(3) Certify persons as being qualified under the provisions of this Article to be Code-enforcement ~~officials;~~ officials, including persons employed by a federally recognized Indian Tribe to perform inspections on tribal lands under G.S. 153A-350.1;".

Section 4. G.S. 143-151.15 reads as rewritten:

**"§ 143-151.15. Return of certificate to Board; reissuance by Board.**

A certificate issued by the Board under this Article is valid as long as the person certified is employed by the State of North Carolina or any political subdivision thereof as a Code-enforcement ~~official.~~ official, or is employed by a federally recognized Indian Tribe to perform inspections on tribal lands under G.S. 153A-350.1 as a Code-enforcement official. When the person certified leaves that employment for any reason, he shall return the certificate to the Board. If the person subsequently

1 obtains employment as a Code-enforcement official in any governmental jurisdiction  
2 described above, the Board may reissue the certificate to him. The provisions of G.S.  
3 143-151.16(b) relating to renewal fees and late renewals shall apply, if appropriate.  
4 The provisions of G.S. 143-151.16(c) shall not apply. This section does not affect the  
5 Board's powers under G.S. 143-151.17."

6 Section 5. G.S. 143-151.17 reads as rewritten:

7 **"§ 143-151.17. Grounds for disciplinary actions; investigation; administrative**  
8 **procedures.**

9 (a) The Board shall have the power to suspend, revoke or refuse to grant any  
10 certificate issued under the provisions of this Article to any person who:

- 11 (1) Has been convicted of a felony against this State or the United  
12 States, or convicted of a felony in another state that would also be  
13 a felony if it had been committed in this State;
- 14 (2) Has obtained certification through fraud, deceit, or perjury;
- 15 (3) Has knowingly aided or abetted any person practicing contrary to  
16 the provisions of this Article or the State Building Code; Code or  
17 any building codes adopted by a federally recognized Indian Tribe  
18 under G.S. 153A-350.1;
- 19 (4) Has defrauded the public or attempted to do so;
- 20 (5) Has affixed his signature to a report of inspection or other  
21 instrument of service if no inspection has been made by him or  
22 under his immediate and responsible direction; or,
- 23 (6) Has been guilty of willful misconduct, gross negligence or gross  
24 incompetence.

25 (b) The Board may investigate the actions of any qualified Code-enforcement  
26 official or applicant upon the verified complaint in writing of any person alleging a  
27 violation of subsection (a). The Board may suspend or revoke the certification of any  
28 qualified Code-enforcement official and refuse to grant a certificate to any applicant,  
29 whom it finds to have been guilty of one or more of the actions set out in subsection  
30 (a) as grounds for disciplinary action.

31 (c) A denial, suspension, or revocation of a certificate issued under this Article  
32 shall be made in accordance with Chapter 150B of the General Statutes.

33 (d) The Board may deny an application for a certificate for any of the grounds  
34 that are described in subsection (a) of this section. Within 30 days after receipt of a  
35 notification that an application for a certificate has been denied, the applicant may  
36 make a written request for a review by a committee designated by the chairman of  
37 the Board to determine the reasonableness of the Board's action. The review shall be  
38 completed without undue delay, and the applicant shall be notified promptly in  
39 writing as to the outcome of the review. Within 30 days after service of the  
40 notification as to the outcome, the applicant may make a written request for a  
41 hearing under Article 3A of Chapter 150B of the General Statutes if the applicant  
42 disagrees with the outcome.

1     (e) The provisions of this section shall apply to Code-enforcement officials and  
2 applicants who are employed or seek to be employed by a federally recognized  
3 Indian Tribe to perform inspections on tribal lands under G.S. 153A-350.1."

4             Section 6. Session Law 1998-21 is repealed.

5             Section 7. This act is effective when it becomes law.



# HB 674: Tribal Building Inspections

## BILL ANALYSIS

**Committee:** Commerce Committee  
**Date:** May 11, 1999  
**Version:** 2nd Edition

**Introduced by:** Rep. Haire  
**Summary by:** Terrence Sullivan  
**Esther Manheimer**  
Committee Counsel

**SUMMARY:** The 2<sup>nd</sup> Edition to HB 674, would reaffirm the power of a federally recognized Indian tribe to adopt the State Building Code and local building rules and would allow the certification and licensure of persons hired or contracted for by the tribe to inspect buildings.

**CURRENT LAW:** G.S. Chapter 153A, Article 18, Part 4 requires counties to inspect buildings under the State Building Code and local laws and ordinances. A new section, G.S.153A-350.1, added to that Part in the 1998 Session in a *local bill* (SL 1998-21), includes a federally recognized Indian tribe and lands held in trust for the tribe in the definitions of the terms "county" or "counties" for the purposes of inspection of buildings.

**BILL ANALYSIS:** The 2<sup>nd</sup> Edition of HB 674 makes the bill a public bill, rather than a local bill as it was originally introduced.

**Sections 1 and 6,** would reenact the operative language of SL 1998-21 as a public law, deleting all references to specific counties, and would repeal SL 1998-21.

**Section 2** would amend the definitions section, G.S. 143-151.8, controlling G.S. Chapter 143, Article 9C, the North Carolina Code Qualifications Board ("Board"). "Code" would be defined to allow adoption or approval of the State Building Code and related local building rules by a federally recognized Indian tribe. "Code enforcement" would be amended to include employees of a federally recognized Indian tribe performing building inspections on tribal lands. "Local inspection department" would be defined to include a government agency of a federally recognized Indian tribe.

**Section 3** would amend G.S. 143-151.12(3), setting forth the powers of the Board, to include specifically the power to certify as building inspectors persons employed by federally recognized Indian tribes for inspections on tribal lands.

**Section 4** would amend G.S. 143-151.15 to provide that a certificate issued by the Board is valid as long as the person certified is employed by a federally recognized Indian tribe to perform building inspections on tribal lands. Under present law, the certificate is valid only as long as a State or local governmental subdivision employs the person certified as a Code enforcement official.

**Section 5** would amend G.S. 143-151.17. Under current law, the aiding and abetting of a person violating the State Building Code is grounds for suspension, revocation, or refusal to grant a certificate under this Article. House Bill 674 would extend these grounds to include the aiding and abetting of a person violating building codes adopted by a federally recognized building tribe.

**This act is effective when it becomes law.**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1076

Short Title: Fire Mains Comply with Building Code.

(Public)

---

Sponsors: Representative Cox.

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Referred to: Ways and Means.

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April 15, 1999

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THAT FIRE SERVICE MAINS COMPLY WITH THE  
3 NORTH CAROLINA STATE BUILDING CODE.  
4 The General Assembly of North Carolina enacts:  
5                   Section 1. G.S. 87-10(b) reads as rewritten:  
6       "(b) The Board shall conduct an examination, either oral or written, of all  
7 applicants for license to ascertain the ability of the applicant to make a practical  
8 application of his knowledge of the profession of contracting, under the classification  
9 contained in the application, and to ascertain the qualifications of the applicant in  
10 reading plans and specifications, knowledge of estimating costs, construction, ethics  
11 and other similar matters pertaining to the contracting business and knowledge of the  
12 applicant as to the responsibilities of a contractor to the public and of the  
13 requirements of the laws of the State of North Carolina relating to contractors,  
14 construction and liens. If the results of the examination of the applicant shall be  
15 satisfactory to the Board, then the Board shall issue to the applicant a certificate to  
16 engage as a general contractor in the State of North Carolina, as provided in said  
17 certificate, which may be limited into five classifications as the common use of the  
18 terms are known -- that is,  
19               (1) Building contractor, which shall include private, public,  
20               commercial, industrial and residential buildings of all types;  
21               (1a) Residential contractor, which shall include any general contractor  
22               constructing only residences which are required to conform to the  
23               residential building code adopted by the Building Code Council  
24               pursuant to G.S. 143-138;



- 1 (2) Highway contractor;
- 2 (3) Public utilities contractors, which shall include those whose
- 3 operations are the performance of construction work on the
- 4 following subclassifications of facilities:
- 5 a. Water and sewer mains and water service lines and house
- 6 and building sewer lines as defined in the North Carolina
- 7 State Building Code, and water storage tanks, lift stations,
- 8 pumping stations, and appurtenances to water storage tanks,
- 9 lift stations and pumping stations;
- 10 b. Water and wastewater treatment facilities and appurtenances
- 11 thereto;
- 12 c. Electrical power transmission facilities, and primary and
- 13 secondary distribution facilities ahead of the point of
- 14 delivery of electric service to the customer;
- 15 d. Public communication distribution facilities; and
- 16 e. Natural gas and other petroleum products distribution
- 17 facilities; provided the General Contractors Licensing Board
- 18 may issue license to a public utilities contractor limited to
- 19 any of the above subclassifications for which the general
- 20 contractor qualifies, and
- 21 (4) Specialty contractor, which shall include those whose operations as
- 22 such are the performance of construction work requiring special
- 23 skill and involving the use of specialized building trades or crafts,
- 24 but which shall not include any operations now or hereafter under
- 25 the jurisdiction, for the issuance of license, by any board or
- 26 commission pursuant to the laws of the State of North Carolina.

27 Public utilities contractors constructing water service lines and house and building

28 sewer lines as provided in (3)a above shall terminate said lines at a valve, box, meter,

29 or manhole or cleanout at which the facilities from the building may be connected.

30 Public utilities contractors constructing fire service mains for connection to fire

31 sprinkler systems shall terminate those lines at a flange, cap, plug, or valve inside the

32 building one foot above the finished floor. All fire service mains shall comply with

33 Standard 24 of the National Fire Protection Association ("NFPA Standard 24"),

34 entitled "Standard for the Installation of Private Fire Service Mains" and

35 incorporated in and made applicable by Volume V of the North Carolina State

36 Building Code."

37 Section 2. This act becomes effective October 1, 1999.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
House Bill 1076

H1076-ARN-002

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_\_

Date \_\_\_\_\_, 1999

Comm. Sub. [  
Amends Title [  
1st Edition

Sen. \_\_\_\_\_

1  
2 moves to amend the bill on page 2, lines 32-36, by rewriting the  
3 sentence that begins on line 32 to read:

4  
5 "All fire service mains shall comply with the NFPA standards for  
6 fire service mains as incorporated into and made applicable by  
7 Volume V of the North Carolina Building Code."

8  
9

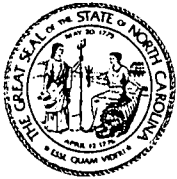
SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_

FAILED \_\_\_\_\_

TABLED \_\_\_\_\_



BILL ANALYSIS

## HB 1076: Fire Mains Comply with Building Code

**Committee:** Senate Commerce  
**Date:** May 10, 1999  
**Version:** 1st

**Introduced by:** Rep. Cox  
**Summary by:** Linwood Jones  
Committee Counsel

House Bill 1076 requires public utility contractors constructing fire service mains for connection to fire sprinkler systems to run those lines into the building and terminate them at a flange, cap, plug, or valve one foot above the finished floor. The bill also requires the contractors to comply with applicable NFPA standards in the Building Code with respect to fire service mains.

This act takes effect October 1, 1999.

P.O. Box 16146  
Greensboro, North Carolina 27416-0146  
Telephone Greensboro Area (336) 373-3901  
Greensboro Fax (336) 373-3902  
E-Mail: asc@associatedsprinkler.com

## Associated Sprinkler Co. LLC

5/11/99

The Honorable R.C. Soles, Jr.  
Room 2022  
Legislative Building  
Raleigh, NC 27601-2808

Re: House Bill 1076

Dear Senator Soles:

I am writing this letter to request you support for House Bill 1076 when it reaches the Commerce Committee.

This bill was introduced to correct a situation, which occurs on many large construction projects. What usually occurs is this:

1. A site utilities contractor installs the storm and sanitary sewer, domestic, water and fire service mains to a point 5'-0" outside the building wall.
2. Unlike the plumbing contractor who has trenching equipment on site to install underfloor sewer and domestic water pipes, the fire sprinkler contractor has to bring a backhoe on site to install just 5'-0" of underground fire service main. The remainder of his/her work is at the roof of the building.
3. After the site utilities contractor has flushed and tested the portion of pipe he/she has installed, the fire sprinkler contractor must connect to work done by others to flush and test the 5'-0" section of pipe that he/she installed. This procedure creates a duplication of costs to owner and confusion over which contractor has the liability for the installation.

As background on our company, Associated Sprinkler Co., LLC is a 32 year old fire sprinkler contractor, with seventy-five employees, and based in Greensboro. Our company installs fire sprinkler systems on projects all over North Carolina.

Again, I urge you to support this bill when it comes to support this bill when it comes to your committee and on the Senate floor. If I may be of any further assistance, please call me at (336) 373-3901, ext. 201

Yours truly,  
Associated Sprinkler Co. LLC

Stephen K. Hensley, PE  
President



**Associated  
Fire  
Protection,  
Inc.**

Fire Sprinkler Systems

Planning • Fabrication • Installation • Service

PO Box 28022 • Raleigh, North Carolina 27611-8022 • (919) 553-4021 • Fax (919) 553-2169

May 10, 1999

Senator R.C. Soles, Jr.  
2022 Legislative Building  
Raleigh, N.C. 27601-2808

**RE: HB 1076**

Dear Senator Soles:

We are writing to request your support for H.B. 1076, which is on the Commerce committee calendar for Tuesday 5-11-99.

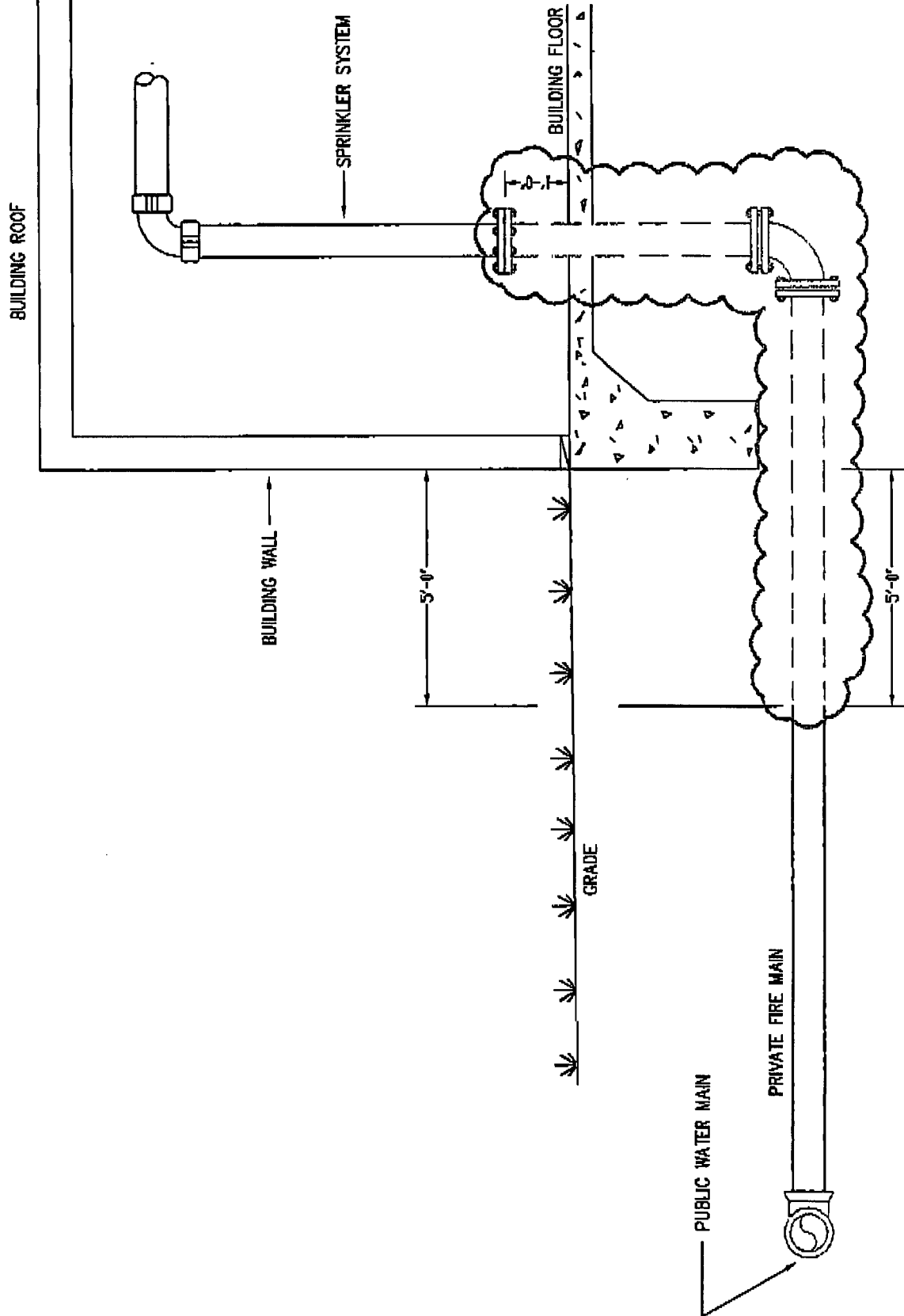
This Bill addresses an item which currently is not in the Code nor G.S. 87 - 10.

We would appreciate your support!

Regards,

Ronnie J. Hahn  
President

RJH/lb



"SECTION VIEW"  
NTS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 899

Short Title: Real Estate Salesman/Broker Licensure.

(Public)

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Sponsors: Representatives Bridgeman, Howard; Dedmon and Morris.

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Referred to: Ways and Means.

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April 1, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING CERTAIN REQUIREMENTS FOR LICENSURE OF REAL  
3 ESTATE BROKERS AND SALESMEN.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 93A-4 reads as rewritten:  
6 "**§ 93A-4. Applications for licenses; fees; qualifications; examinations; ~~bond~~; privilege**  
7 **licenses; renewal or reinstatement of license; power to enforce provisions.**  
8 (a) Any person, partnership, ~~association, or corporation~~ corporation, limited  
9 liability company, association, or other business entity hereafter desiring to enter into  
10 business of and obtain a license as a real estate broker or real estate salesman shall  
11 make written application for such license to the Commission ~~on such forms as are in~~  
12 the form and manner prescribed by the Commission. Each applicant for a license as a  
13 real estate broker or real estate salesman shall be at least 18 years of age. Each  
14 applicant for a license as a real estate salesman shall, within ~~five~~ three years  
15 preceding the date application is made, have satisfactorily completed, at a school  
16 approved by the Commission, a real estate fundamentals course consisting of at least  
17 ~~30~~ 75 hours of classroom instruction in subjects determined by the Commission, or  
18 shall possess real estate education or experience in real estate transactions which the  
19 Commission shall find equivalent to the course. Each applicant for a license as a real  
20 estate broker shall, within ~~five~~ three years preceding the date the application is made,  
21 ~~either have been actively engaged on a full-time basis as a licensed real estate~~  
22 ~~salesman for at least two years, or~~ have satisfactorily completed, at a school approved  
23 by the Commission, ~~advanced courses in Real Estate Law, Real Estate Finance, and~~  
24 ~~Real Estate Brokerage Operations, each~~ an education program consisting of at least

1 ~~30~~ 60 hours of classroom ~~instruction, these courses to~~ instruction in subjects  
2 determined by the Commission, which shall be in addition to ~~those the course~~  
3 required for a real estate salesman license, or shall possess real estate education or  
4 experience in real estate transactions which the Commission shall find equivalent to  
5 ~~the above requirements.~~ education program. Each ~~application~~ applicant for a license  
6 as a real estate broker or real estate salesman shall be ~~accompanied by~~ required to  
7 pay a fee, fixed by the Commission but not to exceed thirty dollars (\$30.00). ~~Each~~  
8 ~~application for license as a real estate salesman shall be accompanied by a fee, fixed~~  
9 ~~by the Commission but not to exceed thirty dollars (\$30.00).~~

10 (b) ~~Any~~ Except as otherwise provided in this Chapter, any person who files such  
11 submits an application to the Commission in proper manner for a license as real  
12 estate broker or a license as real estate salesman shall be required to take an oral or  
13 written ~~examination to~~ examination. The Commission may allow an applicant to  
14 elect to take the examination by computer as an alternative to the written or oral  
15 examination and may require the applicant to pay the Commission or a provider  
16 contracted by the Commission the actual cost of administering the computerized  
17 examination. The cost of the computerized examination shall be in addition to any  
18 other fees the applicant is required to pay under subsection (a) of this section. The  
19 examination shall determine his the applicant's qualifications with due regard to the  
20 paramount interests of the public as to the ~~honesty, truthfulness, integrity and~~  
21 ~~competency of the applicant.~~ applicant's competency. A person holding a real estate  
22 salesman license in this State and applying for a real estate broker license shall not be  
23 required to take an additional examination under this subsection.

24 ~~The Commission may make such investigation as it deems necessary into the~~  
25 ~~ethical background of the applicant.~~ An applicant for licensure under this Chapter  
26 shall satisfy the Commission that he or she possesses the competency, honesty,  
27 truthfulness, integrity, and general moral character necessary to protect the public  
28 interest and promote public confidence in the real estate brokerage business. If the  
29 results of ~~the~~ any required competency examination and investigation of the  
30 applicant's moral character shall be satisfactory to the Commission, then the  
31 Commission shall issue to ~~such a person~~ the applicant a license, authorizing ~~such~~  
32 ~~person~~ the applicant to act as a real estate broker or real estate salesman in the State  
33 of North Carolina, upon the payment of privilege taxes now required by law or that  
34 may hereafter be required by law.

35 Provided, however, that any person who, at the time of the passage or at the  
36 effective date of this Chapter, has a license to engage in, and is engaged in business as  
37 a real estate broker or real estate salesman and who shall file a sworn application  
38 with the Commission setting forth his qualifications, including a statement that such  
39 applicant has not within five years preceding the filing of the application been  
40 convicted of any felony or any misdemeanor involving moral turpitude, shall not be  
41 required to take or pass such examination, but all such persons shall be entitled to  
42 receive such license from the Commission under the provisions of this Chapter on  
43 proper application therefor and payment of a fee of ten dollars (\$10.00).



1 (c) All licenses issued by the Commission under the provisions of this Chapter  
2 shall expire on the 30th day of June following issuance or on any other date that the  
3 Commission may determine and shall become invalid after that date unless reinstated.  
4 A license may be renewed 45 days prior to the expiration date by filing an  
5 application with and paying to the Executive Director of the Commission the license  
6 renewal fee. The license renewal fee is thirty dollars (\$30.00) unless the Commission  
7 sets the fee at a higher amount. The Commission may set the license renewal fee at  
8 an amount that does not exceed fifty dollars (\$50.00). The license renewal fee may  
9 not increase by more than five dollars (\$5.00) during a 12-month period. The  
10 Commission may adopt rules establishing a system of license renewal in which the  
11 licenses expire annually with varying expiration dates. These rules shall provide for  
12 prorating the annual fee to cover the initial renewal period so that no licensee shall  
13 be charged an amount greater than the annual fee for any 12-month period. All  
14 licenses reinstated after the expiration date thereof shall be subject to a late filing fee  
15 of five dollars (\$5.00) in addition to the required renewal fee. In the event a licensee  
16 fails to obtain a reinstatement of such license within 12 months after the expiration  
17 date thereof, the Commission may, in its discretion, consider such person as not  
18 having been previously licensed, and thereby subject to the provisions of this Chapter  
19 relating to the issuance of an original license, including the examination requirements  
20 set forth herein. Duplicate licenses may be issued by the Commission upon payment  
21 of a fee of five dollars (\$5.00) by the licensee. Commission certification of a licensee's  
22 license history shall be made only after the payment of a fee of ten dollars (\$10.00).

23 (d) The Commission is expressly vested with the power and authority to make and  
24 enforce any and all ~~such~~ reasonable rules and regulations connected with ~~the~~  
25 ~~application for any license~~ license application, examination, renewal, and  
26 reinstatement as shall be deemed necessary to administer and enforce the provisions  
27 of this Chapter. The Commission is further authorized to adopt reasonable rules and  
28 regulations necessary for the approval of real estate ~~schools and such rules and~~  
29 ~~regulations may, in accordance with G.S. 93A-4(a),~~ schools, instructors, and textbooks  
30 and rules that prescribe specific requirements pertaining to the teaching of mechanics  
31 ~~and law governing real estate transactions at such schools.~~ instruction, administration,  
32 and content of required education courses and programs.

33 (e) Nothing contained in this Chapter shall be construed as giving any authority to  
34 the Commission nor any licensee of the Commission as authorizing any licensee  
35 ~~whether by examination or under the grandfather clause or by comity~~ to engage in  
36 the practice of law or to render any legal service as specifically set out in G.S. 84-2.1  
37 or any other legal service not specifically referred to in said section."

38 Section 2. This act becomes effective October 1, 2000.



BILL ANALYSIS

# HOUSE BILL 899: Real Estate Salesman/Broker Licensure.

**Committee:** Senate Commerce  
**Date:** May 11, 1999  
First Edition

**Introduced by:** Representative Bridgeman  
**Summary by:** O. Walker Reagan,  
Committee Co-Counsel

**SUMMARY:** *House Bill 899 amends the real estate licensing law to require that the salesman and broker real estate course be longer and taken within a shorter period prior to licensure, eliminates the broker exam, clarifies the ethical standard for licensure, and clarifies the Real Estate Commission's rule making authority for licensing matters and real estate instruction.*

**CURRENT LAW:** Under current law a person who applies for a real estate salesman license must complete a 30 hour real estate fundamentals course within 5 years preceding the licensing application. A real estate broker applicant has to complete an additional 30 hours of real estate instruction within 5 years preceding the brokers license application in addition to the requirements for a salesman's license. The broker applicant also has to pass a broker's licensing examination.

**BILL ANALYSIS:** The bill amends G.S. 93A-4 which sets out the qualifications and requirements for licensure as a real estate salesman and broker.

Subsection (a) of this statute is amended by permitting licensed real estate firms to also be in the form of a limited liability company or other business entity. This subsection is also amended to increase the required salesman course hours from 30 hours to 75 hours and to shorten the time period prior to application during which this course can be taken from 5 years down to 3 years. This subsection is also amended to increase the required broker course hours from 30 hours to 60 hours in addition to the salesman course hours. The time period for this instruction prior to application for the broker's license has also been shortened from 5 years to 3 years.

Subsection (b) is amended to permit the real estate licensing exam to be taken by computer with any additional cost associated with taking the exam by computer to be born by the applicant. This subsection is also amended to eliminate a broker's examination in addition to the salesman's examination. The outdated grandfather provision enacted in 1957 is repealed.

Subsection (d) is amended to clarify that the Commission's rulemaking authority over applications for licensure also applies to license examinations, license renewals, and license reinstatements. This subsection is also amended to clarify that the rulemaking authority for approval of real estate schools and instruction applies to the schools, the instructors, the text books and the instruction, administration and content of required education courses and programs.

**EFFECTIVE DATE:** The bill becomes effective October 1, 2000.

H899-SMRU-001

VISITOR REGISTRATION SHEET

⑦

COMMERCE

Name of Committee

5-11-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Jenny Harden Dorsten	Raleigh/Wake Board of REALTORS®
Larry Outlaw	N.C. Real Estate Commission
PHILIP FOSTER	N.C. REAL ESTATE Commission
Stephaine Mansur	NC Assoc. of REALTORS
Joe Henderson	STATE PROPERTY OFFICE, DOA
June M. Michaux	State Property office, DOA
Rupert Conroy	" "
Harmon Byrd	State Construction Office
GROVER L SAWYER	NC DEPT OF INSURANCE
Fred Sickett	NC Propane Gas Assoc.
David Barnett	NC Propane Gas Assoc.
Kemp Johnson	NC Propane Gas Assoc.
Beal McPherson	N.C. PROPANE GAS ASSOC.
C. Ray Brown	N.C. PROPANE GAS ASSO.
Jane Wether	NC Propane Gas Assoc.

VISITOR REGISTRATION SHEET

Commerce Committee  
Name of Committee

5/4/99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Brian D. Campbell	N.C. Propane Gas Assoc.
Ethelene Davis	Electricities
Alice Perkins	Electricities
Bruce Byers	Propane Gas Assoc. (North State Gas)
John [unclear]	AT&T
Michael Lewis	N.C. Propane Gas Assoc.
Brenda Dougherty	Sprint
Paul Stahl	N.C. Bankers
David Simmons	ZDA, DA
Rennie Aahn	Amer. FIRE SPRINKLER ASSOC.
Tom Jones	Attorney - Raleigh

**1999-2000**

**SENATE  
COMMERCE**

**MINUTES**

SENATE COMMERCE COMMITTEE  
11:00 A.M., TUESDAY, May 18, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, May 18, 1999, in Room 1027 of the State Legislative Building. Nineteen members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles, Chairman, called the meeting to order. The following bills were considered by the Committee:

C. S. #2 for HB 512, AN ACT TO CERTIFY ASSISTED LIVING RESIDENCE ADMINISTRATORS. Rep. Clary, the bill sponsor, explained the bill. She said the bill creates a new Article 20A in Chapter 90 of the General Statutes that requires certain assisted living administrators to be certified. (See memorandum from Committee Counsel for complete summary.) Mr. Jerry Cooper, Executive Director of the N. C. Assisted Living Association, assisted in answering questions from the Committee.

Mr. Ted Goins, Chairman of the N. C. State Board of Examiners for Nursing Home Administrators, spoke on the bill.

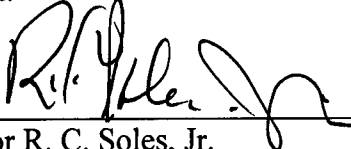
Senator Kerr sent forward an amendment and moved its adoption. (Copy attached.) Motion carried. He then moved that the C. S. #2 for HB 512, as amended, be converted into a new Committee Substitute and given a favorable report. Motion carried.

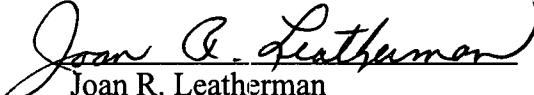
C. S. for HB 985, AN ACT TO INCREASE THE BENCHMARK AT WHICH THE DEPARTMENT OF ADMINISTRATION IS REQUIRED TO ADVERTISE FOR PROPOSALS FOR LEASES BY THE STATE, TO CLARIFY WHEN THE DEPARTMENT MAY TRANSFER PROPERTY TO NONPROFIT ORGANIZATIONS AT LESS THAN FAIR-MARKET VALUE, AND TO SIMPLIFY THE LAW REGARDING STATE LEASES OF PROPERTY IN UNIQUE LOCATIONS.

Representative Wainwright, the bill sponsor, said the legislation would amend the laws governing certain leases and sales of real estate owned by the State by raising the minimum level of leasing requiring formal bids from \$12,000 to \$25,000, by permitting transfers of real property for less than fair market value to nonprofits for use for nonprofit purposes, and to exempt leases for property with a unique location or adjacent to other State rental property from normal rules and regulations. (For additional information refer to memorandum from Committee Counsel and also memorandum from Mr. Joseph H. Henderson, Director of the State Property Office.)

Mr. Henderson assisted Rep. Wainwright in responding to questions from the Committee. Senator Kerr was concerned that a reverter clause on land sales should be in the bill. He sent forward the attached amendment and moved its adoption. Motion failed.

Senator Ballance moved that C. S. for HB 985 be given a favorable report. Motion carried.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr.

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant\_

**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, MAY 18, 1999  
Room 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**HB 19 - CASINO BOATS REGULATED (Rep. Redwine)**

**HB 512 - ASSISTED LIVING ADMINISTRATORS (Rep. Clary)**

**HB 985 - STATE LAND TRANSACTIONS (Rep. Wainwright)**

**HB 1149- MODULAR CONSTRUCTION REQUIREMENTS (Rep. Jeffus)**

**ADJOURNMENT**



**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair, ~~Chair~~**

Tuesday, May 18, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

**FAVORABLE**

H.B.(CS)985	State Land Transactions	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 1

Committee Clerk Comment:

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair**

Wednesday, May 19, 1999

SENATOR SOLES,

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)512

Assisted Living Administrators.

Draft Number:	PCS7236
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

3

HOUSE BILL 512  
Committee Substitute Reported Without Prejudice 4/21/99  
Committee Substitute #2 Favorable 4/28/99

Short Title: Assisted Living Administrators.

(Public)

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Sponsors:

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Referred to:

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March 22, 1999

1

A BILL TO BE ENTITLED

2

AN ACT TO CERTIFY ASSISTED LIVING RESIDENCE ADMINISTRATORS.

3

The General Assembly of North Carolina enacts:

4

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

5

6

"ARTICLE 20A.

7

"Assisted Living Administrator Act.

8

"§ 90-288.10. Title.

9

This Article shall be known as the Assisted Living Administrator Act.

10

"§ 90-288.11. Purpose.

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The administrators of assisted living residences are responsible for the residents who require daily care to attend to their physical, mental, and emotional needs. Therefore, the certification of assisted living administrators is necessary to ensure adequate levels of care across the State and to protect public health, safety, and welfare.

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"§ 90-288.12. Certification required; exemptions.

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(a) No person shall perform or offer to perform services as an assisted living administrator unless the person has been certified under the provisions of this Article. A certificate granted under this Article shall be valid throughout the State.

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(b) The provisions of this Article shall not apply to:

21

(1) Combination homes as defined in G.S. 131E-101 and hospitals that contain adult care beds.

22

1           (2) Family care homes as defined in G.S. 131D-2(a)(5).

2           (3) Continuing care facilities, as defined in Article 64 of Chapter 58 of  
3 the General Statutes, if adult care beds are housed in the same  
4 facility as nursing home beds.

5 **"§ 90-288.13. Definitions.**

6 The following definitions apply in this Article:

7           (1) Administrator-in-training. -- An individual who serves a training  
8 period under the supervision of an approved preceptor.

9           (2) Assisted living administrator. -- An individual certified to operate,  
10 administer, manage, and supervise an assisted living residence or to  
11 share in the performance of these duties with another person who  
12 has been so certified.

13           (3) Assisted living residence. -- A facility defined in G.S. 131D-  
14 2(a)(1d), whether proprietary or nonprofit. The term also includes  
15 institutions or facilities that are owned or administered by the  
16 federal or State government or any agency or political subdivision  
17 of the State government.

18           (4) Department. -- The Department of Health and Human Services.

19           (5) Preceptor. -- An individual who is certified by the Department as  
20 an assisted living administrator and who meets the requirements  
21 established by the Department to serve as a supervisor of  
22 administrators-in-training.

23 **"§ 90-288.14. Assisted living administrator certification.**

24 An applicant shall be certified by the Department as an assisted living  
25 administrator if the applicant meets all of the following qualifications:

26           (1) Is at least 21 years old.

27           (2) Provides a satisfactory criminal background report from the State  
28 Repository of Criminal Histories, which shall be provided by the  
29 State Bureau of Investigation upon its receiving fingerprints from  
30 the applicant. If the applicant has been a resident of this State for  
31 less than five years, the applicant shall provide a satisfactory  
32 criminal background report from both the State and National  
33 Repositories of Criminal Histories.

34           (3) Successfully completes the equivalent of two years of coursework  
35 at an accredited college or university or has a combination of  
36 education and experience as approved by the Department.

37           (4) Successfully completes a Department approved administrator-in-  
38 training program of at least 120 hours of study in courses relating  
39 to assisted living residences.

40           (5) Successfully completes a written examination administered by the  
41 Department.

42 **"§ 90-288.15. Issuance, renewal, and replacement of certificates.**

43           (a) The Department shall issue a certificate to any applicant who has satisfactorily  
44 met the requirements of this Article. The certificate shall show the full name of the

1 person and an identification number and shall be signed by the Secretary of the  
2 Department. A certificate may not be transferred or assigned.

3 (b) All certificates shall expire on December 31 of the second year following  
4 issuance. All applications for renewal shall be filed with the Department and shall be  
5 accompanied by documentation of the certificate holder's completion of the annual  
6 continuing education requirements established by the Department regarding the  
7 management and operation of an assisted living residence.

8 (c) The Department shall replace any certificate that is lost, destroyed, or  
9 mutilated subject to rules established by the Department.

10 **"§ 90-288.16. Certification by reciprocity.**

11 The Department may grant, upon application, a certificate to a person who holds a  
12 valid certificate as an assisted living community administrator issued by another state  
13 if, in the Department's determination, the standards of competency for the certificate  
14 are substantially equivalent to those in this State.

15 **"§ 90-288.17. Posting certificates.**

16 Every person issued a certificate under this Article shall display the certificate  
17 prominently in the assisted living residence where the person works.

18 **"§ 90-288.18. Adverse action on a certificate.**

19 (a) Subject to subsection (b) of this section, the Department shall have the  
20 authority to deny a new or renewal application for a certificate, and to amend, recall,  
21 suspend, or revoke an existing certificate upon a determination that there has been a  
22 substantial failure to comply with the provisions of this Article or any rules  
23 promulgated under this Article.

24 (b) The provisions of Chapter 150B of the General Statutes shall govern all  
25 administrative action and judicial review in cases where the Department has taken  
26 action as described in subsection (a) of this section. A petition for a contested case  
27 shall be filed within 20 days after the Department mails the certificate holder a notice  
28 of its decision to deny a renewal application, or to recall, suspend, or revoke an  
29 existing certificate.

30 **"§ 90-288.19. Reporting requirement.**

31 The holder of a facility license issued pursuant to G.S. 131D-2 shall report any  
32 incidents of suspected abuse, neglect, or exploitation of persons residing in an assisted  
33 living residence by a person certified under this Article to the Health Care Personnel  
34 Registry.

35 **"§ 90-288.20. Penalties.**

36 A person who serves as an assisted living administrator without first obtaining a  
37 certificate from the Department is guilty of a Class 1 misdemeanor. Each act of  
38 unlawful practice constitutes a distinct and separate offense."

39 Section 2. G.S. 131D-2(a)(1b) reads as rewritten:

40 "(1b) "Adult care home" is an assisted living residence in which the  
41 housing management provides 24-hour scheduled and unscheduled  
42 personal care services to two or more residents, either directly or,  
43 for scheduled needs, through formal written agreement with  
44 licensed home care or hospice agencies. Some licensed adult care

1 homes provide supervision to persons with cognitive impairments  
2 whose decisions, if made independently, may jeopardize the safety  
3 or well-being of themselves or others and therefore require  
4 supervision. Medication in an adult care home may be  
5 administered by designated, trained staff. Adult care homes that  
6 provide care to two to six unrelated residents are commonly called  
7 family care homes. ~~Adult care homes and family care homes are~~  
8 ~~subject to licensure by the Division of Facility Services."~~

9 Section 3. Notwithstanding the provisions of G.S. 90-288.14, as enacted  
10 in Section 1 of this act, the Department may prior to December 31, 1999, grant a  
11 certificate to practice as an assisted living administrator to a person who has been  
12 actively engaged as an assisted living administrator in this State for at least two years.  
13 Any person who has been actively engaged as an assisted living administrator for less  
14 than two years shall satisfactorily complete a written exam administered by the  
15 Department before issuance of a license. The Department may refuse to certify such  
16 a person as an assisted living administrator if the person's compliance history review  
17 shows a pattern of noncompliance with State law or otherwise demonstrates disregard  
18 for the health safety, and welfare of residents in current or past facilities where the  
19 person has worked as an assisted living administrator.

20 Section 4. This act becomes effective January 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. 512

DATE \_\_\_\_\_

S. B. No. \_\_\_\_\_

Amendment No. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep. )

)  
Sen. )

1 moves to amend the bill on page 4, line 10

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "may" and inserting "shall"

4

5 and on page 4, line 15 by deleting

6 the word "such".

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SIGNED

ADOPTED \_\_\_\_\_

FAILED \_\_\_\_\_

TABLED \_\_\_\_\_



BILL ANALYSIS

# HB 512: Assisted Living Administrators

**Committee:** Senate Commerce  
**Date:** May 17, 1999  
**Version:** 3rd

**Introduced by:** Rep. Clary  
**Summary by:** Linwood Jones  
Committee Counsel

**SUMMARY:** *House Bill 512 would require the Department of Health and Human Services to certify certain assisted living residence administrators. The Act becomes effective January 1, 2000.*

**BILL ANALYSIS:** House Bill 512 creates a new Article 20A in Chapter 90 of the General Statutes that requires certain assisted living administrators to be certified. An assisted living administrator is a person that operates, manages, or supervises an assisted living residence, including a person that performs these duties jointly with another certified person. An assisted living residence is "any group housing and service program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies" (G.S. 131D-2(a)(1d)). The bill adds the following provisions:

**G.S. 90-288.12:** Requires that an assisted living administrator be certified (unless grandfathered in pursuant to Section 3 of the bill) but exempts administrators in facilities that have both nursing home beds and assisted living beds, hospitals with adult care beds, family care homes, and continuing care facilities if adult care beds are housed in the same facility.

**G. S. 90-288.13:** Defines "administrator-in-training", "assisted living administrator", "assisted living residence", "department", and "preceptor".

**G.S. 90-288.14:** Establishes the qualifications for the administrator as (a) at least 21, (b) criminal background report, (c) successful completion of the equivalent of two years of coursework in an accredited college or university or a combination of education and experience as approved by the Department, (d) successful completion of a department approved administrator-in-training program of at least 120 hours in assisted living, and (e) passage of a written exam.

**G.S. 90-288.15:** Establishes the requirements for issuance, renewal, and replacement of certificates.

**G.S. 90-288.16:** Allows the Department to issue a reciprocal certificate if the Department determines that the standards of competency for the certificate are substantially the same as those in the other state.

**G.S. 90-288.17:** Requires the administrator's certificate to be posted in a prominent place in the assisted living residence.

**G.S. 90-288.18:** Allows the Department to deny a new or renewal application and to amend, recall, suspend, or revoke an existing certificate upon a determination that there has been substantial failure to comply with this law or rules, subject to APA requirements. An administrator has 20 days in which to file a contested case proceeding.

**G.S. 90-288.19:** The holder of the assisted living facility license must report any incidents of suspected abuse, neglect or exploitation to the Health Care Personnel Registry.



**G.S. 90-288.20-** A person who serves as an administrator without a certificate is guilty of a Class 1 misdemeanor.

**Section 2** removes a sentence in the current law that says that adult care homes and family care homes are subject to licensure by the Division of Facility Services. Another provision in the current law already requires adult care homes to be licensed by the Department (see G.S. 131D-2(b)(1)). A family care home is a type of adult care home.

**Section 3** provides that DHHS may exempt an applicant from the licensure requirements if he or she has practiced as an assisted living administrator for at least 2 years. Persons practicing for less than 2 years can be exempted from the exam. The Department may refuse to certify anyone who has a history of noncompliance with State law or has demonstrated a disregard for residents in other facilities in which he or she has worked.

**Section 4** makes this act effective January 1, 2000.



1 Section 2. G.S. 146-29.1(c) reads as rewritten:

2 "(c) Real property owned by the State or by any State agency may be sold, leased,  
3 or rented at less than market value to a private, nonprofit corporation, association,  
4 organization or society ~~upon a determination by~~ if the Department of Administration  
5 ~~that such~~ determines both of the following:

6 (1) The transaction is in consideration of public service rendered or to  
7 be rendered. rendered by the nonprofit.

8 (2) The property will be used in connection with the nonprofit's tax-  
9 exempt purpose and not in connection with its unrelated trade or  
10 business, as defined in section 513 of the Code. For the purposes  
11 of this subdivision, the term "Code" has the same meaning as in  
12 G.S. 105-228.90.

13 The transaction shall be reported in detail at least 30 days prior to the sale, lease, or  
14 rental to the Joint Legislative Commission on Governmental Operations and the  
15 Fiscal Research Division of the Legislative Services Office. ~~In the case of a private,~~  
16 ~~nonprofit corporation, association, organization, or society that engages in some~~  
17 ~~for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair~~  
18 ~~market value of the property times the percentage of the total activities of the~~  
19 ~~corporation, association, organization, or society that are for-profit."~~

20 Section 3. G.S. 146-32 reads as rewritten:

21 "§ 146-32. Exemptions as to leases, etc.

22 The Governor, acting with the approval of the Council of State, may adopt rules  
23 and regulations.

24 (1) Exempting from any or all of the requirements of this Subchapter  
25 such classes of lease, rental, easement, and right-of-way  
26 transactions as he deems advisable; and

27 (2) Authorizing any State agency to enter into and/or approve those  
28 classes of transactions exempted by such rules and regulations from  
29 the requirements of this Chapter.

30 (3) No rule or regulation adopted under this section may exempt from  
31 the provisions of G.S. 146-25.1 any class of lease or rental which  
32 has a duration of more than 21 days, unless the class of lease or  
33 rental:

34 a. Is a lease or rental necessitated by a fire, flood, or other  
35 disaster that forces the agency seeking the new lease or  
36 rental to cease use of real property; ~~or~~

37 b. Is a lease or rental necessitated because an agency had  
38 intended to move to new or renovated real property that  
39 was not completed when planned, but a lease or rental  
40 exempted under this subparagraph may not be for a period  
41 of more than ~~six months.~~ months; or

42 c. Is a lease or rental which requires a unique location or a  
43 location that adjoins or is in close proximity to an existing  
44 rental location."

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Section 4. This act is effective when it becomes law.



BILL ANALYSIS

## HOUSE BILL 985: State Land Transactions.

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<b>Committee:</b>	Senate Commerce	<b>Introduced by:</b>	Representative Wainwright
<b>Date:</b>	May 11, 1999	<b>Summary by:</b>	O. Walker Reagan,
<b>Version:</b>	Second Edition		Committee Co-Counsel

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**SUMMARY:** *House Bill 985 would amend the laws governing certain leases and sales of real estate owned by the State by raising the minimum level of leasing requiring formal bids from \$12,000 to \$25,000, by permitting transfers of real property for less than fair market value to nonprofits for use for nonprofit purposes, and to exempt leases for property with a unique location or adjacent to other State rental property from the normal rules and regulations.*

**CURRENT LAW:** Current law requires that leases of State land that exceed \$12,000 per year must be subject to an advertised bid process. Current law permits sales or leases of real property to nonprofit organizations but requires that the nonprofit pay to the State at least the percentage of the fair market value of the property equal to the percentage of the nonprofits' activities that are for profit activities. Current law only permits as exceptions to the bid law exceptions for leases for replacements arising from losses due to a fire, flood, or other disaster or temporary leases of no more than 6 months while awaiting permanent space.

**BILL ANALYSIS:** Section 1 of the bill amends the law requiring a bid process when the State leases its property to a third party by applying these requirements to leases with annual rents in excess of \$25,000 instead of the current minimum limit of \$12,000.

Section 2 amends the law permitting sales or leases of State real property to nonprofits by only permitting State land to be used for nonprofit, tax-exempt purposes and not in conjunction with any for profit activity.

Section 3 exempts from the bid requirements related to State property leases that require a unique location or leases for property adjacent or in close proximity to an existing rented location.

**EFFECTIVE DATE:** The bill becomes effective when it becomes law.

H985-SMRU-001



# North Carolina Department of Administration

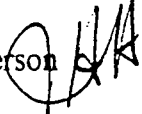
James B. Hunt, Jr. Governor  
Katie G. Dorsett, Secretary

State Property Office  
Joseph H. Henderson, Director

May 11, 1999

## MEMORANDUM

TO: - Members of the Senate Commerce Committee

FROM: Joseph H. Henderson 

SUBJECT: Proposed House Bill 985

We are asking that you sponsor the changes to existing legislation as outlined, herewith. The justification for each proposed change is indicated. We believe these relatively minor amendments will greatly improve our process for leasing office space and land.

Upon your review of this information, we are available to discuss the proposed changes with you further, upon your request.

Thank you.

Attachment

Delete 146-32(3): Exemptions as to leases, etc. The deletion of this statute, as shown on the attached, will enable the Council of State to exempt from advertising classes of leases which requires an unique or predetermined location.

For example, fire tower sites and communications tower sites must meet fairly exact location requirements. In the case of a fire tower, it must provide a view of a specific area relative to other tower sites. In the case of a communication tower, the site must often meet exacting elevation and line-of "sight" requirements in order to receive signals from other towers. In both cases, the location requirements are so restrictive that it more efficient to locate the appropriate site(s) and negotiate rental rates (just as we do on purchases) rather than advertise for proposals. In fact, that is exactly what we do now except, in order to technically comply with the law, we also advertise for proposals. This is expensive and time consuming. I don't remember a single instance where such advertisements resulted in locating a site.

Another example pertains to leasing office space and agency occupying leased space in an office building leased space in an office building desires to expand and there is available space in the building. Under current law, we are required to advertise and receive proposals for that space, even though we would not consider anything but the vacant space in that same building. The advertisement is expensive and time consuming. Landlords of other buildings who go to the trouble and expense of submitting "good faith" proposals are angered when they learn that we are interested only in expansion space in the current building.

Revise 146-25.1 to increase dollar threshold. Adjusting the dollar threshold for advertising from \$12,000 to \$25,000 , as shown on the attached, will allow smaller leases to be handled without advertising thus streamlining the lease space/procurement process. Approximately, fifty percent of State leases fall in to this category. The threshold has not been raised since 1983, and the requested increase is only slightly higher than the average rate of inflation during the same period (4.69% versus 4.25% average inflation).

Delete the last sentence in 146-29.1(c): Lease or sale of real property for less than fair market value. The language in the last sentence is ambiguous and unnecessary. We have yet to find a practical means of applying this statutory requirement. The term "percentage of total activities" is so ambiguous as to defy interpretation.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. 985

DATE \_\_\_\_\_

S. B. No. \_\_\_\_\_

Amendment No. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.) KERR

Sen.)

1 moves to amend the bill on page 2, line 15

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING AFTER THE WORD "OFFICE," THE

4 FOLLOWING SENTENCE "ANY <sup>SALE OF PROPERTY</sup> ~~CONVEYANCE~~ UNDER THIS

5 SUBSECTION SHALL BE MADE SUBJECT REVERSION IN

6 THE EVENT THE PROPERTY IS NOT USED FOR THE

7 NONPROFIT'S TAX EXEMPT PURPOSE."

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SIGNED [Signature]

ADOPTED \_\_\_\_\_ FAILED X TABLED \_\_\_\_\_



VISITOR REGISTRATION SHEET

Senate Commerce  
Name of Committee

5-18-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	McCleer Consulting
Joe McCleer	McCleer Consulting
Tim Henderson	N.C. HYDRO ASSO
Steve Cook	" " "
Hemi McEeels	McEeels Consulting
Joray Cooper	N.C.A.L.A.
John Phelps	NCLM
Joe Henderson	State Property Office
Rupert Conroy	" " "
Tommy Clon	" " "
June W. Michaux	" " "
Jay Peters	AP Assoc
Alton Day	N.C. PROPANE
Michael Lewis	N.C. PROPANE
RAY BROWN	N.C. PROPANE GAS ASSO.

VISITOR REGISTRATION SHEET

Senate Commee  
Name of Committee

5-18-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Brian D. Campbell	N.C. Propane Gas Assoc.
Burl Williamson	N.C. Propane Gas Assoc
Albert C. Smith	N.C. Propane Gas Assoc.
Bobby N. Smith	N.C. Propane Gas Assoc.
Eatherine Davis	Electricities of NC
Harmon Byrd	State Construction Office
McBortley	NC Aggregates - NC Podiatry Society
Steve Keene	NC Med. Soc.
Murray D. Dixon	NC Med. Soc.
C.H. Smith, Jr	Self
M. Inel Clark	NC opt Soc
DAVID ANDERSON	NC opt Soc
Alice Farland	Electricities
Jaele Aurbels	Allen + Pinnix
Jaele Aurbels, Jr.	NC Stat Board of Examiners for Nursing Home Administrators

VISITOR REGISTRATION SHEET

*Senate Communc*  
Name of Committee

*5-18-99*  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

<i>Jane Baker</i>	<i>NC Board of Examiners for Nursing Home Adm.</i>
<i>Tom Schoenroger</i>	<i>NC Non-profit Homes for the Aging</i>
<i>W. Peter</i>	<i>NCDJ/NCPHA</i>
<i>Roger Bone</i>	<i>Bone &amp; Assoc - NCAALTF</i>
<i>Ken Wampler</i>	<i>RLBSNL</i>
<i>Paul Mahoney</i>	<i>NC ASSN OF HEALTH PLANS</i>
<i>Crissey Porter</i>	<i>Bone and Associates</i>
<i>Loan White</i>	<i>NCAALTF</i>

**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, MAY 25, 1999  
Room 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**HB 476 – EMC SUBSIDIARIES (Rep. Tolson)\***

**Requests to be heard:**

**\*Dave Denson  
Cape Fear Electric Co.  
Deregulation Chair, N. C. Assn. of Electrical Contractors**

**ADJOURNMENT**

**ADJOURNMENT**

SENATE COMMERCE COMMITTEE  
11:00 A.M., TUESDAY, MAY 25, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, May 25, 1999. Nineteen members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets. Ms. Margaret Hinman, sponsored by Senator Horton, and Ms. Arthenia B. Booth, sponsored by Senator Ballance, were the Senate Pages assisting with the meeting.

Senator Soles, Chairman, called the meeting to order and the following bill was considered by the Committee:

HB 476, AN ACT CONCERNING THE GRANT OF POWERS TO ELECTRIC MEMBERSHIP CORPORATIONS REGARDING SUBSIDIARY ORGANIZATIONS. Senator Soles said that several meetings had been held with interested parties on this bill and they had worked out a compromise which will be offered in a Committee Substitute. Senator Metcalf moved the adoption of the Proposed Committee Substitute for House Bill 476. Motion carried.

Senator Metcalf, who sponsored the companion bill in the Senate, briefly explained the bill. Rep. Tolson, sponsor of the House Bill, said a lot of work had been done in the House and the Senate to produce a bill that would be acceptable to all parties and one that would benefit all areas of the State. He urged the Committee's adoption of the Committee Substitute bill. Mr. Steve Rose, Staff Attorney, went through the Committee Substitute pointing out the areas that differed from the original House Bill. He assisted in answering questions from members of the Committee.

The following persons spoke for the legislation:

Mr. Chris Haggarty who represented the EMC's  
Mr. Roger Bone who represented the N. C. Propane Association  
Mr. Alton Overby, N. C. Propane Gas Association.

Mr. Larry Jordan, Governmental Affairs Chairman for the N. C. Petroleum Marketing Association, said his group did not like the bill; however, they did understand the compromise.

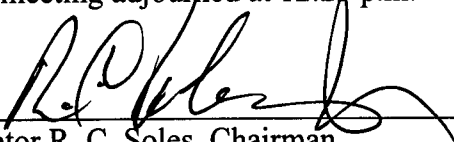
Ms. Perry Morgan, National Federation of Independent Businesses, spoke in opposition to the bill. (See attached handout.)

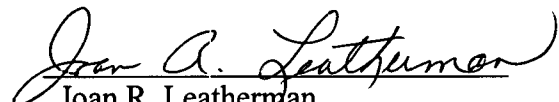
Mr. Dave Denson, representing the N. C. Association of Electrical Contractors, spoke in opposition to the bill. (See attached handout for his remarks and a position statement from the Association.)

Mr. Ron Brooks, National Federation of Independent Businesses and member of the Carteret County Association of Electrical Contractors, also spoke in opposition to the bill.

Senator Carter moved that the Committee Substitute for House Bill 476 be given a favorable report. Motion carried.

The meeting adjourned at 12:25 p.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair**

Wednesday, May 26, 1999

SENATOR SOLES,  
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)476	EMC Subsidiaries.	
	Draft Number:	PCS3427
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

2

HOUSE BILL 476\*  
Committee Substitute Favorable 4/26/99

Short Title: EMC Subsidiaries.

(Public)

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Sponsors:

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Referred to:

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March 23, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT CONCERNING THE GRANT OF POWERS TO ELECTRIC  
3 MEMBERSHIP CORPORATIONS REGARDING SUBSIDIARY  
4 ORGANIZATIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 117-18 is amended by adding a new subdivision to read:

7 "(14) As to electric membership corporations, to form, organize, acquire,  
8 hold, dispose of, and operate any interest up to and including full  
9 controlling interest in separate business entities that provide energy  
10 services and products, telecommunications services and products,  
11 water, and wastewater collection and treatment, so long as those  
12 other business entities meet all of the following conditions:

13 a. They are not financed with loans or grants from the  
14 Rural Utilities Service (RUS) of the United States  
15 Department of Agriculture (USDA) or the USDA or  
16 with similar financing from any successor agency.  
17 This limitation shall not apply to RUS or USDA  
18 loans or grants, or loans or grants from successor  
19 agencies, for water or wastewater collection and  
20 treatment projects.

21 b. They are subject to all taxes, specifically including  
22 federal and state income taxes, levied against business



1 entities of the same structure and engaged in the same  
2 activities.

3 c. They do not use any personnel, equipment, or  
4 property of the electric membership corporation in  
5 the operation of the other business entity.

6 d. They are organized and operated pursuant to Chapter  
7 55 or Chapter 57C of the General Statutes.

8 e. They do not encumber or expose to liability, in the  
9 aggregate, in excess of fifteen percent (15%) of the  
10 assets of the electric membership corporation.

11 An electric membership corporation may not form or  
12 organize a separate business entity to engage in activities  
13 involving the distribution, storage, or sale of oil, as defined  
14 in G.S. 143-215.77(8), specifically including liquefied  
15 petroleum gases, but may acquire, hold, dispose of, and  
16 operate any interest in an existing business entity already  
17 engaged in these activities, subject to the other provisions of  
18 this subdivision."

19 Section 2. G.S. 117-30(a) reads as rewritten:

20 "(a) In the event it is ascertained by the Rural Electrification Authority that the  
21 community or communities referred to in the foregoing section [G.S. 117-29] are in  
22 need of telephone service and that there is a sufficient number of persons to be  
23 served to justify such services, and the telephone company serving in the area in  
24 which the community or communities are located is unwilling to provide such  
25 service, a telephone membership corporation may be organized by such community  
26 or communities in the same manner that electric membership corporations may be  
27 formed under Article 2 of this Chapter, and all of the provisions of said Article shall  
28 be applicable to the formation of telephone membership corporations and such  
29 corporations shall have all the authority, powers and duties of such a corporation  
30 when formed under the provisions of said Article; except that the provisions of G.S.  
31 117-8, 117-9, 117-10.1, 117-10.2, 117-16.1, 117-18(14), 117-19 and 117-24 shall not be  
32 applicable to the organization of a telephone membership corporation, and except  
33 that such corporations so formed for the express purpose of providing telephone  
34 service necessary to serve the community or communities prescribed in the  
35 application may also provide the community or communities prescribed in the  
36 application with any communication service for the transmission of voice, sounds,  
37 signals, pictures, writing or signs of all kinds through the use of electricity or the  
38 electromagnetic spectrum between the transmitting and receiving apparatus, together  
39 with any telecommunications service requiring band-width capacity, including, but  
40 not limited to community antenna and cable television services, and including all  
41 lines, wires, cables, radio, light, electromagnetic impulse and all facilities, systems or  
42 other means used in the rendition of such services, but not including message  
43 telegram service or radio broadcasting services or facilities within the meaning of  
44 section 3(o) of the Federal Communications Act of 1934, as amended (47 USC §

1 153(o)) and except that such corporation so formed shall have no authority to engage  
2 in any other business. Provided, that the references in Article 2 of this Chapter to  
3 "power lines" or "energy" as to such telephone membership corporations shall be  
4 construed to mean telephone lines, broadband cables and lines, telephone service and  
5 broadband communications services. Provided further, that nothing herein shall be  
6 construed to authorize any telephone membership corporation organized hereunder  
7 to duplicate any line or lines, systems or other means by which adequate telephone  
8 service is being furnished; or to build or to construct a telephone line, or telephone  
9 lines, or telephone systems, or otherwise to provide facilities or means of furnishing  
10 telephone service to any person, community, town or city then being adequately  
11 served by a telephone company, corporation or system; or to provide telephone  
12 service in an unserved area while any telephone company, corporation or system is  
13 acting in good faith and with reasonable diligence in arranging to provide adequate  
14 telephone service to such person, community, town or city."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

HOUSE BILL 476\*  
Committee Substitute Favorable 4/26/99  
Senate Proposed Committee Substitute for H476-SPCSRL-002  
25-MAY-99 08:56:02  
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: EMC Subsidiaries.

(Public)

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Sponsors:

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Referred to:

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March 23, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT CONCERNING THE GRANT OF POWERS TO ELECTRIC MEMBERSHIP  
3 CORPORATIONS REGARDING SUBSIDIARY ORGANIZATIONS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 117-18 is amended by adding a new  
6 subdivision to read:  
7 "(14) As to electric membership corporations, to conduct the  
8 activities permitted by G.S. 117-18.1."  
9 Section 2. Article 2 of Chapter 117 of the General  
10 Statutes is amended by adding a new section to read:  
11 "§ 117-18.1. Subsidiary business activities.  
12 "(a) Electric membership corporations may form, organize,  
13 acquire, hold, dispose of, and operate any interest up to and  
14 including full controlling interest in separate business entities  
15 that provide energy services and products, telecommunications  
16 services and products, water, and wastewater collection and  
17 treatment, so long as those other business entities meet all of  
18 the following conditions:  
19 1. They are not financed with loans or grants from the  
20 Rural Utilities Service (RUS) of the United States

1           Department of Agriculture (USDA) or the USDA or  
2           with similar financing from any successor agency.  
3           This limitation shall not apply to RUS or USDA  
4           loans or grants, or loans or grants from successor  
5           agencies, for water or wastewater collection and  
6           treatment projects.

7           2.   They are subject to all taxes, specifically  
8           including federal and state income taxes, levied  
9           against business entities of the same structure and  
10           engaged in the same activities.

11           3.   They fully compensate the electric membership  
12           corporation for the use of personnel, services,  
13           equipment, or tangible and intangible property, the  
14           greater of (i) a competitive price, which is a  
15           price comparable with prices generally being  
16           charged at the time in arms length transactions in  
17           the same market, or (ii) the electric membership  
18           corporation's fully distributed costs, which shall  
19           include all direct and indirect costs, including  
20           cost of capital incurred in providing the  
21           personnel, services, equipment, tangible property,  
22           or intangible property in question. The value of  
23           real property shall include the intangible value of  
24           not having to purchase the real property being  
25           used, and the value of the identification with the  
26           EMC that will exist because of the use of the  
27           particular real property. Should the Utilities  
28           Commission, upon complaint showing reasonable  
29           grounds for investigation, find after  
30           investigation, that the charges for those  
31           transactions between the electric membership  
32           corporation and the other business entity do not  
33           conform with the provisions of this subdivision,  
34           the Utilities Commission is empowered to direct the  
35           electric membership corporation to adjust those  
36           charges to comply with the provisions of this  
37           subdivision. If the electric membership  
38           corporation does not comply with the Utilities  
39           Commission's directive, then the Utilities  
40           Commission is empowered to direct the electric  
41           membership corporation to divest its interest in  
42           the other business entity. For purposes of  
43           enforcing this subdivision, members of the  
44           Utilities Commission, the Utilities Commission

1 staff, and the Public Staff, are authorized to  
2 inspect the books and records of such other  
3 business entities and the electric membership  
4 corporations. The Utilities Commission shall have  
5 the authority to adopt rules and reporting  
6 requirements to enforce this subdivision. The  
7 provisions of G.S. 62-310(a), 62-311, 62-312, 62-  
8 313, 62-314, 62-315, 62-316, 62-326 and 62-327  
9 shall apply to electric membership corporations  
10 with respect to the application of this  
11 subdivision.

12 4. They are organized and operated pursuant to Chapter  
13 55 or Chapter 57C of the General Statutes.

14 5. They do not receive from an electric membership  
15 corporation any investment, loan, guarantee, or  
16 pledge of assets in an amount that, in the  
17 aggregate, exceeds ten percent (10%) of the assets  
18 of that electric membership corporation.

19 (b) An electric membership corporation may not form or  
20 organize a separate business entity to engage in activities  
21 involving the distribution, storage, or sale of oil, as defined  
22 in G.S. 143-215.77(8), specifically including liquefied petroleum  
23 gases, but may acquire, hold, dispose of, and operate any  
24 interest in an existing business entity already engaged in these  
25 activities, subject to the other provisions of this section.

26 (c) No director, or spouse of a director, of an electric  
27 membership corporation may be employed or have any financial  
28 interest in any separate business entity formed, organized,  
29 acquired, held, or operated by an electric membership corporation  
30 pursuant to the provisions of this section."

31 Section 3. G.S. 117-30(a) reads as rewritten:

32 "(a) In the event it is ascertained by the Rural  
33 Electrification Authority that the community or communities  
34 referred to in the foregoing section [G.S. 117-29] are in need of  
35 telephone service and that there is a sufficient number of  
36 persons to be served to justify such services, and the telephone  
37 company serving in the area in which the community or communities  
38 are located is unwilling to provide such service, a telephone  
39 membership corporation may be organized by such community or  
40 communities in the same manner that electric membership  
41 corporations may be formed under Article 2 of this Chapter, and  
42 all of the provisions of said Article shall be applicable to the  
43 formation of telephone membership corporations and such  
44 corporations shall have all the authority, powers and duties of

1 such a corporation when formed under the provisions of said  
2 Article; except that the provisions of G.S. 117-8, 117-9,  
3 117-10.1, 117-10.2, 117-16.1, 117-18(14), 117-18.1, 117-19 and  
4 117-24 shall not be applicable to the organization of a telephone  
5 membership corporation, and except that such corporations so  
6 formed for the express purpose of providing telephone service  
7 necessary to serve the community or communities prescribed in the  
8 application may also provide the community or communities  
9 prescribed in the application with any communication service for  
10 the transmission of voice, sounds, signals, pictures, writing or  
11 signs of all kinds through the use of electricity or the  
12 electromagnetic spectrum between the transmitting and receiving  
13 apparatus, together with any telecommunications service requiring  
14 band-width capacity, including, but not limited to community  
15 antenna and cable television services, and including all lines,  
16 wires, cables, radio, light, electromagnetic impulse and all  
17 facilities, systems or other means used in the rendition of such  
18 services, but not including message telegram service or radio  
19 broadcasting services or facilities within the meaning of section  
20 3(o) of the Federal Communications Act of 1934, as amended (47  
21 USC § 153(o)) and except that such corporation so formed shall  
22 have no authority to engage in any other business. Provided, that  
23 the references in Article 2 of this Chapter to "power lines" or  
24 "energy" as to such telephone membership corporations shall be  
25 construed to mean telephone lines, broadband cables and lines,  
26 telephone service and broadband communications services. Provided  
27 further, that nothing herein shall be construed to authorize any  
28 telephone membership corporation organized hereunder to duplicate  
29 any line or lines, systems or other means by which adequate  
30 telephone service is being furnished; or to build or to construct  
31 a telephone line, or telephone lines, or telephone systems, or  
32 otherwise to provide facilities or means of furnishing telephone  
33 service to any person, community, town or city then being  
34 adequately served by a telephone company, corporation or system;  
35 or to provide telephone service in an unserved area while any  
36 telephone company, corporation or system is acting in good faith  
37 and with reasonable diligence in arranging to provide adequate  
38 telephone service to such person, community, town or city."

39 Section 4. Article 3 of Chapter 62 of the General  
40 Statutes is amended by adding a new section to read:

41 "§ 62-53. Electric membership corporation subsidiaries.

42 In addition to any other authority granted to the Commission in  
43 this Chapter, the Commission shall have the authority to regulate  
44 electric membership corporations as provided in G.S. 117-18.1."

1 Section 5. G.S. 62-302 reads as rewritten:

2 "§ 62-302. Regulatory fee.

3 (a) Fee Imposed. -- It is the policy of the State of North  
4 Carolina to provide fair regulation of public utilities in the  
5 interest of the public, as provided in G.S. 62-2. The cost of  
6 regulating public utilities is a burden incident to the privilege  
7 of operating as a public utility. Therefore, for the purpose of  
8 defraying the cost of regulating public utilities, every public  
9 utility subject to the jurisdiction of the Commission shall pay a  
10 quarterly regulatory fee, in addition to all other fees and  
11 taxes, as provided in this section. The fees collected shall be  
12 used only to pay the expenses of the Commission and the Public  
13 Staff in regulating public utilities in the interest of the  
14 public. It is also the policy of the State to provide limited  
15 oversight of certain electric membership corporations as provided  
16 in G.S. 62-53.

17 (b) Public Utility Rate. --

18 (1) For the 1989-90 fiscal year, the regulatory fee  
19 shall be the greater of (i) twelve hundredths  
20 percent (0.12%) of each public utility's North  
21 Carolina jurisdictional revenues for each quarter  
22 or (ii) six dollars and twenty-five cents (\$6.25)  
23 each quarter.

24 (2) For fiscal years beginning on or after July 1,  
25 1990, the regulatory fee shall be the greater of  
26 (i) a percentage rate, established by the General  
27 Assembly, of each public utility's North Carolina  
28 jurisdictional revenues for each quarter or (ii)  
29 six dollars and twenty-five cents (\$6.25) each  
30 quarter.

31 When the Commission prepares its budget request  
32 for the upcoming fiscal year, the Commission shall  
33 propose a percentage rate of the regulatory fee.  
34 For fiscal years beginning in an odd-numbered year,  
35 that proposed rate shall be included in the budget  
36 message the Governor submits to the General  
37 Assembly pursuant to G.S. 143-11. For fiscal years  
38 beginning in an even-numbered year, that proposed  
39 rate shall be included in a special budget message  
40 the Governor shall submit to the General Assembly.  
41 The General Assembly shall set the percentage rate  
42 of the regulatory fee by law.

43 The percentage rate may not exceed the amount  
44 necessary to generate funds sufficient to defray

1 the estimated cost of the operations of the  
2 Commission and the Public Staff for the upcoming  
3 fiscal year, including a reasonable margin for a  
4 reserve fund. The amount of the reserve may not  
5 exceed the estimated cost of operating the  
6 Commission and the Public Staff for the upcoming  
7 fiscal year. In calculating the amount of the  
8 reserve, the General Assembly shall consider all  
9 relevant factors that may affect the cost of  
10 operating the Commission or the Public Staff or a  
11 possible unanticipated increase or decrease in  
12 North Carolina jurisdictional revenues.

13 (3) If the Commission, the Public Staff, or both  
14 experience a revenue shortfall, the Commission  
15 shall implement a temporary regulatory fee  
16 surcharge to avert the deficiency that would  
17 otherwise occur. In no event may the total  
18 percentage rate of the regulatory fee plus any  
19 surcharge established by the Commission exceed  
20 twenty-five hundredths percent (0.25%).

21 (4) As used in this section, the term "North Carolina  
22 jurisdictional revenues" means all revenues derived  
23 or realized from intrastate tariffs, rates, and  
24 charges approved or allowed by the Commission or  
25 collected pursuant to Commission order or rule, but  
26 not including tap-on fees or any other form of  
27 contributions in aid of construction.

28 (b1) Electric Membership Corporation Rate.-- For the purpose  
29 of providing the oversight authorized by G.S. 62-53 and G.S. 117-  
30 18.1, beginning with the 1999-2000 fiscal year the North Carolina  
31 Electric Membership Corporation shall pay an annual flat fee to  
32 the fund established in subsection (d) of this section. The  
33 amount of the annual fee shall be as established by the General  
34 Assembly by law.

35 When the Commission prepares its budget request for the  
36 upcoming fiscal year, the Commission shall propose the amount of  
37 the regulatory fee. For fiscal years beginning in an odd-  
38 numbered year, the proposed amount shall be included in the  
39 budget message the Governor submits to the General Assembly  
40 pursuant to G.S. 143-11. For fiscal years beginning in an even-  
41 numbered year, the proposed amount shall be included in a special  
42 budget message the Governor shall submit to the General Assembly.

43 The amount of the fee proposed by the Commission may not exceed  
44 the amount necessary to defray the estimated cost of the



1 operations of the Commission and the Public Staff for the  
2 regulation of the electric membership corporations in the  
3 upcoming fiscal year, including a reasonable margin for a reserve  
4 fund. The amount of the reserve may not exceed the estimated  
5 cost of the Commission and the Public Staff for the regulation of  
6 the electric membership corporations for the upcoming fiscal  
7 year. The fee will be assessed on a quarterly basis and will be  
8 due and payable to the Commission on or before the 15th day of  
9 the second month following the end of each quarter.

10 (c) When Due. -- The regulatory fee imposed under this ~~section~~  
11 section, except the fee imposed by subsection (b1) of this  
12 section, is due and payable to the Commission on or before the  
13 15th day of the second month following the end of each quarter.  
14 Every public utility subject to the regulatory fee shall, on or  
15 before the date the fee is due for each quarter, prepare and  
16 render a report on a form prescribed by the Commission. The  
17 report shall state the public utility's total North Carolina  
18 jurisdictional revenues for the preceding quarter and shall be  
19 accompanied by any supporting documentation that the Commission  
20 may by rule require. Receipts shall be reported on an accrual  
21 basis.

22 If a public utility's report for the first quarter of any  
23 fiscal year shows that application of the percentage rate would  
24 yield a quarterly fee of twenty-five dollars (\$25.00) or less,  
25 the public utility shall pay an estimated fee for the entire  
26 fiscal year in the amount of twenty-five dollars (\$25.00). If,  
27 after payment of the estimated fee, the public utility's  
28 subsequent returns show that application of the percentage rate  
29 would yield quarterly fees that total more than twenty-five  
30 dollars (\$25.00) for the entire fiscal year, the public utility  
31 shall pay the cumulative amount of the fee resulting from  
32 application of the percentage rate, to the extent it exceeds the  
33 amount of fees, other than any surcharge, previously paid.

34 (d) Use of Proceeds. -- A special fund in the office of State  
35 Treasurer, the Utilities Commission and Public Staff Fund, is  
36 created. The fees collected pursuant to this section and all  
37 other funds received by the Commission or the Public Staff,  
38 except for the clear proceeds of civil penalties collected  
39 pursuant to G.S. 62-50(d) and the clear proceeds of funds  
40 forfeited pursuant to G.S. 62-310(a), shall be deposited in the  
41 Utilities Commission and Public Staff Fund. The Fund shall be  
42 placed in an interest bearing account and any interest or other  
43 income derived from the Fund shall be credited to the Fund.

1 Moneys in the Fund shall only be spent pursuant to appropriation  
2 by the General Assembly.

3 The Utilities Commission and Public Staff Fund shall be subject  
4 to the provisions of the Executive Budget Act except that no  
5 unexpended surplus of the Fund shall revert to the General Fund.  
6 All funds credited to the Utilities Commission and Public Staff  
7 Fund shall be used only to pay the expenses of the Commission and  
8 the Public Staff in regulating public utilities in the interest  
9 of the public as provided by this ~~Chapter~~ Chapter, and in  
10 regulating electric membership corporations as provided in G.S.  
11 117-18.1.

12 The clear proceeds of civil penalties collected pursuant to  
13 G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant  
14 to G.S. 62-310(a) shall be remitted to the Civil Penalty and  
15 Forfeiture Fund in accordance with G.S. 115C-457.2."

16 Section 6. G.S. 62-300 is amended by adding a new  
17 subsection to read:

18 "(e) The provisions of this section shall apply with respect  
19 to the regulation of electric membership corporations as provided  
20 in G.S. 117-18.1."

21 Section 7. Four years after this act becomes law, the  
22 Utilities Commission shall report to the Joint Legislative  
23 Utility Review Committee on activities the Commission has  
24 conducted pursuant to the provisions of this act. The report  
25 shall contain the Utilities Commission's recommendations, if any,  
26 with regard to any action to be taken by the General Assembly.

27 Section 8. This act is effective when it becomes law.

Perri Morgan

**HB 476 EMC Subsidiaries Bill**  
**Statement before Senate Commerce Committee**  
**May 25, 1999**

Thank you Sen. Soles and members of the Committee. I am Perri Morgan and I represent the National Federation of Independent Business, the largest small business advocacy organization in this state.

I wrote to each of you last week with some detailed information about the bill, and I'm hoping that you took the time to review this information. This bill will allow the EMC's to use their advantages as non-profit, tax subsidized monopolies to set up for-profit businesses that will be able to use these advantages to compete unfairly with the private sector.

The 15,000 small business members of NFIB believe this legislation is anti free-enterprise and should be defeated, or at the very least, given a proper study. This bill represents an enormous change in the public policy of North Carolina regarding tax-subsidized non-profits and fair competition, and will have far reaching repercussions. This is a fact that has gone widely unrecognized.

We understand the tremendous pressure you have been under by the proponents of this bill. I'd ask you to remember that they represent the management and Boards of Directors of the EMC's, and they are compensated for their support activities here in the legislature. Unlike NFIB, EMC members are *captive* members – they have no choice in the matter. They become members simply by purchasing their electricity from the EMC. In fact, most EMC members are completely unaware of this legislation, or what it might do to them. They are not being told the whole story. And these proponents have engaged in a well-financed misinformation campaign that has confused the issue before you, as well. NFIB believes it is critical for you to conduct a complete examination of this important issue and be armed with the facts before you cast your votes.

The EMC's have told you that they want the right to compete on an even playing field with private enterprise, just like the big, investor owned utilities. This is completely untrue. They don't want to give up their not-for-profit status, pay back the federal government, and be regulated by the Utilities Commission like the other major utilities. In fact, when asked during the House committee debate if they would have a problem with restructuring to become like the other major utilities, the EMC's replied that they felt that this would put them "at a competitive disadvantage." And they don't want to be denied the special advantages of their tax-exempt, monopoly status to compete equally with private enterprise. As late as last week, the EMC's told the Associated Press that they have been "looking at ways to make sure the EMC doesn't have any advantage over other businesses." Yet they have strenuously fought the provisions prohibiting the use of the parent company equipment, property, and personnel that were placed into the bill by Rep. Culpepper in the House, and those provisions have been watered down significantly in the bill you have before you today. Once again, the EMC's will be able to share personnel, equipment, and property with the parent EMC's, while small businesses have to purchase the whole truck and pay their personnel for 40 hours of work per week, whether they need them or not, and so forth. This is not what the House intended, but we can understand why the EMC's worked so hard to get these changes back in the Senate – it's very hard to make a profit when you are competing on the same level as private enterprise, which doesn't enjoy these advantages. So what the EMC's actually want from you is a special status that would be distinct only to them – different from the public utilities and different from private enterprise.

We see many questions that need to be answered before a thoughtful vote can be taken on this legislation. For example, what is the problem that the EMC's are trying to solve? First, they said that

this was an economic development issue -- that they wanted to provide essential services to areas where these services are unavailable now. We have no problem with that at all (and would not oppose such legislation), but when legislators tried to limit the bill to these services in the House, the EMC's balked, and the bill remains virtually wide-open. We can understand this too – it's also hard to make money in the rural areas of the state. So the EMC's don't want to set up there – they want to establish subsidiary businesses of many different types in the cities and towns across North Carolina where they *can* make money – and where these services are not needed, since they are already readily available from the private sector. Next, the EMC's said that they wanted to set themselves up to be insulated if deregulation occurs, but the services provided by the EMC's are *not* the ones under discussion for deregulation. In fact, the distribution lines, which make up the bread-and-butter of the EMC's income, will, in all likelihood, *not* be deregulated at all. The EMC's do own portions of a couple of small generation plants which may be deregulated, and for which they are carrying a debt (or “stranded costs”) of at least \$100 million (we've been unable to ascertain the exact amount). Shouldn't they be concerned with paying down this debt before they set themselves up in other businesses? Like Electricities, will the taxpayers of North Carolina be stuck with paying off the debt of the EMC's? Shouldn't this be explored at least to the extent that the Electricities debt is being explored? And if this *is* a deregulation issue, why can't it be explored at the same level that the rest of the deregulation issue is being explored? Finally, the EMC's said they wanted to lower their customers' electric rates. But who will bear the burden if these subsidiaries *lose* money? Why aren't they returning some of their assets to their customers in the form of lower rates *now*? Clearly, there is no demonstrated need for this far-reaching legislation, and the EMC's inability to show the need should be of concern to you.

Another question concerns the limitation of 10% of the EMC assets for the subsidiary company. Small businesses are put out of business by lawsuits every day, and the EMC's will not be exempt from litigation. If a catastrophic award occurs which exceeds 10%, who will pay for the excess? The bill prohibits the use of their RUS loans, so will the members and ratepayers again be liable? Will the taxpayers?

The bill *appears* to limit the areas in which the EMC's can set up subsidiaries, but are you aware that under the EMC's own definition of “energy services”, they will be allowed to set up electrical contracting companies, HVAC companies, and virtually any other kind of business that involves anything that uses wiring or plugs in or uses energy of *any* sort? This includes retail ventures which involve the sale of appliances, lawnmowers, electronics, and so forth. The possibilities are limitless for them to compete on an unlevel playing field with your friends and constituents.

And why are special provisions made for propane dealers that are not offered to other small businesses?

It disturbs me to hear some legislators focus on all the good the EMC's have done in the past, as if this is a reason for allowing them to engage in unfair competition today. It is true that the EMC's were chartered by the federal government in the 1930's for the distinct purpose of providing power to rural customers. They have served this purpose well, and they should continue to do so. But I don't believe that the federal government ever intended for the EMC's to use their special powers to compete unfairly with the private sector – those people who built America. When they first began branching out into other areas in the 1980's, the attorney general ruled in 1988 that the EMC's were prohibited from engaging in activities for which they were not chartered. This did not stop the EMC's. They continued to encroach into other enterprises anyway, until several propane gas companies decided to challenge them in court last year. And once again in 1998, the attorney general ruled against the EMC's. So while the EMC's have done a tremendous job in the area for which they were formed, they have continued to flaunt the rules of the state to get into other areas, even telling us that the attorneys general rulings

<quote> “are only the opinion of some deputy AG”. With two unfavorable attorneys general rulings behind them and a pending lawsuit, they have come to you to bail them out. Will they exhibit the same level of respect for your decision as they’ve shown toward the AG?

The EMC’s have asked you to consider the contributions they’ve made to their communities. That is commendable, but again, is this a sound reason for changing the public policy of this state? They’ve also gone to great pains to point out to you the amount of other taxes they have paid to the state of North Carolina, in spite of their tax exempt status. But you must put this into perspective: 99% of the businesses in North Carolina are small businesses which are not tax exempt. What the EMC’s have paid in taxes is peanuts compared to what small businesses have paid. And small businesses are big contributors to the community as well – they just don’t have the avenues that are available to the EMC’s to publicize the many good works that they do. So we don’t believe that the EMC’s should be unjustly enriched just because of their good works, any more than we expect to be unjustly enriched ourselves.

As for the argument that the EMC’s are doing it in other states, are you fully aware of all the limitations that have been placed on EMC activities in those states? Does it automatically follow that what is good for another state is good for North Carolina? The EMC’s have argued that out-of-state EMC’s could come into North Carolina and set up subsidiary businesses, but I believe that there are enough lawmakers in this room today to develop a bill to prohibit that.

I am given to understand that you are being discouraged from studying this issue further, in spite of its complexity. Apparently the EMC’s consider a study to be a defeat. Yet it seems to us that the only way that the EMC’s could possibly be defeated by a study is if they know that their proposal could not withstand your scrutiny. Certainly, we have nothing to fear and would welcome your complete understanding of this bill. *Why don’t they want you to understand it?* Even the Blue Cross Conversion, which has many similarities to this issue, generated greater study than this bill is getting, and the Blue Cross conversion represented a much lesser change to the public policy of North Carolina.

Once again, there is no demonstrated need NOT to study this bill – except to assist the EMC’s in their pending lawsuit. But the legislature has not traditionally intervened in pending lawsuits, so why should this be an exception?

In summary, small businesses of under 100 employees comprise 99% of the employers in North Carolina. NFIB strongly opposes HB 476, and we feel that at the very least, a study committee should be appointed to carefully consider the grave impact the legislation could have on the future of small businesses across the state. As the leading economic force in North Carolina, small business deserves at least that much. Are you certain enough about what the far-reaching effects of this bill will be five years, ten years down the road, to both the small business community and to the rate-payers of the EMC’s -- to vote *for* this legislation? I am asking you to do what’s right for the future of North Carolina. Unless you fully understand and agree with every aspect of this bill, you should either vote it down or vote to study it, and I am asking you to do so. If it is worthwhile legislation, the EMC’s should have nothing to fear.

Thank you for your time. I’ll be happy to answer any questions.

# North Carolina Association of Electrical Contractors, Inc.



3707 Alliance Drive  
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Independent Electrical  
Contractors, Inc.

## POSITION STATEMENT ON HOUSE BILL 476 (EMC SUBSIDIARIES) May 6, 1999

The North Carolina Association of Electrical Contractors (NCAEC) represents electrical contractors throughout North Carolina. Most of our members are small businesses who are not able to attend legislative committee meetings, but they are hard at work competing with the other 14,482 electrical contractors licensed in North Carolina. These contractors are not large corporations that can use publicly regulated funds to pay lobbyists or salaried employees to represent them in the legislature.

**NCAEC is opposed to House Bill 476, "EMC Subsidiaries" for a number of reasons.**

1. EMC's were formed as not-for-profit corporations. According to GS117-10, they were formed "for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural sections of the state". And further, in GS117-16 their corporate purpose is stated that EMC's "shall be to render service to its members only". Therefore, we believe that the proposal to new subdivision 14 is contrary to the original intent of the legislation to form EMC's.
2. The members of the EMC's are already afforded the right to form for-profit corporations for other corporate purposes not set forth in GS117. Why do they need this legislation unless they believe that there will be some specific advantage to their subsidiaries being affiliated with the publicly regulated EMC?
3. By their very nature, the fixed overhead costs of office buildings, office equipment, office staff, office professional staff, bucket trucks, line trucks, and other capital equipment has been paid for with regulated funds and public funds by virtue of grants and tax advantages. Therefore, these assets, subsidized by public funds, should not be used to compete in the private sector. In many cases, the reasons the utilities were not able to serve some of the rural areas was because these fixed overhead costs could not be justified by being spread among a small amount of customers, even though they are very necessary costs to do the work the EMC's perform. Many times this overhead is not being used at capacity, thus necessitating the subsidies, but again, that overhead should not be used to compete with private enterprises not subsidized by public funds.
4. Specifically, in our industry small contractors in the areas served by the EMC's may have a bucket truck or trencher that cost tens of thousands of dollars in capital investment. It would be very difficult for them to compete with an EMC offering to do similar work who has the same (or often superior) equipment and whose capital investment has been paid for by the public. Even though the subsidiary may pay the EMC the variable cost for use of the equipment, the subsidiary will still have a distinct advantage over the private contractor. If the contractor can't keep his equipment busy earning enough money to pay for itself, then he either has a drain on his operating capital or he may be required to sell the equipment and be forced out of the market in which he used the equipment. If the subsidiary of the EMC does not efficiently utilize the equipment owned by the EMC it won't matter because the EMC will still need to have that equipment in order to serve the customers.

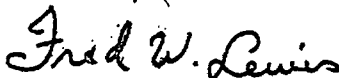
NCAEC POSITION STATEMENT ON HOUSE BILL 476 (EMC SUBSIDIARIES)

May 6, 1999

Page 2

5. EMC's have an unfair advantage in that they have a captive market for the one product that they sell. If they are allowed to engage in other businesses, they can simply market those other businesses in the billing envelopes sent out each month. In fact, the ratepayers and public will be funding the mailing for the marketing of their other businesses.
6. There is a tremendous potential for conflict of interest. If the EMC were also to own an electrical contracting company, they might employ either a) an engineer who does design work for the electrical contractor one day a week and design work for the EMC four days a week, or, b) a technician who works for the EMC on an as needed basis and the electrical contracting subsidiary on an as needed basis. He/she might go to a service call at a customer's residence as a technician for the EMC and determine that the problem is not on the utility side of the meter but is instead on the customer side of the meter. Will he be able to simply "change hats" and go to work on the unregulated side of the business as an electrician after already being paid to get there as a worker for the EMC?
7. The CEO salaries for EMC's would quite likely need to go up. These individuals would need to be able to run not only an EMC but also several other businesses. They would have to be capable of running a conglomerate rather than a narrowly focused organization. The extra cost of the CEO would naturally be born by the ratepayers.
8. If the EMC's have venture capital or other extra funds to invest in other businesses, should they not be lowering their rates to their customers? If they were originally set up as a not-for-profit organization, why should they be allowed "to form organize, or operate... business entities engaged in any lawful activities..."?
9. We have heard the argument that North Carolina's large utilities are already doing some of this, so why can't the EMC's? Our answer to that argument is that "two wrongs don't make a right." We believe that since regulated utilities have not been unbundled, they are already using capital equipment, personnel, and marketing paid for by publicly regulated ratepayer funds to unfairly compete with private businesses. Therefore, we believe that this bill should be defeated or postponed until the utility deregulation issues have all been resolved.
10. Due to excessive overhead capacity of EMC's, should they be able to start an internet service subsidiary, cable TV subsidiary, an engineering group, a tax preparation group, a bookkeeping group, an electrical contracting business, a plumbing business, a real estate development company or any other type of business?
11. There may be specific needs that the EMC's are uniquely qualified to fill in the rural areas of North Carolina that fall outside of the parameters of GS 117. They have proven themselves up to the task assigned by the statute. If they are to venture into other appropriate businesses, there needs to be specific legislation passed to authorize specific subsidiaries. However, we do not think that a corporation begun to electrify rural North Carolina should be allowed to participate in any business entity engaged in any lawful activities.

Respectfully submitted,



Fred W. Lewis  
NCAEC Legislative Chair

# North Carolina Association of Electrical Contractors, Inc.



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(336) 854-8354  
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May 6, 1999



Independent Electrical  
Contractors, Inc.

Members of the Senate Commerce Committee, my name is Dave Denson and I am an electrical contractor from Wilmington representing the North Carolina Association of Electrical Contractors. I am strongly opposed to HB476, "EMC Subsidiaries."

EMC's were formed as not-for-profit corporations. According to the General Statutes, they were formed "for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural areas of the state," and I feel that they are doing a credible job of rendering service to their members.

Amending G.S. 117-18 to allow EMC's, who are regulated monopolies, to form and operate subsidiary organizations to compete in the free market against the private sector, without rules and guidelines, would border on unfair business practice.

Most of our members are small businesses who are in daily competition with the 14,000 plus licensed electrical contractors in this state. We compete by the same rules, which makes for a level playing field. If we are to compete against EMC subsidiaries, rules and guidelines must be implemented to prevent cross subsidizing of capital, property, equipment, or personnel. Remember all assets of the EMC's have been procured with regulated ratepayers and tax dollars.

Let me give you some examples of what I consider unfair competition:

1. *Capital*—I have stated that most of us are small businesses and cannot come close to the capital that the EMC's have amassed over the years. This money should not be used to finance their subsidiaries.
2. *Marketing*—EMC's could send out flyers in their monthly billings promoting their subsidiaries at rate payers' expense.
3. *Referrals*—EMC's could trouble-shoot problems, find that the problem is on the customer's side of the meter, and recommend their subsidiary be called.
4. *Purchasing Power*—If I, as an individual contractor, purchase fifty area lights, and the EMC's purchase thousands of area lights, the EMC's will get a much better price per light. They should not be allowed to pass these savings to their subsidiary to compete against me.
5. *Equipment*—If I need a bucket-truck, line truck, backhoe, etc., I have to pay thousands of dollars for this equipment and utilize it as much as possible. When it is not being utilized, my payments are still due every month. EMC's have this equipment, which was purchased with regulated dollars, on hand. The EMC subsidiary will be able to use this equipment at a token rental. I wonder if the EMC would rent to me at the same price that they charge their subsidiary.



6. *Personnel*—I have on staff estimators, purchasing agents, clerical workers, and superintendents, which constitute a large portion of my fixed overhead costs. Just like equipment payments, these people receive a paycheck every week whether they are utilized 100% or not. These costs are factored into my bids. If the EMC subsidiary could borrow personnel from the EMC on an “as-needed” basis for short periods of time, it could greatly reduce their fixed overhead costs. This reduction would be factored into their bids resulting in a much lower price than mine.

Hopefully you can see by these examples that allowing an EMC to operate any organization, business, or company in the free market without implementing rules and guidelines for its operations, would clearly give their subsidiaries an unfair advantage.

Thank you for your consideration on this matter.

DAVE DAWSON

# North Carolina Association of Electrical Contractors, Inc.



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Independent Electrical  
Contractors, Inc.

## HELP PREVENT UNFAIR COMPETITION BY UTILITIES

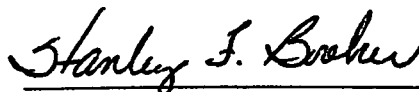
The North Carolina Association of Electrical Contractors believes that Federal and State legislation should insure that rate payers are protected and that competition in the contracting market must be fair and open with no hidden rate payer subsidies. Utilities should be banned from cross subsidizing their presence in the Electrical and HVAC industry because it is unfair to rate payers.

The United States Small Business Administration agrees that utilities often cross subsidize their unregulated businesses with rate payer money. Utilities that compete unfairly often use the following tactics (among others):

1. Provide subsidiaries with unregulated businesses, loans, and loan guarantees, thereby sharing the utilities' excellent credit rating.
2. Subsidize everything from office space and equipment to lawyers and accountants.
3. Allow subsidiaries to use utility logos and brand names, as well as providing access to their customer database.
4. Refer information on rate payer needs and requests to their subsidiaries.
5. Pass along reduced prices from equipment manufacturers.
6. Provide low cost, easy to obtain customer financing.
7. Provide installations with no upfront investment allowing the rate payer modified monthly utility charges.

Some stipulation that should be required of utility companies would be as follows:

1. The affiliate and the utility shall operate from physically separate locations.
2. The affiliate must maintain inventory and equipment separately from the utility parent's inventory, vehicles, and equipment.
3. The utility may submit a proposal on utility sponsored or state or federally mandated DSM or energy conservation programs; but will receive no preferential treatment evaluation and contracting terms as a non-affiliated bidder. The utility shall not purchase from the affiliate or provide the affiliate with any non tariff services.
4. The affiliate must provide all installations in total compliance with the NEC, SMACNA, and ASHRAE standards.

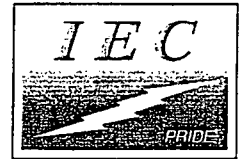
  
Stanley F. Booker, President-Elect

Dated: May 6, 1999

# North Carolina Association of Electrical Contractors, Inc.



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Greensboro, NC 27407-2715  
(336) 854-8354  
fax (336) 854-7148



Independent Electrical  
Contractors, Inc.

May 6, 1999

TO: NC Senate Commerce Committee Members

## **Response to EMC Subsidiaries NC House Bill 476:**

Amending G.S. 117-18 to allow Electric Membership Corporations to form and operate subsidiary organizations (companies) would allow a regulated monopoly to compete in a free market, giving an unfair advantage to the EMC's. As of this date the EMC's, along with other electric utilities, operate within a regulated market, which offers them certain privileges and benefits. One of which is a return on investment.

**I ask each of you: Where will the operating capital, equipment, and management for the EMC's subsidiary organization come from?** The only logical place is from the EMC itself. This capital and equipment was acquired with regulated ratepayer and tax dollars. I wish I could have this luxury in operating my business. Even if there will be no transfer of regulated acquired equipment, the EMC subsidiary will be able to use the equipment at a token rental price. Who is going to establish the rental rate of the equipment that was purchased with regulated money? Will other private, free market contractors be able to rent the EMC's equipment at the same rate as the EMC's subsidiary? Are other private, free market entities going to be allowed to use the same purchasing power the EMC's have?

**Allowing an EMC to operate any organization, business or company in the free market will lean heavily toward the side of unfair business practices.**

**If it is not possible for you to vote no on House Bill 476, please hear our concerns and postpone action until the Study Commission on the Future of Electric Service in North Carolina has completed their work and made recommendations.**

Thank you for your consideration.

Respectfully submitted,

Julian R. Burns, Vice President  
North Carolina Association of Electrical Contractors

# North Carolina Association of Electrical Contractors, Inc.



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Independent Electrical  
Contractors, Inc.

TO: Senate Commerce Committee Members  
DATE: May 6, 1999

My name is Jimmy Evans. I represent the North Carolina Association of Electrical Contractors.

I own and operate a family-owned, electrical contracting business in Brunswick County. I am an EMC member. An EMC provides electricity to my business and my home. The majority of my employees are also EMC members.

My business began as a "one man, one truck" operation on borrowed money. Today, it is a 12-person operation with 15 service vehicles, which include a bucket truck, a line truck, and a trencher. The "American Dream" would not have been possible if we had been forced to compete with the regulated monopolies or their subsidiaries as House Bill 476 would allow.

The EMC's were created as "not for profit" corporations with taxpayer money for the purpose of rural electrification. The EMC's have done a commendable job. And yes, the EMC's have put a lot of money back into the community—money that came from the EMC consumers and indirectly from taxpayers everywhere.

Earlier this year, the EMC's in our area began to refund capital credits—"profits accrued through monthly payments after operating costs and expenses of the cooperative have been covered"—to their members. Members were not allowed to use these funds to pay outstanding bills, nor were we allowed to spend our "money" to purchase groceries. We were not allowed to purchase a gas appliance. Members were allowed to use these capital credits toward purchase of electrical appliances. This ensured the purchase of electricity from the EMC.

In 1988, we saw the EMC's aggressively trying to move into other businesses. We have been successful, to a point, in slowing this progression. However, with their concern about deregulation, their fear of competition, and because they are now making a profit, the EMC's want to embark into other business ventures on a much larger scale.

It seems to me that the EMC's profits would be better used by lowering the consumer electric rates and improving their services rather than toward expansion into business ventures that will threaten the businesses of North Carolina.

House Bill 476 should scare every business and anyone considering starting a business in North Carolina. It definitely scares me!

I urge you to vote "No" on House Bill 476.

Thank you,

Jimmy Evans  
NCAEC Past President

# North Carolina Association of Electrical Contractors, Inc.



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fax (336) 854-7148



Independent Electrical  
Contractors, Inc.

## POSITION STATEMENT FOR HB 476, "EMC SUBSIDIARIES" May 6, 1999

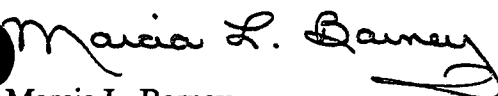
The Study Commission on the Future of Electric Service in North Carolina was established in April 1997 by ratification of Senate Bill 38 (S.L. 1997-40). This commission was charged with recommending a smooth regulatory transition from the highly regulated, monopoly electric utility industry to a free market system in which customers can buy power from one of many suppliers. The review and evaluation of this commission has not been completed and no recommendations have been made. Two bills regarding this commission are in committee in this session of the General Assembly: House Bill 777, to provide for reimbursement of additional expenses of the Commission on the Future of Electric Service in North Carolina from the Utilities Commission and Public Staff Fund, and House Bill 778, to add four members to the Study Commission on the Future of Electric Service in North Carolina.

NCAEC has requested that the Commission consider the impact of unfair competition on small businesses, in our instance the independent electrical contractors. If regulated monopolies are allowed to use their rate base to subsidize their ventures, the small and medium sized electrical contractors will be put out of business.

House Bill 476, "EMC Subsidiaries" would give electric membership corporations the power to form, operate and own any type of business as long as no public money is used to create or support the new venture.

We realize that the power companies and electric membership corporations cannot be told they can not form and operate subsidiary companies. Our concern is that this current legislation would give the EMC's, as a regulated monopoly, an unfair advantage since no recommendations have been made from the Study Commission on the Future of Electric Service in North Carolina to **ensure that ratepayer and tax dollars will be not be used for operating capital, management and equipment for the subsidiary organizations.** And, if the subsidiary company, as a private enterprise, leases or rents equipment or materials from a regulated monopoly, other private enterprises (other electrical contractors) should be able to lease or rent equipment or materials from the EMC (and power companies) at the same rate and under the same terms.

**We therefore, respectfully request that HB 476, "EMC Subsidiaries" be tabled and not considered until the Study Commission on the Future of Electric Service in NC presents its evaluations and recommendations.**

  
Marcia L. Barney  
Executive Director



Rob Wilson Electric  
9361 US 401 North  
Fuquay-Varina, NC 27526

*"We Sell Quality"*

DATE: April 22, 1999  
TO: N.C. House Public Utilities Committee  
FROM: Robert M. Wilson, Jr., President  
Rob Wilson Electric  
SUBJECT: Comments on N.C. House Bill 476

Dear Committee Members:

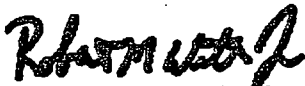
My company is a small electrical contracting firm located in Southern Wake County. We have been in business for 10 years and currently have 25 employees.

I personally view House Bill 476 as a direct threat to my company. We have worked hard to provide a stable, safe working environment with good pay and excellent benefits for our employees.

I believe it is inherently unfair to expect the private contracting sector to compete with subsidized EMC's and utilities. EMC's and utilities have accumulated equipment, material purchasing power, and highly trained personnel at the expense of the taxpayers. It would be highly unfair for them to be able to have access to the same market that we service. We must use local banks, lines of credit and personal guarantees to secure financing to operate our business. We do not have a wealthy "sugar daddy" to fall back on.

This bill basically undermines any concept of free enterprise and I urge all committee members to vote "No" on House Bill 476.

Sincerely,

  
Robert M. Wilson, Jr., President  
RWE, Inc.

RMW:lec

VISITOR REGISTRATION SHEET

①

COMMERCE

5-25-99

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Paul J. Ferguson	Carolin Hoely Assn.
Elaina L. Blanks	Intern - Institute of Government
Michael Lieberman	Intern - Institute of Government
Sam Watson	NC Util's Comm
Sam Kirby	NCUC
Gisele Rankin	Public Staff - NCUC
Wayne Wilkins	Energy United EMU
Jim Collier	NC Propane Gas Assn.
Bred Bobbitt	NC Propane Gas Assoc
Ed Congleton	NCPGA
Paul Williamson	NCPGA
Robby Smith	Smith, Ross & Co
Brian D. Campbell	NCPGA
Michael Lewis	NCPGA
Laph Webb	NCPGA

VISITOR REGISTRATION SHEET

②

Commerce

Name of Committee

5/25/99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kemp C. Johnson	NCPGA
DENYSE BYNUM	NCPGA
David Fletcher	NCPGA
Jim Kowalski	TMC
Jenny Patus	JPASSOCI.
DAN ALLEN	Four County EMC
GARY JOHNSON	Four County EMC
KEVIN EVERETT	FCEMC
Billy McGavock	Four County EMC
David Williams	Wake EMC
Kathy Norris	Four County EMC
LARRY ARNSTADT	HILLIARY EMC
NORMAN SLOAN	HAYWOOD EMC
Ray Stamey	Haywood EMC
Dee Hickman	Four County EMC



VISITOR REGISTRATION SHEET

Senate Commerce Committee 5/25/99  
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Smith	Four County EMC
William Rouse	Four County EMC
Chris Ingram	FOUR COUNTY EMC
Delores Lann	Commerce / Energy
Delle Hodges	NCAEC
Patricia Lagason	NCABCO
C. Eric Wynn	Roanoke E.C.
Peggy Brambley	Roanoke E.C.
Saula Bass	Roanoke E.C.
John	Moore Van Allen, PLLC (NCAEC)
Ann Smith	Lumber River EMC Red Springs
Carolyn Rice	N.C. Electric Membership Corp.
Lyons TEW	South River EMC - Durham
Buddy Capps	" " " "
Jim Kinghorn	Edgecombe-Martin County EMC
John McAlister	Duke Energy

VISITOR REGISTRATION SHEET

Commerce

Name of Committee

5/25/99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Paul Campbell	Campbell Oil Co
Doug Hammond	Frankford EMC
Richard Broadway	Energy United EMC
Kenneth E. Thomas	Haywood EMC
Ed Carter	Energy United EMC
Dalton Black	Union EMC
Elbert Ray Pitt	Edgcombe - Martin EMC
Adam Sloan	ENERGY UNITED EMC
Dennis C. Briley	Edgcombe Martin - EMC
DAVID T. BATHEN	Brunswick EMC
DAVID L. GORB	BRUNSWICK EMC
J. P. ...	MEY
Brenda Dougherty	Sprint
PAUL D ANDREWS	Brunswick EMC
Doris S. Brown	Energy United EMC



VISITOR REGISTRATION SHEET

①

COMMERCE  
Name of Committee

5-25-99  
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Larry Jordan	L. G. Jordan Oil Co., Apex, N.C.
Harold Berry	Hatch Hill # Bunn L.P., Raleigh
Doug Howay	NC Petroleum Marketers Assoc.
Gary Harris	NC Petroleum Marketers Assoc.
Hayden James	McCraiken Enterprises, Inc.
Edward E. Brown Jr.	Four County EMC, Burgaw
Charles W. Terrill	NCEMC
Dennis Patterson	AP
Lori Ann Harris	NCEMC
Robert Schweitzer	NCEMC
PERRI MORGAN	NFIB
Raymond [unclear]	Bove + Assoc. Program
Anna Christina	Atty. Program
R B SLOAN	ENERGYUNITED
Chris Hayslett	Electric Co-op?

VISITOR REGISTRATION SHEET

②

Commerce

5-25-99

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

DAVE ROWE	RANDOLPH EMC
Harold Terry	Randolph EMC
Dale Lambert	Randolph EMC
BOB PHILLIPS	RANDOLPH EMC ASHESBORO, NC
JIM MANGUM	WAKE EMC WAKE FOREST, NC.
DOUG JOHNSON	Blue Ridge EMC Lenoir NC
N. Mark Shuf	Energy United - Statesville, N.C
Tom Woodruff	Energy United Statesville N.C.
RON BROOK	Diamond State Company
Kenneth Israel	Haywood EMC, Waynesville, NC
Neale Slater	Tideland EMC, Pantego NC
Joe Slater	Tideland EMC, Pantego, NC
Steve Morgan	CENTRAL EMC, Sanford, NC
Jeanne Higgins	Central EMC, Sanford, NC
Calvin Duncan	BEML SHALLOTTE, NC

VISITOR REGISTRATION SHEET

③

Senate Commerce Committee  
Name of Committee

May 25, 1999  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Hubert Brittain	BEMC, SHARLOTTE NC
Robert Maxwell	Union EMC
Richard H. ...	Piedmont EMC
R. B. Breckner	" "
Richard Tabasta	" "
Frank Murphy	" "
Stew Sumner	NCPGA
John Leonard	BR 25 Pender
Mike Denning	Dixie-Denning & Sons, Benson, NC
Loyane McEach	McEach's LP Gas, Benson, NC
Harold Van Derwee	VAN DERWEE GAS BIZ INC
Bill James	Pender Gas & Oil Burgaw NC
Andrew ...	WCSR
Jim Speed	Bones & Associates
Jeff VAN DYKE	BELL SOUTH

VISITOR REGISTRATION SHEET

COMMERCE

Name of Committee

5/25/99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ernie Brockley	HEMC
Pam Ballou	"
Tripp Bell	Rader Gas & Oil Co Burgin, N.C.
Leroy Pfluminger	B.J. Williamson Gas
Alicia Garland	Electricities
Butter Brown	Springer Subbank Co
Chlyne	Callers Gas Co, Inc.
Don Wozley	Huntz Oil & Propane, Inc.
HENRY LOMARD	MARK TRANS.
Ben Singleton	Stan Taylor Agency
Cam Over	BPMH L
Will Culpepper	Linwood Mercantile Associates
Eleana F. Slater	Tideband EMC
CH WATTS	NCEMC
Jeff Burdette	NC PGA
Doro Bernette	NC PGA

VISITOR REGISTRATION SHEET

COMMERCE

Name of Committee

5/25/99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Albert Chad Smith	NCPGA
A. Q. Smith, Jr	NCPGA B+R Gas Co. Wil. N.C
Wayl Fusell	NCPGA Smith Bros. Gas Co.
Bryan Fowler	NCPGA B J WILLIAMSON INC
Bonnaine Matt	NCPGA
W. F. Pickett	NCPGA Smith Bros Gas.
Janice DAVIS	Janice DAVIS & Assoc, RAL
Alice E. Wilson	SM & L
DAVID BRILES	BRILES OIL & GAS INC.
Tripp Williamson	NCPGA B. J. WILLIAMSON INC
Marcia L. Boney	North Carolina Association of Electrical Contractors
DAVE DENSON	"CAPE FEAR" Electric Inc.



SENATE COMMERCE COMMITTEE  
11:00 A.M., TUESDAY, JUNE 1, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, June 1, 1999. Sixteen members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles, Chairman, called the meeting to order and the following bills were considered by the Committee:

HB 219, AN ACT TO AMEND CHAPTERS 54B AND 54C OF THE GENERAL STATUTES TO MAKE TECHNICAL CHANGES TO THE LAW GOVERNING STATE-CHARTERED SAVINGS AND LOAN ASSOCIATIONS AND SAVINGS BANKS AND TO INCREASE THE PERMITTED PERCENTAGE OF COMMERCIAL LOANS. Representative Church, the bill sponsor, explained the proposed legislation. He said the bill makes technical changes to the law governing state-chartered savings and loan associations and savings banks, and authorizes the Savings Institutions Administrator to increase the limit of commercial loans which savings banks may hold. (See attached memorandum from Committee Counsel for detailed explanation.) Representative Church said the bill is supported by the North Carolina Bankers' Association and is good for consumers.

Senator Carpenter moved that House Bill 219 be given a favorable report. Motion carried.

HB 414, AN ACT ALLOWING THE NORTH CAROLINA VETERINARY MEDICAL BOARD TO LICENSE VETERINARIANS WHO ARE LICENSED IN OTHER STATES BUT HANE NOT COMPLETED THE CERTIFICATION PROGRAM FOR FOREIGN VETERINARY GRADUATES. Representative Setzer was recognized to explain the bill. He said the legislation amends the Veterinarian Practice Act to allow the Board to consider and approve a licensure application submitted by an individual licensed in another state who graduated from a non-accredited veterinary medical school and who has not completed the ECFVG competency certification program. (See memorandum from Committee Counsel for additional explanation.) Representative Setzer said he introduced the legislation to accommodate a specific individual in his area.

Senator Kerr sent forward an amendment placing a sunset provision in the bill and moved its adoption. (See copy attached.) Motion carried.

Senator Foxx moved that House Bill 414, as amended, be given a favorable report and that it be rolled into a Committee Substitute. Motion carried.

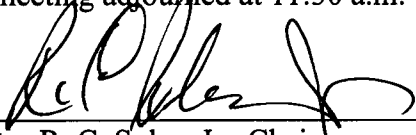
HB 14, AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES. Senator Kerr moved the adoption of a Proposed Committee Substitute for House Bill 14. Motion carried.

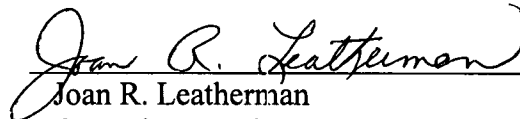
In the absence of the bill sponsor, Representative Allred, Ms Esther Manheimer, Committee Counsel, explained the bill. She said the bill would expand the Cemetery Commissions' powers, and would require that certain disclosures be made in each pre-need and at-need contract. It would also require the Cemetery Commission to keep certain records. (See attached memorandum from Counsel for a bill analysis.)

Mr. Kip Sturges, Attorney General's Office, assisted in answering questions from the Committee. He said the original version of the House Bill was preferable to the one under discussion.

After much discussion by the Committee Senator Kerr moved that the Proposed Committee Substitute for House Bill 14 be postponed indefinitely in the Committee. Motion carried.

The meeting adjourned at 11:30 a.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, JUNE 1,1999  
Room 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**HB 14 – CEMETERY CONSUMER PROTECTION (Rep. Allred)**

**HB 219- SAVINGS INSTITUTION CHANGES (Rep. Church)**

**HB 414- VETERINARIAN RECIPROCITY (Rep. Setzer)**

**ADJOURNMENT**

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair**

Tuesday, June 01, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

**FAVORABLE**

H.B. 219	Savings Institution Changes/AB.	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 1

Committee Clerk Comment:

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair**

Wednesday, June 02, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

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

H.B.	<b>414</b>	Veterinarian Reciprocity.	
		Draft Number:	PCS1278
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 219

Short Title: Savings Institution Changes/AB.

(Public)

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Sponsors: Representatives Church, Ramsey (Primary Sponsors); and Buchanan.

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Referred to: Financial Institutions.

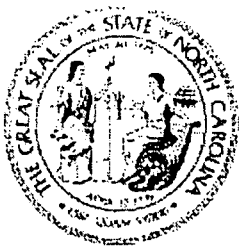
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March 3, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CHAPTERS 54B AND 54C OF THE GENERAL  
3 STATUTES TO MAKE TECHNICAL CHANGES TO THE LAW GOVERNING  
4 STATE-CHARTERED SAVINGS AND LOAN ASSOCIATIONS AND  
5 SAVINGS BANKS AND TO INCREASE THE PERMITTED PERCENTAGE OF  
6 COMMERCIAL LOANS.  
7 The General Assembly of North Carolina enacts:  
8 Section 1. G.S. 54B-152(a) reads as rewritten:  
9 "(a) Real property is deemed ~~encumbered~~ unencumbered within the meaning of  
10 this Chapter unless the security instrument thereon establishes a first lien upon such  
11 real property or interest therein."  
12 Section 2. G.S. 54C-18 is repealed.  
13 Section 3. G.S. 54C-143 reads as rewritten:  
14 "**§ 54C-143. Commercial lending.**  
15 ~~Subject to any rules that the Administrator deems appropriate, a savings bank may~~  
16 ~~lend and invest no more than fifteen percent (15%) of its total assets in commercial~~  
17 ~~loans. A commercial loan is for business, commercial, corporate, and agricultural~~  
18 ~~purposes.~~  
19 A savings bank may lend and invest in commercial loans in an aggregate amount  
20 that either (i) does not exceed fifteen percent (15%) of its total assets; or (ii) equals a  
21 percentage of its total assets greater than fifteen percent (15%), if approved by the  
22 Administrator upon written request of the savings bank. In considering a request for  
23 an increased limit, the Administrator shall take into consideration the commercial  
24 lending expertise of the management and the overall risk profile of the savings bank

1 making the request. For the purposes of this section, 'commercial loan' means a loan  
2 for business, commercial, corporate, or agricultural purposes."

3           Section 4. This act is effective when it becomes law.



# HOUSE BILL 219: Savings Institutions Changes

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** June 1, 1999  
**Version:** 1st Edition

**Introduced by:** Reps. Church and Ramsey  
**Summary by:** O. Walker Reagan,  
Committee Co-Counsel

**SUMMARY:** *House Bill 219 makes technical changes to the law governing state-chartered savings and loan associations and savings banks, and authorizes the Savings Institutions Administrator to increase the limit of commercial loans which savings banks may hold.*

### BILL ANALYSIS:

Section 1 of the bill corrects an error in the definition of encumbered property in the Savings and Loan chapter. This definition is relevant in determining what types of loans savings and loan associations are authorized to make. The correction changes the word "encumbered" to "unencumbered".

Section 2 repeals an existing provision relating to a state savings bank's status as an IRS qualified thrift institution. (See copy of G.S. 54C-18 attached). Prior to 1996, there was a federal income tax benefit associated with being a qualified thrift institution. Institutions, which obtained this status, were permitted to choose one of two alternative methods of computing deductions for bad debt. Federal law has been changed and there is now only one method permitted, which does not require the qualified trust status. This section no longer has any effect on savings banks in this State.

Section 3 makes a substantive change to the savings bank law. This section authorizes the Savings Institutions Administrator to increase the limit for commercial loans above the current statutory limit of 15% of the saving bank's total assets upon the written request of a savings bank. Under current law, a savings bank may lend or invest no more that 15% of its total assets in commercial loans, subject to any rules the Administrator deems appropriate. This bill would allow the Administrator to authorize an increase of that percentage above 15% and would eliminate the Administrator's authority to apply rules for lending or investing in commercial loans when less than 15 % of the total assets of the savings bank. The only standard, which the Administrator is required to consider in making this determination to approve a limit over 15%, is the "commercial lending expertise of the management and the overall risk profile of the savings bank." A commercial loan is defined as a loan for business, commercial, corporate, or agricultural purposes.

**EFFECTIVE DATE:** The bill is effective when it becomes law.

H219-SMRU-001



# HOUSE BILL 219

— Page 2

## **§ 54C-18. Status as IRS qualified thrift institution.**

A State savings bank shall maintain sixty percent (60%) of its assets in investments that qualify under 26 U.S.C. § 7701(a)(19), except that no more than ten percent (10%) of the sixty percent (60%) shall be comprised of investments described in 26 U.S.C. § 7701(a)(19)(C)(i) and 26 U.S.C. § 7701(a)(19)(C)(ii). (1991, c. 680, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 414

Short Title: Veterinarian Reciprocity.

(Public)

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Sponsors: Representative Setzer.

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Referred to: Public Health.

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March 11, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT ALLOWING THE NORTH CAROLINA VETERINARY MEDICAL  
3 BOARD TO LICENSE VETERINARIANS WHO ARE LICENSED IN OTHER  
4 STATES BUT HAVE NOT COMPLETED THE CERTIFICATION PROGRAM  
5 FOR FOREIGN VETERINARY GRADUATES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 90-187.3(a) reads as rewritten:

8 "(a) The Board may issue a license without written examination, other than the  
9 written North Carolina license examination, to applicants already licensed in another  
10 state provided the applicant presents evidence satisfactory to the Board that:

11 (1) The applicant is currently an active, competent practitioner in  
12 good ~~standing, and standing.~~

13 (2) The applicant has practiced at least three of the five years  
14 immediately preceding filing the ~~application, and application.~~

15 (3) The applicant currently holds an active license in another ~~state,~~  
16 ~~and state.~~

17 (4) There is no disciplinary proceeding or unresolved complaint  
18 pending against the applicant at the time a license is to be issued  
19 by this ~~State, and State.~~

20 (4a) Any disciplinary actions taken against the applicant or his or her  
21 license by the other state in which he or she is licensed will not  
22 affect the applicant's competency to practice veterinary medicine  
23 as provided in this Article or any rules adopted by the Board.

- 1           (5) The licensure requirements in the other state are substantially  
2           equivalent to those required by this ~~State, and State.~~  
3           (6) The applicant has achieved a passing score on the written North  
4           Carolina license examination."

5           Section 2. G.S. 90-187.3 is amended by adding a new subsection to read:

6           "(a1) If an applicant fails to satisfy subdivision (a)(5) of this section because the  
7           applicant was not required by the state in which he or she is licensed to complete the  
8           certification program developed and currently administered by the Educational  
9           Commission for Foreign Veterinary Graduates of the American Veterinary Medical  
10           Association or its predecessor program, the Board may consider the following in  
11           determining whether the applicant should be licensed in this State:

- 12           (1) The length of time the applicant has been licensed in the other  
13           state, but the applicant shall have been licensed and engaged in the  
14           practice of veterinary medicine for at least 10 years.  
15           (2) The applicant's veterinary practice history, including the type and  
16           nature of practice.  
17           (3) The completion of continuing education courses satisfactory to the  
18           Board.  
19           (4) Affidavits from veterinarians licensed and in good standing in the  
20           other state who can attest to the applicant's competency to practice  
21           veterinary medicine.  
22           (5) Any other evidence that demonstrates the applicant's clinical  
23           proficiency and his or her ability to comprehend and communicate  
24           in English."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. FIRST

H. B. No. 414

DATE \_\_\_\_\_

S. B. No. \_\_\_\_\_

Amendment No. \_\_\_\_\_

(to be filled in by  
Principal Clerk)

COMMITTEE SUBSTITUTE \_\_\_\_\_

Rep.) KEEP

Sen.)

1 moves to amend the bill on page 2, line 25

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4 "Sec. 3. This act is effective when it  
5 becomes law, <sup>SECTION 2 OF THIS ACT</sup> ~~and~~ shall expire on July  
6 1, 2001."

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19

SIGNED J. Ken

ADOPTED X FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



BILL ANALYSIS

## HOUSE BILL 414: Veterinarian Reciprocity

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<b>Committee:</b>	Commerce Committee	<b>Introduced by:</b>	Representative Setzer
<b>Date:</b>	June 1, 1999	<b>Summary by:</b>	John Young
<b>Version:</b>	First Edition		Esther Manheimer Committee Counsel

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### Background

The Veterinary Medical Board regulates the practice of veterinary medicine in this State through administering the Veterinary Practice Act (G.S. 90-179 et seq.). A threshold requirement for any applicant for licensure to practice veterinary medicine is graduation from an accredited college of veterinary medicine. An applicant who is a graduate of a non-accredited veterinary institution, virtually all of which are located outside the U.S. and Canada, must first successfully complete a certification course of the Educational Commission for Foreign Veterinary Graduates (ECFVG). This program certifies to state licensing boards that the applicant satisfies minimum levels of competency as well as English language skills.

The Board may consider for licensure applicants who are already licensed in other states. This is a somewhat less complicated avenue for licensure. While the Board has discretion to license an applicant without written examination other than the written North Carolina Exam, the applicant must comply with several important provisions, including demonstrating that the licensure requirements in the other state are substantially equivalent to those required in North Carolina. The Board has ruled that an applicant who has graduated from a non-accredited institution, is licensed in another state, and meets all the criteria except completion of the ECFVG program, does not satisfy the "substantially equivalent" test, and, therefore, cannot be licensed in North Carolina.

### House Bill 414

House Bill 414 amends the Veterinarian Practice Act to allow the Board to consider and approve a licensure application submitted by an individual licensed in another state who graduated from a non-accredited veterinary medical school and who has not completed the ECFVG competency certification program. The Board may consider, in lieu of ECFVG certification, the following five conditions: (1) applicant must be licensed for at least 10 years, (2) applicant's practice history, (3) completion of continuing education courses, (4) applicant's good standing and competency, and (5) applicant's clinical proficiency and ability to communicate in English.

In addition, House Bill 414 adds the following requirement to the issuance of a veterinarian license to all applicants that are already licensed in another state: any disciplinary action taken against the applicant or the applicant's license by the other state must not affect the applicant's competency to practice veterinary medicine.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

H

3

HOUSE BILL 14\*  
Committee Substitute Favorable 4/22/99  
Third Edition Engrossed 4/27/99

Short Title: Cemetery Consumer Protection.

(Public)

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Sponsors:

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Referred to:

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February 1, 1999

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING  
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS  
4 RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S  
5 STUDY COMMITTEE ON CEMETERY ISSUES.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 65-66(d) reads as rewritten:  
8 "(d) Any contract for the sale of personal property ~~and/or~~ or services services,  
9 whether preneed or at-need, shall state disclose separate costs the following:  
10 (1) A specific description of each item of personal property purchased  
11 and the cost to the purchaser for each item of personal property,  
12 property and for each act of installation or other service required  
13 by the contract, and for each other item of services included in the  
14 contract: including any costs for the right of interment,  
15 entombment, or inurnment;  
16 (2) Specification of whether opening and closing of a grave space,  
17 mausoleum space, or columbarium space is included in the  
18 contract, and, if not, the current prices for opening and closing and  
19 a statement in bold lettering that these prices are subject to change;  
20 (3) Any requirements or costs relating to memorial markers, including  
21 any obligations of the grave space, mausoleum space, or  
22 columbarium space owner if the owner desires to have an outside

1 provider provide the marker and any costs relating to having an  
2 outside provider provide and place a marker;

3 (4) A statement describing, in language that is readable and  
4 understandable by a person of average intelligence, experience,  
5 and education, the nature of the property right in the grave space,  
6 mausoleum space, or columbarium space; and whether the grave  
7 space, mausoleum space, or columbarium space may be used for  
8 future interments, entombments or inurnments in addition to use  
9 by the intended occupant;

10 (5) A statement that a preneed purchaser has, pursuant to G.S. 65-  
11 66(m), 30 days following the execution of a contract to cancel the  
12 contract by giving written notice to the seller and that the seller  
13 may cancel the contract, upon default by the purchaser, by giving  
14 written notice to the purchaser. The statement shall include (i)  
15 whether or not the purchaser may transfer the purchaser's rights in  
16 the property to another person or organization and (ii) whether or  
17 not the seller will refund all or part of the purchase price and the  
18 conditions under which a refund will be made, after the 30-day  
19 period, including the purchaser moving from one locale to another;

20 (6) If the seller knows that the grave space, mausoleum space, or  
21 columbarium space has been previously sold by the cemetery  
22 company to a purchaser and the space was used in the final  
23 disposition interment, entombment, or inurnment of human  
24 remains and has since returned to the inventory of available  
25 spaces, a statement that the space has been used for a prior  
26 interment, entombment, or inurnment;

27 (7) A statement identifying the person or legal entity which owns the  
28 cemetery or provides the property or services, including whether  
29 the entity is wholly or partially owned by another corporation; and

30 (8) A statement of whether the purchaser may obtain property and  
31 services from an outside provider and if the purchaser elects to do  
32 so, a statement disclosing any costs to the purchaser, or fees or  
33 assessments charged to the outside provider for such property or  
34 services, and notice that these costs, assessments, or fees are subject  
35 to change. The statement shall also include the current prices for  
36 such property and services, and state in bold lettering that the  
37 prices are subject to change."

38 Section 2. G.S. 65-53 is amended by adding a new subdivision to read:

39 "(9) The Commission shall keep records of the complaints received and  
40 the action taken by the Commission on each complaint. These  
41 records shall be kept for at least five years after receipt of the  
42 complaint."

43 Section 3. G.S. 65-53 reads as rewritten:

44 "§ 65-53. Powers.

1 In addition to other powers conferred by this Article, the Cemetery Commission  
2 shall have the following powers and duties:

- 3 (1) The administrator shall be appointed by the Governor upon  
4 recommendation of the Cemetery Commission. The compensation  
5 of the administrator and such other personnel as is necessary to  
6 operate the Commission is subject to the provisions of Chapter 126  
7 of the General Statutes of North Carolina. The Commission is  
8 authorized and empowered to employ such staff, including legal  
9 counsel, as may be necessary.
- 10 (2) To examine a cemetery company's records when a person applies  
11 for a change of control of the company.
- 12 (3) Investigate, upon its own initiative or upon a verified complaint in  
13 writing, the actions of any person engaged in the business or acting  
14 in the capacity of a licensee under this Article. The license of a  
15 licensee may be revoked or suspended for a period not exceeding  
16 two years, or until compliance with a lawful order imposed in the  
17 final order of suspension, or both, where the licensee in performing  
18 or attempting to perform any of the acts specified in this Article  
19 has been guilty of:
- 20 a. Failing to pay the fees required herein;
  - 21 b. Failing to make any reports required by this Article;
  - 22 c. Failing to remit to the care and maintenance trust fund,  
23 merchandise trust fund, or preconstruction trust fund the  
24 required amounts;
  - 25 d. Making any substantial misrepresentation;
  - 26 e. Making any false statement of a character likely to influence  
27 or persuade;
  - 28 f. A continued and flagrant course of misrepresentation or  
29 making of false promises through cemetery agents or  
30 salesmen;
  - 31 g. Violating any provision of this Article or rule promulgated  
32 by the Commission; or
  - 33 h. Violating the disclosure requirements in G.S. 65-66(d); or
  - 34 i. Any other conduct, whether of the same or a different  
35 character than specified in this section, which constitutes  
36 fraud or dishonest dealing.
- 37 (3a) Investigate, upon its own initiative or upon a verified complaint in  
38 writing, whether a particular contract for the sale of personal  
39 property or services, whether preneed or at-need, contains the  
40 disclosures required pursuant to G.S. 65-66(d) and to adopt  
41 temporary rules pursuant to Chapter 150B of the General Statutes,  
42 if necessary, to implement this subdivision until such time as  
43 permanent rules are adopted.



- 1 (4) In all proceedings under this Article for the revocation or  
2 suspension of licenses, the provisions of Chapter 150B of the  
3 General Statutes shall be applicable.
- 4 (5) At such time as the Commission finds it necessary it may bring an  
5 action in the name of the State in the court of the county in which  
6 the place of business is located against such person to enjoin such  
7 person from engaging in or continuing such violation or doing any  
8 act or acts in furtherance thereof. In any such action, an order or  
9 judgment may be entered awarding such temporary or permanent  
10 injunction as may be deemed proper; provided, that before any  
11 such action is brought the Commission shall give the cemetery at  
12 least 20 days' notice in writing, stating the alleged violation and  
13 giving the cemetery an opportunity within the 20-day period to  
14 cure the violation. In addition to all other means provided by law  
15 for the enforcement of a temporary restraining order, temporary  
16 injunction, or permanent injunction, the court shall have the power  
17 and jurisdiction to impound and to appoint a receiver for the  
18 property and business of the defendant, including books, papers,  
19 documents, and records appertaining thereto or so much thereof as  
20 the court may deem reasonably necessary to prevent further  
21 violation of this Article through or by means of the use of said  
22 property and business. The Commission may institute proceedings  
23 against the cemetery or its officers, whereafter an examination,  
24 pursuant to this Article, a shortage in the care and maintenance  
25 trust fund, merchandise trust fund or mausoleum and belowground  
26 crypts preconstruction trust fund is discovered, to recover said  
27 shortage.
- 28 (6) Whenever any special additional audit or examination of a  
29 licensee's premises, facilities, books or records is necessary because  
30 of the failure of the licensee to comply with the requirements  
31 imposed in this Article or by the rules and regulations of the  
32 Commission, to charge a fee based on the cost of the special  
33 examination or audit, taking into consideration the salary of any  
34 employees involved in the special audit or examination and any  
35 expenses incurred.
- 36 (7) Promulgate rules and regulations requiring licensees to file with  
37 the Commission plans and specifications for the minimum quality  
38 of any product sold. The sale of any product for which plans and  
39 specifications required by the rules and regulations have not been  
40 filed or sale of any product of a lesser quality than the plans and  
41 specifications filed with the Commission is a violation of this  
42 Article.
- 43 (8) When the Commission finds that failure by a licensee to maintain a  
44 cemetery properly has caused that cemetery to be a public

1 nuisance or a health or safety hazard, the Commission may bring  
2 an action for injunctive relief, against the responsible licensee, in  
3 the superior court of the county in which the cemetery or any part  
4 thereof is located."

5 Section 4. The Department of Justice through the Office of the Attorney  
6 General, Consumer Protection Division, shall ensure that private, for-profit cemetery  
7 companies operate within Article 1 of Chapter 75 of the General Statutes, titled  
8 "Monopolies, Trusts, and Consumer Protection", the antitrust and unfair trade  
9 practices laws.

10 Section 5. This act becomes effective January 1, 2000, and is applicable  
11 to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

HOUSE BILL 14\*  
Committee Substitute Favorable 4/22/99  
Third Edition Engrossed 4/27/99  
Proposed Senate Committee Substitute: H14-CSSK-003  
Attention: line numbers may change after adoption.

Short Title: Cemetery Consumer Protection.

(Public)

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Sponsors:

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Referred to:

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February 1, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING  
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED  
4 BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON  
5 CEMETERY ISSUES.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 65-66(d) reads as rewritten:  
8 "(d) Any contract for the sale of personal property ~~and/or or~~  
9 ~~services~~ services, whether preneed or at-need, shall ~~state~~  
10 disclose separate costs the following:  
11 (1) A specific description of each item of personal  
12 property purchased and the cost to the purchaser  
13 for each item of personal ~~property,~~ property and  
14 for each act of installation or other service  
15 required by the contract, and ~~for each other item~~  
16 of ~~services included in the contract,~~ including any  
17 costs for the right of interment, entombment, or  
18 inurnment;  
19 (2) Specification of whether opening and closing of a  
20 grave space, mausoleum space, or columbarium space

- 1 is included in the contract, and, if not, the  
2 current prices for opening and closing and a  
3 statement in bold lettering that these prices are  
4 subject to change;
- 5 (3) Any requirements or costs relating to memorial  
6 markers, including any obligations of the grave  
7 space, mausoleum space, or columbarium space owner  
8 if the owner desires to have an outside provider  
9 provide the marker and any costs relating to having  
10 an outside provider provide and place a marker;
- 11 (4) A statement describing, in language that is  
12 readable and understandable by a person of average  
13 intelligence, experience, and education, the nature  
14 of the property right in the grave space, mausoleum  
15 space, or columbarium space; and if the grave  
16 space, mausoleum space, or columbarium space may be  
17 used for future interments, entombments or  
18 inurnments in addition to use by the intended  
19 occupant, a statement to that effect;
- 20 (5) A statement that a preneed purchaser has, pursuant  
21 to G.S. 65-66(m), 30 days following the execution  
22 of a contract to cancel the contract by giving  
23 written notice to the seller and that the seller  
24 may cancel the contract, upon default by the  
25 purchaser, by giving written notice to the  
26 purchaser. The statement shall include (i) whether  
27 or not the purchaser may transfer the purchaser's  
28 rights in the property to another person or  
29 organization and (ii) whether or not the seller  
30 will refund all or part of the purchase price and  
31 the conditions under which a refund will be made,  
32 after the 30-day period, including the purchaser  
33 moving from one locale to another;
- 34 (6) If the seller knows that the grave space, mausoleum  
35 space, or columbarium space has been previously  
36 sold by the cemetery company to a purchaser and the  
37 space was used in the final disposition interment,  
38 entombment, or inurnment of human remains and has  
39 since returned to the inventory of available  
40 spaces, a statement that the space has been used  
41 for a prior interment, entombment, or inurnment;
- 42 (7) A statement identifying the person or legal entity  
43 which owns the cemetery or provides the property or  
44 services. If an affiliation with a regional or

1                   national entity exists, this affiliation shall be  
2                   identified; and  
3           (8) A statement of whether the purchaser may obtain  
4           property and services from an outside provider and  
5           if the purchaser elects to do so, a statement  
6           disclosing seller's costs to the purchaser, or fees  
7           or assessments charged by seller to the outside  
8           provider for such property or services, and notice  
9           that seller's costs, assessments, or fees are  
10           subject to change. The statement shall also  
11           include seller's current prices for such property  
12           and services, and state in bold lettering that the  
13           prices are subject to change."

14           Section 2. G.S. 65-53 is amended by adding a new  
15 subdivision to read:

16           "(9) The Commission shall keep records of the complaints  
17           received and the action taken by the Commission on  
18           each complaint. These records shall be kept for at  
19           least five years after receipt of the complaint."

20           Section 3. G.S. 65-53 reads as rewritten:

21 "**§ 65-53. Powers.**

22    In addition to other powers conferred by this Article, the  
23 Cemetery Commission shall have the following powers and duties:

24           (1) The administrator shall be appointed by the  
25           Governor upon recommendation of the Cemetery  
26           Commission. The compensation of the administrator  
27           and such other personnel as is necessary to operate  
28           the Commission is subject to the provisions of  
29           Chapter 126 of the General Statutes of North  
30           Carolina. The Commission is authorized and  
31           empowered to employ such staff, including legal  
32           counsel, as may be necessary.

33           (2) To examine a cemetery company's records when a  
34           person applies for a change of control of the  
35           company.

36           (3) Investigate, upon its own initiative or upon a  
37           verified complaint in writing, the actions of any  
38           person engaged in the business or acting in the  
39           capacity of a licensee under this Article. The  
40           license of a licensee may be revoked or suspended  
41           for a period not exceeding two years, or until  
42           compliance with a lawful order imposed in the final  
43           order of suspension, or both, where the licensee in

- 1 performing or attempting to perform any of the acts  
2 specified in this Article has been guilty of:
- 3 a. Failing to pay the fees required herein;
  - 4 b. Failing to make any reports required by this  
5 Article;
  - 6 c. Failing to remit to the care and maintenance  
7 trust fund, merchandise trust fund, or  
8 preconstruction trust fund the required  
9 amounts;
  - 10 d. Making any substantial misrepresentation;
  - 11 e. Making any false statement of a character  
12 likely to influence or persuade;
  - 13 f. A continued and flagrant course of  
14 misrepresentation or making of false promises  
15 through cemetery agents or salesmen;
  - 16 g. Violating any provision of this Article or  
17 rule promulgated by the Commission; ~~or~~
  - 18 h. Violating the disclosure requirements in G.S.  
19 65-66(d); or  
20 i. Any other conduct, whether of the same or a  
21 different character than specified in this  
22 section, which constitutes fraud or dishonest  
23 dealing.
- 24 (3a) Investigate, upon its own initiative or upon a  
25 verified complaint in writing, whether a particular  
26 contract for the sale of personal property or  
27 services, whether preneed or at-need, contains the  
28 disclosures required pursuant to G.S. 65-66(d) and  
29 to adopt temporary rules pursuant to Chapter 150B  
30 of the General Statutes, if necessary, to implement  
31 this subdivision until such time as permanent rules  
32 are adopted.
- 33 (4) In all proceedings under this Article for the  
34 revocation or suspension of licenses, the  
35 provisions of Chapter 150B of the General Statutes  
36 shall be applicable.
- 37 (5) At such time as the Commission finds it necessary  
38 it may bring an action in the name of the State in  
39 the court of the county in which the place of  
40 business is located against such person to enjoin  
41 such person from engaging in or continuing such  
42 violation or doing any act or acts in furtherance  
43 thereof. In any such action, an order or judgment  
44 may be entered awarding such temporary or permanent

1 injunction as may be deemed proper; provided, that  
2 before any such action is brought the Commission  
3 shall give the cemetery at least 20 days' notice in  
4 writing, stating the alleged violation and giving  
5 the cemetery an opportunity within the 20-day  
6 period to cure the violation. In addition to all  
7 other means provided by law for the enforcement of  
8 a temporary restraining order, temporary  
9 injunction, or permanent injunction, the court  
10 shall have the power and jurisdiction to impound  
11 and to appoint a receiver for the property and  
12 business of the defendant, including books, papers,  
13 documents, and records appertaining thereto or so  
14 much thereof as the court may deem reasonably  
15 necessary to prevent further violation of this  
16 Article through or by means of the use of said  
17 property and business. The Commission may institute  
18 proceedings against the cemetery or its officers,  
19 whereafter an examination, pursuant to this  
20 Article, a shortage in the care and maintenance  
21 trust fund, merchandise trust fund or mausoleum and  
22 belowground crypts preconstruction trust fund is  
23 discovered, to recover said shortage.

24 (6) Whenever any special additional audit or  
25 examination of a licensee's premises, facilities,  
26 books or records is necessary because of the  
27 failure of the licensee to comply with the  
28 requirements imposed in this Article or by the  
29 rules and regulations of the Commission, to charge  
30 a fee based on the cost of the special examination  
31 or audit, taking into consideration the salary of  
32 any employees involved in the special audit or  
33 examination and any expenses incurred.

34 (7) Promulgate rules and regulations requiring  
35 licensees to file with the Commission plans and  
36 specifications for the minimum quality of any  
37 product sold. The sale of any product for which  
38 plans and specifications required by the rules and  
39 regulations have not been filed or sale of any  
40 product of a lesser quality than the plans and  
41 specifications filed with the Commission is a  
42 violation of this Article.

43 (8) When the Commission finds that failure by a  
44 licensee to maintain a cemetery properly has caused

1                   that cemetery to be a public nuisance or a health  
2                   or safety hazard, the Commission may bring an  
3                   action for injunctive relief, against the  
4                   responsible licensee, in the superior court of the  
5                   county in which the cemetery or any part thereof is  
6                   located."

7                   Section 4. The Department of Justice through the Office  
8 of the Attorney General, Consumer Protection Division, shall  
9 ensure that private, for-profit cemetery companies operate within  
10 Article 1 of Chapter 75 of the General Statutes, titled  
11 "Monopolies, Trusts, and Consumer Protection", the antitrust and  
12 unfair trade practices laws.

13                   Section 5. This act becomes effective January 1, 2000,  
14 and is applicable to contracts entered into on or after that  
15 date.





# HOUSE BILL 14: Cemetery Protection

## BILL ANALYSIS

<b>Committee:</b> Commerce Committee	<b>Introduced by:</b> Representatives Allred, Earle and Sexton
<b>Date:</b> June 1, 1999	<b>Summary by:</b> Esther Manheimer Committee Counsel
<b>Version:</b> H14-CSSK-003 (Third Edition)	

**SUMMARY:** House Bill 14 would expand the Cemetery Commission's powers, and would require that certain disclosures be made in each preneed and at-need contract. House Bill 14 would also require the Cemetery Commission to keep certain records.

### BILL ANALYSIS:

#### Disclosures Required in each Contract (e.g. preneed and at-need).

**Section 1.** Amends G.S. 65-66(d) and would add a list of disclosures required to be included in each contract for the sale of personal property or services (e.g. preneed and at-need contracts). The following disclosures would be required:

1. An itemized list of personal property and services purchased and their cost (required to be disclosed under current law).
2. Whether the opening and closing of a grave space is included (if not, then a list of prices for this service).
3. Requirements relating to memorial markers (including requirements for using an outside provider).
4. Statement describing the nature of the property right. And, if the funeral establishment engages in doublestacking (e.g. more than one occupant in a grave space), a statement that that effect.
5. Statement that preneed purchasers have 30 days to cancel their contract and that the seller may cancel upon default of the purchaser. Also, statement must include whether purchaser's rights are transferable and refund policies.
6. If the grave space was previously used and if the seller is aware of the previous use, a statement to that effect.
7. Statement identifying the owner of the cemetery or the services provider.
8. A statement of whether the purchaser may use and outside provider and fees assessed against the outside provider.

#### Cemetery Commission Record Keeping Required.

**Section 2.** Amends G.S. 65-53 by adding a new subdivision. This section would require the Cemetery Commission to keep records of complaints received and actions taken.

# HOUSE BILL 14

Page 2

## Expand Authority of the Cemetery Commission.

**Section 3.** Amends G.S. 65-53 to expand the powers and duties of the Cemetery Commission to include: the power to revoke or suspend a person's license to operate a cemetery for violation of the disclosure requirements listed in section 1; and the power to investigate whether a contract (e.g. a preneed or at-need contract) contains certain disclosures. Those disclosures are listed in section 2.

## Consumer Protection Division of the Attorney General's Office to Ensure Chapter 75 Enforced.

**Section 4.** States that the Consumer Protection Division of the Attorney General's Office will ensure that Article 1 of Chapter 75 is enforced against private, for-profit cemetery companies. (Chapter 75, Article 1 deals with unfair and deceptive trade practices, etc.)

**Section 5.** This act becomes effective January 1, 2000, and is applicable to contracts entered into on or after that date.

**BACKGROUND:** House Bill 14 is a study commission bill recommended by the Committee on Cemetery Issues.

VISITOR REGISTRATION SHEET

Commerce  
Name of Committee

6/1/99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Joseph P. Turner	IP Assoc
Melissa Lovell	DOJ
Roger Bon	Bono Assoc -
John Lyne	N.C. State Grange
R. Paul Wilson	NCA/BA
Dina Amute	ALMCA
Kip Sturgis	Attorney General's Office
Ginger Bagley	Attorney General's Office
April Bland	" "
ANDREW WAMBERG	" "
Bernie Henderson	Loeven Group Int., Inc. 10416 Huntsmoor Dr., Richmond, VA 23233
Alida Gregory	Poyner & Spruill
Crisse Porter	Bono & Associates
John Rams	Poyner & Spruill
Harriet Perry	Poyner & Spruill

VISITOR REGISTRATION SHEET

Commerce Committee  
Name of Committee

6-1-99  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Jack Cogort	Parker Poe Adams & Bernstein
NICK LAUGS	Loewen Group International, Inc.
David Worth	DOC NSID
Paul Stock	NC Bankers Assn.
Dick Hatch	AARP
Lucinda Pullen	Attorney NCCA
Rusty Syon	NCCA
Richard D. Baxa	NCCA
Steve Cook	Cook Industries
Kelli Hanna	DuPont

SENATE COMMERCE COMMITTEE  
11:00 A.M., TUESDAY, JUNE 22, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, June 22, 1999. Fourteen members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets. Ms. Katie Cox, sponsored by Senator Plyler, Chandler Vatauvuk, sponsored by Senator Lucas, and Robert Hewett, sponsored by Senator Shaw, were the Senate Pages assisting with the meeting.

Senator Soles, Chairman, called the meeting to order and the following bills were considered by the Committee:

SB 968, AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF COMPETITIVE BIDDING AND TO REQUIRE BID PROTESTS INVOLVING CONTRACTS OVER A CERTAIN AMOUNT TO BE HANDLED BY THE DEPARTMENT OF ADMINISTRATION. Senator Larry Shaw, the bill sponsor, said the legislation provides that the Division of Purchase and Contract review and decide a protest on a contract valued at \$25,000 or more. Further, it provides that the Secretary of Administration shall adopt rules or criteria governing the review of and decision on a protest on a contract of less than \$25,000 by the agency that awarded the contract.

Senator Shaw sent forward an amendment to the bill and moved its adoption. Motion carried. A second amendment had been adopted at a previous meeting of the committee which levied a fee for review of each waiver application. Senator Shaw moved that SB 968 be given a favorable report, as amended, and that it be rolled into a Committee Substitute Bill and that it be re-referred to Finance. Motion carried.

C.S. #2 FOR HB 19, AN ACT TO PROHIBIT CASINO BOATS FROM OPERATING IN NORTH CAROLINA, TO REGULATE CERTAIN GAMBLING BOATS THAT OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW, TO LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH CAROLINA, AND TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING BOAT WINNINGS. Representative Redwine explained the bill which he said basically prohibits casino boat cruises to nowhere in North Carolina by levying a privilege license tax at the rate of \$6.00 for each passenger and by requiring that the gambling boat operator deduct and withhold from a North Carolina resident's winnings individual income taxes equal to 7 per cent of the winnings paid to the resident. (See attached Bill Summary prepared by Committee Counsel for complete explanation.)

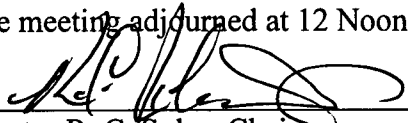
Senator Moore moved that C. S. #2 for HB 19 be given a favorable report and that it be re-referred to the Finance Committee. Motion carried.


C.S. FOR HB 14, AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES. Rep. Allred said he had had numerous complaints from all over the State regarding cemetery practices and this bill would expand the Cemetery's Commission's powers and would require certain disclosures be made in each pre-need and at-need contract. (See attached Memorandum from staff for additional information.) Senator Kerr sent forward an amendment and moved its adoption (copy attached).

Mr. Lucius Pullen who represents the N. C. Cemetery Association spoke in opposition to the amendment.

Due to the length of the meeting Senator Soles announced that consideration of this bill would have to be carried over until another meeting of the Committee.

The meeting adjourned at 12 Noon.

  
\_\_\_\_\_  
Senator R. C. Soles, Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, JUNE 22, 1999  
Room 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**HB 14, CEMETERY CONSUMER PROTECTION (Rep. Allred)**

**HB 19, CASINO BOATS REGULATED (Rep. Redwine)**

**SB 968, WAIVER OF COMPETITIVE BIDDING MODIFIED (Sen. L. Shaw)**

**ADJOURNMENT**

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair**

Tuesday, June 22, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

**FAVORABLE**

H.B.(CS #2)19	Gambling Boats Regulated.	
	Sequential Referral:	Finance
	Recommended Referral:	None

TOTAL REPORTED: 1

Committee Clerk Comment:



**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair**

Wednesday, June 23, 1999

SENATOR SOLES,  
submits the following with recommendations as to passage:

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

<b>S.B. 968</b>	<b>Waiver of Competitive Bidding Modified.</b>
	Draft Number: PCS6685
	Sequential Referral: None
	Recommended Referral: Finance
	Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 968  
Proposed Committee Substitute S968-PCS7670-RN

Short Title: Waiver of Competitive Bidding Modified.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF  
3 COMPETITIVE BIDDING AND TO REQUIRE BID PROTESTS INVOLVING  
4 CONTRACTS OVER A CERTAIN AMOUNT TO BE HANDLED BY THE  
5 DEPARTMENT OF ADMINISTRATION.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 143-53(a)(1) reads as rewritten:  
8 "(1) Prescribing the routine and procedures to be followed in  
9 canvassing bids and awarding contracts, and for reviewing  
10 decisions made pursuant thereto, and the decision of the reviewing  
11 body shall be the final administrative review. The Division of  
12 Purchase and Contract shall review and decide a protest on a  
13 contract valued at twenty-five thousand dollars (\$25,000) or more.  
14 The Secretary shall adopt rules or criteria governing the review of  
15 and decision on a protest on a contract of less than twenty-five  
16 thousand dollars (\$25,000) by the agency that awarded the  
17 contract."  
18 Section 2. G.S. 143-53(a)(5) reads as rewritten:  
19 "(5) Prescribing conditions under which purchases and contracts for the  
20 purchase, rental or lease of equipment, materials, supplies or  
21 services may be entered into by means other than competitive  
22 bidding. Notwithstanding the provisions of subsections (a) and (b)  
23 of this section, any waiver of competition for the purchase, rental,

1                   or lease of equipment, materials, supplies, or services shall have  
2                   the prior written approval of the Secretary, if the expenditure  
3                   exceeds ten thousand dollars (\$10,000)."

4                   Section 3. G.S. 143-57 reads as rewritten:

5   "**§ 143-57. Purchases of articles in certain emergencies.**

6   In case of any emergency or pressing need arising from unforeseen causes  
7 including but not limited to delay by contractors, delay in transportation, breakdown  
8 in machinery, or unanticipated volume of work, the Secretary of Administration shall  
9 have power to obtain or authorize obtaining in the open market any necessary  
10 supplies, materials, equipment, printing or services for immediate delivery to any  
11 department, institution or agency of the State government. A report on the  
12 circumstances of such emergency or need and the transactions thereunder shall be  
13 made a matter of record promptly thereafter. If the expenditure exceeds ten  
14 thousand dollars (\$10,000), the report shall also be made promptly thereafter to the  
15 Division of Purchase and Contract."

16                   Section 4. This act becomes effective July 1, 1999. Section 1 applies to  
17 bid protests filed on or after that date. Sections 2 and 3 of this act apply to contracts  
18 awarded on or after that date.

Passed



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 968

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_

S968-ARN-002

Date \_\_\_\_\_, 1999

Comm. Sub.    
Amends Title    
PCS Edition - PCS7670-RN

Sen. \_\_\_\_\_

- 1
- 2 moves to amend the bill on page 2, line 3, by adding the following
- 3 sentence at the end of said line:
- 4
- 5 "The Division may levy a fee, not to exceed one dollar (\$1.00),
- 6 for review of each waiver application."
- 7
- 8

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



*Adopted  
6-22-99*

NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Senate Bill 968

S968-ARN-001

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_\_

Date \_\_\_\_\_, 1999

Comm. Sub. [  
Amends Title [  
PCS Edition

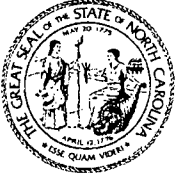
Sen. \_\_\_\_\_

1  
2 moves to amend the bill on page 2, lines 1-2 by deleting the phrase  
3 "shall have the prior written approval of" and inserting the phrase  
4 "is subject to prior review by";  
5  
6 and on page 2, between lines 15 and 16, by inserting the following:  
7 "Section 3.1 This act does not apply to an agency, board,  
8 department, institution, or commission that is exempt from Article 3  
9 of Chapter 143 of the General Statutes or from the provisions of  
10 that Article that require certain contracts to be awarded by the  
11 Department of Administration."  
12

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



BILL ANALYSIS

## HOUSE BILL 19: Casino Boats Regulated

**Committee:** Commerce Committee  
**Date:** June 22-, 1999  
**Version:** Forth Edition

**Introduced by:** Representative Redwine  
**Summary by:** Cindy Avrette and  
Mary Shuping  
Committee Counsel - Esther Manheimer

**SUMMARY:** House Bill 19 prohibits casino boat cruises to nowhere in North Carolina. North Carolina cannot prohibit gambling boat cruises that engage in interstate commerce by making at least one stop outside the State. However, the bill imposes the following requirements on gambling boat cruises that originate and end in North Carolina without making an intervening stop:

- ***A privilege license tax at the rate of \$6.00 for each passenger.***
- ***A requirement that the gambling boat operator deduct and withhold from a North Carolina resident's winnings individual income taxes equal to 7% of the winnings paid to the resident.***

**BACKGROUND:** Gambling and the possession and use of gambling devices, such as slot machines, punchboards, and gaming tables, are illegal in North Carolina. However, because of changes in the federal law since 1992, it is legal to transport and possess gambling devices on US flagships within the boundaries of a state if the use of the devices occurs outside the boundaries of the state and the devices remain onboard the vessel while it is within the state's boundaries. The 1992 changes to the Johnson Act, 15 U.S.C. § 1175, were enacted in part to end the discrimination between US flagships and foreign flagships. This change in the federal law means that it would be permissible for a person in North Carolina to have a vessel equipped with gambling devices and to take passengers on voyages for the purpose of gambling, so long as the vessel travels outside the 3 mile territorial boundary of the State before initiating the gambling games. This type of voyage is commonly referred to as a "cruise to nowhere".

The Johnson Act permits states to prohibit casino boat cruises to nowhere if the voyage begins and ends in the same state without making an intervening stop. To prohibit casino boat cruises to nowhere, a state must pass legislation that bans the use of gambling devices outside the boundaries of the state on voyages that begin and end in the state without making an intervening stop. A South Carolina court case and a Georgia AG opinion, as well as legislative discussions in several other states, have concluded that to escape the effect of the 1992 amendments to the Johnson Act, a state must pass specific legislation to prohibit casino boat cruises to nowhere. North Carolina's current statutes prohibiting gambling and the possession of gambling devices are not sufficient to meet this "opt out" provision in the federal law. House

Bill 19 provides the specific legislation necessary to prohibit casino boat cruises to nowhere in North Carolina.

**BILL ANALYSIS:** Section 1 of the bill defines a "casino boat" as a vessel that leaves from and returns to a port in North Carolina for the purpose of gambling without making an intervening stop in another state or country. Although federal law does not define "an intervening stop", this bill does. It defines an "intervening stop" as a docking at a port outside the boundaries of North Carolina for a period of at least six hours where the passengers may disembark the vessel for sightseeing, shopping, or other similar tourism-related activities.

The bill makes it unlawful to operate a casino boat, to possess, use, or repair a gambling device on a casino boat, or to solicit people to embark on a casino boat. A person who violates this law is guilty of a Class A1 misdemeanor. A Class A1 misdemeanor is the most serious misdemeanor offense. It is punishable by community punishment, intermediate punishment, or active punishment. A monetary fine may be imposed in the discretion of the court. Upon conviction, a person's vessel, along with all of its equipment, may be seized, forfeited, and sold. If a law enforcement officer has probable cause to believe that a violation of this law is occurring, the officer may seize the illegal gambling devices, seize any monies or property used in conjunction with or derived from the unlawful use of the illegal gambling devices, and seize the vessel upon which the illegal gambling devices are found. The bill clarifies that the law does not apply to vessels engaged in interstate commerce and that it does not prevent the prosecution for other gambling offenses.

North Carolina cannot prohibit gambling voyages that are allowed by federal law. Therefore, a person may offer gambling voyages that begin and end in North Carolina so long as the voyage makes an intervening stop in another state or country and all the gambling takes place beyond the 3 mile territorial boundary of the State. However, North Carolina can regulate these gambling boat voyages.

Section 1 of the bill provides that the vessel must meet the Safety of Life at Sea (SOLAS) standards and requirements normally applicable in international waters. SOLAS ensures that, with regard to the passengers' safety, the vessel is fit for service. Vessels are inspected by the U.S. Coast Guard. It also provides that all of the vessel's passengers must be at least 21 years of age.

Sections 2 through 8 of the bill create tax obligations for the gambling boat operator that do not exist under current law. A gambling boat operator is a person engaged in the business of operating a gambling boat voyage. A gambling boat voyage is defined for North Carolina tax purposes as a voyage that meets all of the following conditions:

- It transports passengers engaged in gambling aboard the vessel.
- Its passengers embark the vessel in this State.

- Its passengers disembark the vessel only in this State or a contiguous state.

This definition of “gambling boat voyage” eliminates the imposition of the tax obligations on cruise ships that travel and dock in noncontiguous states or another country.

Section 3 imposes a privilege license tax on gambling boat voyages at a rate equal to \$6 per passenger. Section 6 requires a gambling boat operator who pays a resident of this State more than \$600 in gambling winnings during a gambling boat voyage to deduct and withhold income tax from the resident’s winnings. The federal government requires that taxes be withheld if the winnings exceed \$5,000. The amount of State taxes to be withheld is 7% of the winnings paid to the resident. If the gambling boat operator does not withhold from any gambling winnings paid to an individual, the operator must obtain from the individual documentation proving that the individual is not a resident of North Carolina. The operator must remit the withheld tax payments to the State quarterly.

The following tax laws would also apply to businesses engaged in the gambling boat voyage business: State income tax and sales tax on any sales of tangible personal property that occur while the boat is in North Carolina’s territorial boundaries. Also under current law, residents of North Carolina must pay tax on any income derived from gambling activities, whether they occur inside or outside the State’s territorial boundaries.

**EFFECTIVE DATE:** This act is effective when it becomes law. The tax sections of this act become effective on the first day of the third calendar month after this act becomes law.

**This bill must be referred to Finance.**



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

4

HOUSE BILL 19  
Committee Substitute Favorable 2/24/99  
Committee Substitute #2 Favorable 3/18/99  
Fourth Edition Engrossed 3/25/99

Short Title: Gambling Boats Regulated.

(Public)

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Sponsors:

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Referred to:

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February 3, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT CASINO BOATS FROM OPERATING IN NORTH  
3 CAROLINA, TO REGULATE CERTAIN GAMBLING BOATS THAT  
4 OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW, TO  
5 LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH  
6 CAROLINA, AND TO REQUIRE WITHHOLDING FROM CERTAIN  
7 GAMBLING BOAT WINNINGS.  
8 The General Assembly of North Carolina enacts:  
9 Section 1. Article 37 of Chapter 14 of the General Statutes is amended  
10 by adding a new Part to read:  
11 "Part 4. Casino Boats.  
12 "§ 14-309.30. Definitions.  
13 The following definitions apply in this Part:  
14 (1) Casino boat. -- A vessel that meets both of the following  
15 conditions:  
16 a. Embarks from a point within this State and disembarks at  
17 the same or another point within this State without making  
18 an intervening stop.  
19 b. Is operated or maintained for the purpose of gambling and  
20 carries or operates gambling devices for the use of its

1 passengers or otherwise provides facilities for the purpose of  
2 gambling.

3 (2) Gambling. -- A game of chance at which money, property, or some  
4 other thing of value is bet, whether the same be in stake or not.

5 (3) Gambling device. -- A device as defined in 15 U.S.C. § 1171 and  
6 any other device used to facilitate gambling, such as a gaming table  
7 and a punchboard.

8 (4) Intervening stop. -- When a vessel does all of the following:

9 a. Docks at a port within the boundaries of another state,  
10 possession of the United States, or foreign country.

11 b. Remains continuously at that port for at least six hours.

12 c. Allows passengers to disembark the vessel for sightseeing,  
13 shopping, or other similar tourism-related activities at that  
14 port.

15 (5) Operate. -- To manage, supervise, control, or own, either alone or  
16 in association with others.

17 (6) Vessel. -- A boat, barge, ship, vessel, or watercraft.

18 **§ 14-309.31. Casino boats prohibited.**

19 (a) Unlawful Activity. -- It shall be unlawful to do any one or more of the  
20 following:

21 (1) To operate a casino boat.

22 (2) To manufacture, recondition, repair, sell, transport, possess, or use  
23 a gambling device on a casino boat.

24 (3) To solicit, entice, induce, persuade, or procure, or to aid in  
25 soliciting, enticing, inducing, persuading, or procuring a person to  
26 visit or embark on a casino boat.

27 (b) Penalty and Conviction. -- A person who violates subsection (a) of this section  
28 shall be guilty of a Class A1 misdemeanor. Upon conviction, a court of competent  
29 jurisdiction shall enter an order directing the seizure, forfeiture, and sale of the  
30 vessel, along with all of its gear, engines, tackle, and all other nautical, navigation,  
31 and safety equipment, furniture, and personal property of any description. The  
32 proceeds of a sale in accordance with this subsection shall be applied, in order, to the  
33 costs of seizure, storage, and sale, with the balance paid to the public school fund in  
34 the county in which the property is seized.

35 (c) Applicability. -- This section shall not apply to possession or transportation of  
36 gambling devices on United States-flagged or foreign-flagged vessels during travel  
37 from a foreign nation or another state or possession of the United States up to the  
38 first point of entry into North Carolina waters or during travel to a foreign nation or  
39 another state or possession of the United States from the point of departure from  
40 North Carolina waters.

41 (d) Prosecution for Other Offenses. -- Nothing contained in this section shall  
42 preclude prosecution for another offense under this Article or for the use of a  
43 gambling device on a vessel while docked within the territorial waters of this State.

44 **§ 14-309.32. Enforcement.**

1 A law enforcement officer with subject matter and territorial jurisdiction over a  
2 vessel may take any one or more of the following actions if the officer has probable  
3 cause to believe that a violation of G.S. 14-309.31 is occurring on the vessel:

4 (1) Seize the illegal gambling device.

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

8 (3) Seize the vessel upon which an illegal gambling device is found.

9 **§ 14-309.33. Regulation of gambling boats operating pursuant to federal law.**

10 The operator of a vessel, the operation of which would be illegal in this State  
11 except for the exclusions provided in 15 U.S.C. § 1175(b)(2), shall comply with all of  
12 the following:

13 (1) The applicable provisions of Chapter 105 of the General Statutes.

14 (2) The Safety of Life at Sea (SOLAS) standards and requirements  
15 normally applicable in international waters.

16 (3) The passengers must be at least 21 years of age."

17 Section 2. G.S. 105-228.90(b) is amended by adding a new subdivision to  
18 read:

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

23 Section 3. Article 2 of Chapter 105 of the General Statutes is amended  
24 by adding a new section to read:

25 **§ 105-40.1. Gambling boat voyages.**

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

32 Section 4. G.S. 105-163.1 is amended by adding a new subdivision to  
33 read:

34 "(5a) Gambling boat operator. -- A person engaged in the business of  
35 operating gambling boat voyages."

36 Section 5. G.S. 105-163.1(14) reads as rewritten:

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

39 Section 6. Article 4A of Chapter 105 of the General Statutes is amended  
40 by adding a new section to read:

41 **§ 105-163.3A. Gambling boat operators must withhold taxes.**

42 (a) Requirement. -- Every gambling boat operator who pays a resident of this State  
43 more than six hundred dollars (\$600.00) in gambling winnings during a gambling  
44 boat voyage must deduct and withhold from the winnings paid to the resident the

1 State income taxes due on the winnings as provided in this section. The amount of  
2 taxes to be withheld is seven percent (7%) of the winnings paid to the resident. The  
3 taxes a gambling boat operator withholds are held in trust for the Secretary.

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

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

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

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

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

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

22 (5) Any other information required by the Secretary.

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

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

32 Section 7. G.S. 105-163.9 reads as rewritten:

33 **"§ 105-163.9. Refund of overpayment to withholding agent.**

34 A withholding agent who pays the Secretary more under this Article than the  
35 Article requires the agent to pay may obtain a refund of the overpayment by filing an  
36 application for a refund with the Secretary. No refund is allowed, however, if the  
37 withholding agent withheld the amount of the overpayment from the ~~wages~~ wages,  
38 winnings, or compensation of the agent's ~~employees~~ employees, passengers, or  
39 contractors. A withholding agent must file an application for a refund within the  
40 time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-  
41 266."

42 Section 8. G.S. 105-163.10 reads as rewritten:

43 **"§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.**

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

10 If more than one taxable year begins in the calendar year during which the  
11 withholding occurred, the amount ~~shall be~~ is allowed as a credit against the tax for  
12 the last taxable year so beginning. To obtain the credit allowed in this section, the  
13 individual or nonresident entity must file with the Secretary one copy of the  
14 withholding statement required by G.S. ~~105-163.3~~ or G.S. 105-163.3, 105-163.3A, or  
15 105-163.7 and any other information the Secretary requires."

16 Section 9. If any section or provision of this act is declared  
17 unconstitutional or invalid by the courts, it does not affect the validity of this act as a  
18 whole or any part other than the part so declared to be unconstitutional or invalid.

19 Section 10. This act is effective when it becomes law. Sections 2 through  
20 8 of this act become effective on the first day of the third calendar month after this  
21 act becomes law.



# HOUSE BILL 14: Cemetery Protection

## BILL ANALYSIS

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<b>Committee:</b> Commerce Committee	<b>Introduced by:</b> Representatives Allred, Earle and Sexton
<b>Date:</b> June 22, 1999	<b>Summary by:</b> Esther Manheimer
<b>Version:</b> H14-CSSK-003 (Third Edition)	Committee Counsel

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**SUMMARY:** House Bill 14 would expand the Cemetery Commission's powers, and would require that certain disclosures be made in each preneed and at-need contract. House Bill 14 would also require the Cemetery Commission to keep certain records.

### BILL ANALYSIS:

#### Disclosures Required in each Contract (e.g. preneed and at-need).

**Section 1.** Amends G.S. 65-66(d) and would add a list of disclosures required to be included in each contract for the sale of personal property or services (e.g. preneed and at-need contracts). The following disclosures would be required:

1. An itemized list of personal property and services purchased and their cost (required to be disclosed under current law).
2. Whether the opening and closing of a grave space is included (if not, then a list of prices for this service).
3. Requirements relating to memorial markers (including requirements for using an outside provider).
4. Statement describing the nature of the property right. And, if the funeral establishment engages in doublestacking (e.g. more than one occupant in a grave space), a statement that that effect.
5. Statement that preneed purchasers have 30 days to cancel their contract and that the seller may cancel upon default of the purchaser. Also, statement must include whether purchaser's rights are transferable and refund policies.
6. If the grave space was previously used and if the seller is aware of the previous use, a statement to that effect.
7. Statement identifying the owner of the cemetery or the services provider.
8. A statement of whether the purchaser may use and outside provider and fees assessed against the outside provider.

#### Cemetery Commission Record Keeping Required.

**Section 2.** Amends G.S. 65-53 by adding a new subdivision. This section would require the Cemetery Commission to keep records of complaints received and actions taken.

# HOUSE BILL 14

Page 2

## **Expand Authority of the Cemetery Commission.**

**Section 3.** Amends G.S. 65-53 to expand the powers and duties of the Cemetery Commission to include: the power to revoke or suspend a person's license to operate a cemetery for violation of the disclosure requirements listed in section 1; and the power to investigate whether a contract (e.g. a preneed or at-need contract) contains certain disclosures. Those disclosures are listed in section 2.

## **Consumer Protection Division of the Attorney General's Office to Ensure Chapter 75 Enforced.**

**Section 4.** States that the Consumer Protection Division of the Attorney General's Office will ensure that Article 1 of Chapter 75 is enforced against private, for-profit cemetery companies. (Chapter 75, Article 1 deals with unfair and deceptive trade practices, etc.)

**Section 5.** This act becomes effective January 1, 2000, and is applicable to contracts entered into on or after that date.

**BACKGROUND:** House Bill 14 is a study commission bill recommended by the Committee on Cemetery Issues.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

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HOUSE BILL 14\*  
Committee Substitute Favorable 4/22/99  
Third Edition Engrossed 4/27/99

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

February 1, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING  
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS  
4 RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S  
5 STUDY COMMITTEE ON CEMETERY ISSUES.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 65-66(d) reads as rewritten:

8 "(d) Any contract for the sale of personal property ~~and/or~~ or services services,  
9 whether preneed or at-need, shall state disclose separate costs the following:

- 10 (1) A specific description of each item of personal property purchased  
11 and the cost to the purchaser for each item of personal property;  
12 property and for each act of installation or other service required  
13 by the contract, and for each other item of services included in the  
14 contract. including any costs for the right of interment,  
15 entombment, or inurnment;  
16 (2) Specification of whether opening and closing of a grave space,  
17 mausoleum space, or columbarium space is included in the  
18 contract, and, if not, the current prices for opening and closing and  
19 a statement in bold lettering that these prices are subject to change;  
20 (3) Any requirements or costs relating to memorial markers, including  
21 any obligations of the grave space, mausoleum space, or  
22 columbarium space owner if the owner desires to have an outside



1 provider provide the marker and any costs relating to having an  
2 outside provider provide and place a marker;

3 (4) A statement describing, in language that is readable and  
4 understandable by a person of average intelligence, experience,  
5 and education, the nature of the property right in the grave space,  
6 mausoleum space, or columbarium space; and whether the grave  
7 space, mausoleum space, or columbarium space may be used for  
8 future interments, entombments or inurnments in addition to use  
9 by the intended occupant;

10 (5) A statement that a preneed purchaser has, pursuant to G.S. 65-  
11 66(m), 30 days following the execution of a contract to cancel the  
12 contract by giving written notice to the seller and that the seller  
13 may cancel the contract, upon default by the purchaser, by giving  
14 written notice to the purchaser. The statement shall include (i)  
15 whether or not the purchaser may transfer the purchaser's rights in  
16 the property to another person or organization and (ii) whether or  
17 not the seller will refund all or part of the purchase price and the  
18 conditions under which a refund will be made, after the 30-day  
19 period, including the purchaser moving from one locale to another;

20 (6) If the seller knows that the grave space, mausoleum space, or  
21 columbarium space has been previously sold by the cemetery  
22 company to a purchaser and the space was used in the final  
23 disposition interment, entombment, or inurnment of human  
24 remains and has since returned to the inventory of available  
25 spaces, a statement that the space has been used for a prior  
26 interment, entombment, or inurnment;

27 (7) A statement identifying the person or legal entity which owns the  
28 cemetery or provides the property or services, including whether  
29 the entity is wholly or partially owned by another corporation; and

30 (8) A statement of whether the purchaser may obtain property and  
31 services from an outside provider and if the purchaser elects to do  
32 so, a statement disclosing any costs to the purchaser, or fees or  
33 assessments charged to the outside provider for such property or  
34 services, and notice that these costs, assessments, or fees are subject  
35 to change. The statement shall also include the current prices for  
36 such property and services, and state in bold lettering that the  
37 prices are subject to change."

38 Section 2. G.S. 65-53 is amended by adding a new subdivision to read:

39 "(9) The Commission shall keep records of the complaints received and  
40 the action taken by the Commission on each complaint. These  
41 records shall be kept for at least five years after receipt of the  
42 complaint."

43 Section 3. G.S. 65-53 reads as rewritten:

44 "§ 65-53. Powers.

1 In addition to other powers conferred by this Article, the Cemetery Commission  
2 shall have the following powers and duties:

- 3 (1) The administrator shall be appointed by the Governor upon  
4 recommendation of the Cemetery Commission. The compensation  
5 of the administrator and such other personnel as is necessary to  
6 operate the Commission is subject to the provisions of Chapter 126  
7 of the General Statutes of North Carolina. The Commission is  
8 authorized and empowered to employ such staff, including legal  
9 counsel, as may be necessary.
- 10 (2) To examine a cemetery company's records when a person applies  
11 for a change of control of the company.
- 12 (3) Investigate, upon its own initiative or upon a verified complaint in  
13 writing, the actions of any person engaged in the business or acting  
14 in the capacity of a licensee under this Article. The license of a  
15 licensee may be revoked or suspended for a period not exceeding  
16 two years, or until compliance with a lawful order imposed in the  
17 final order of suspension, or both, where the licensee in performing  
18 or attempting to perform any of the acts specified in this Article  
19 has been guilty of:
- 20 a. Failing to pay the fees required herein;
  - 21 b. Failing to make any reports required by this Article;
  - 22 c. Failing to remit to the care and maintenance trust fund,  
23 merchandise trust fund, or preconstruction trust fund the  
24 required amounts;
  - 25 d. Making any substantial misrepresentation;
  - 26 e. Making any false statement of a character likely to influence  
27 or persuade;
  - 28 f. A continued and flagrant course of misrepresentation or  
29 making of false promises through cemetery agents or  
30 salesmen;
  - 31 g. Violating any provision of this Article or rule promulgated  
32 by the Commission; ~~or~~
  - 33 h. Violating the disclosure requirements in G.S. 65-66(d); or
  - 34 i. Any other conduct, whether of the same or a different  
35 character than specified in this section, which constitutes  
36 fraud or dishonest dealing.
- 37 (3a) Investigate, upon its own initiative or upon a verified complaint in  
38 writing, whether a particular contract for the sale of personal  
39 property or services, whether preneed or at-need, contains the  
40 disclosures required pursuant to G.S. 65-66(d) and to adopt  
41 temporary rules pursuant to Chapter 150B of the General Statutes,  
42 if necessary, to implement this subdivision until such time as  
43 permanent rules are adopted.

- 1 (4) In all proceedings under this Article for the revocation or  
2 suspension of licenses, the provisions of Chapter 150B of the  
3 General Statutes shall be applicable.
- 4 (5) At such time as the Commission finds it necessary it may bring an  
5 action in the name of the State in the court of the county in which  
6 the place of business is located against such person to enjoin such  
7 person from engaging in or continuing such violation or doing any  
8 act or acts in furtherance thereof. In any such action, an order or  
9 judgment may be entered awarding such temporary or permanent  
10 injunction as may be deemed proper; provided, that before any  
11 such action is brought the Commission shall give the cemetery at  
12 least 20 days' notice in writing, stating the alleged violation and  
13 giving the cemetery an opportunity within the 20-day period to  
14 cure the violation. In addition to all other means provided by law  
15 for the enforcement of a temporary restraining order, temporary  
16 injunction, or permanent injunction, the court shall have the power  
17 and jurisdiction to impound and to appoint a receiver for the  
18 property and business of the defendant, including books, papers,  
19 documents, and records appertaining thereto or so much thereof as  
20 the court may deem reasonably necessary to prevent further  
21 violation of this Article through or by means of the use of said  
22 property and business. The Commission may institute proceedings  
23 against the cemetery or its officers, whereafter an examination,  
24 pursuant to this Article, a shortage in the care and maintenance  
25 trust fund, merchandise trust fund or mausoleum and belowground  
26 crypts preconstruction trust fund is discovered, to recover said  
27 shortage.
- 28 (6) Whenever any special additional audit or examination of a  
29 licensee's premises, facilities, books or records is necessary because  
30 of the failure of the licensee to comply with the requirements  
31 imposed in this Article or by the rules and regulations of the  
32 Commission, to charge a fee based on the cost of the special  
33 examination or audit, taking into consideration the salary of any  
34 employees involved in the special audit or examination and any  
35 expenses incurred.
- 36 (7) Promulgate rules and regulations requiring licensees to file with  
37 the Commission plans and specifications for the minimum quality  
38 of any product sold. The sale of any product for which plans and  
39 specifications required by the rules and regulations have not been  
40 filed or sale of any product of a lesser quality than the plans and  
41 specifications filed with the Commission is a violation of this  
42 Article.
- 43 (8) When the Commission finds that failure by a licensee to maintain a  
44 cemetery properly has caused that cemetery to be a public

1 nuisance or a health or safety hazard, the Commission may bring  
2 an action for injunctive relief, against the responsible licensee, in  
3 the superior court of the county in which the cemetery or any part  
4 thereof is located."

5 Section 4. The Department of Justice through the Office of the Attorney  
6 General, Consumer Protection Division, shall ensure that private, for-profit cemetery  
7 companies operate within Article 1 of Chapter 75 of the General Statutes, titled  
8 "Monopolies, Trusts, and Consumer Protection", the antitrust and unfair trade  
9 practices laws.

10 Section 5. This act becomes effective January 1, 2000, and is applicable  
11 to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

HOUSE BILL 14\*  
Committee Substitute Favorable 4/22/99  
Third Edition Engrossed 4/27/99  
Proposed Senate Committee Substitute: H14-CSSK-003  
Attention: line numbers may change after adoption.

Short Title: Cemetery Consumer Protection.

(Public)

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Sponsors:

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Referred to:

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February 1, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING  
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED  
4 BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON  
5 CEMETERY ISSUES.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 65-66(d) reads as rewritten:  
8 "(d) Any contract for the sale of personal property ~~and/or~~ or  
9 ~~services~~ services, whether preneed or at-need, shall ~~state~~  
10 disclose separate costs the following:  
11 (1) A specific description of each item of personal  
12 property purchased and the cost to the purchaser  
13 for each item of personal ~~property,~~ property and  
14 for each act of installation or other service  
15 required by the contract, and ~~for each other item~~  
16 of services included in the contract, including any  
17 costs for the right of interment, entombment, or  
18 inurnment;  
19 (2) Specification of whether opening and closing of a  
20 grave space, mausoleum space, or columbarium space

- 1 is included in the contract, and, if not, the  
2 current prices for opening and closing and a  
3 statement in bold lettering that these prices are  
4 subject to change;
- 5 (3) Any requirements or costs relating to memorial  
6 markers, including any obligations of the grave  
7 space, mausoleum space, or columbarium space owner  
8 if the owner desires to have an outside provider  
9 provide the marker and any costs relating to having  
10 an outside provider provide and place a marker;
- 11 (4) A statement describing, in language that is  
12 readable and understandable by a person of average  
13 intelligence, experience, and education, the nature  
14 of the property right in the grave space, mausoleum  
15 space, or columbarium space; and if the grave  
16 space, mausoleum space, or columbarium space may be  
17 used for future interments, entombments or  
18 inurnments in addition to use by the intended  
19 occupant, a statement to that effect;
- 20 (5) A statement that a preneed purchaser has, pursuant  
21 to G.S. 65-66(m), 30 days following the execution  
22 of a contract to cancel the contract by giving  
23 written notice to the seller and that the seller  
24 may cancel the contract, upon default by the  
25 purchaser, by giving written notice to the  
26 purchaser. The statement shall include (i) whether  
27 or not the purchaser may transfer the purchaser's  
28 rights in the property to another person or  
29 organization and (ii) whether or not the seller  
30 will refund all or part of the purchase price and  
31 the conditions under which a refund will be made,  
32 after the 30-day period, including the purchaser  
33 moving from one locale to another;
- 34 (6) If the seller knows that the grave space, mausoleum  
35 space, or columbarium space has been previously  
36 sold by the cemetery company to a purchaser and the  
37 space was used in the final disposition interment,  
38 entombment, or inurnment of human remains and has  
39 since returned to the inventory of available  
40 spaces, a statement that the space has been used  
41 for a prior interment, entombment, or inurnment;
- 42 (7) A statement identifying the person or legal entity  
43 which owns the cemetery or provides the property or  
44 services. If an affiliation with a regional or

1           national entity exists, this affiliation shall be  
2           identified; and  
3           (8) A statement of whether the purchaser may obtain  
4           property and services from an outside provider and  
5           if the purchaser elects to do so, a statement  
6           disclosing seller's costs to the purchaser, or fees  
7           or assessments charged by seller to the outside  
8           provider for such property or services, and notice  
9           that seller's costs, assessments, or fees are  
10           subject to change. The statement shall also  
11           include seller's current prices for such property  
12           and services, and state in bold lettering that the  
13           prices are subject to change."

14           Section 2. G.S. 65-53 is amended by adding a new  
15 subdivision to read:

16           "(9) The Commission shall keep records of the complaints  
17           received and the action taken by the Commission on  
18           each complaint. These records shall be kept for at  
19           least five years after receipt of the complaint."

20           Section 3. G.S. 65-53 reads as rewritten:

21   "**§ 65-53. Powers.**

22   In addition to other powers conferred by this Article, the  
23 Cemetery Commission shall have the following powers and duties:

- 24           (1) The administrator shall be appointed by the  
25 Governor upon recommendation of the Cemetery  
26 Commission. The compensation of the administrator  
27 and such other personnel as is necessary to operate  
28 the Commission is subject to the provisions of  
29 Chapter 126 of the General Statutes of North  
30 Carolina. The Commission is authorized and  
31 empowered to employ such staff, including legal  
32 counsel, as may be necessary.
- 33           (2) To examine a cemetery company's records when a  
34 person applies for a change of control of the  
35 company.
- 36           (3) Investigate, upon its own initiative or upon a  
37 verified complaint in writing, the actions of any  
38 person engaged in the business or acting in the  
39 capacity of a licensee under this Article. The  
40 license of a licensee may be revoked or suspended  
41 for a period not exceeding two years, or until  
42 compliance with a lawful order imposed in the final  
43 order of suspension, or both, where the licensee in

- 1 performing or attempting to perform any of the acts  
2 specified in this Article has been guilty of:
- 3 a. Failing to pay the fees required herein;
  - 4 b. Failing to make any reports required by this  
5 Article;
  - 6 c. Failing to remit to the care and maintenance  
7 trust fund, merchandise trust fund, or  
8 preconstruction trust fund the required  
9 amounts;
  - 10 d. Making any substantial misrepresentation;
  - 11 e. Making any false statement of a character  
12 likely to influence or persuade;
  - 13 f. A continued and flagrant course of  
14 misrepresentation or making of false promises  
15 through cemetery agents or salesmen;
  - 16 g. Violating any provision of this Article or  
17 rule promulgated by the Commission; ~~or~~
  - 18 h. Violating the disclosure requirements in G.S.  
19 65-66(d); or
  - 20 i. Any other conduct, whether of the same or  
21 different character than specified in this  
22 section, which constitutes fraud or dishonest  
23 dealing.
- 24 (3a) Investigate, upon its own initiative or upon a  
25 verified complaint in writing, whether a particular  
26 contract for the sale of personal property or  
27 services, whether preneed or at-need, contains the  
28 disclosures required pursuant to G.S. 65-66(d) and  
29 to adopt temporary rules pursuant to Chapter 150B  
30 of the General Statutes, if necessary, to implement  
31 this subdivision until such time as permanent rules  
32 are adopted.
- 33 (4) In all proceedings under this Article for the  
34 revocation or suspension of licenses, the  
35 provisions of Chapter 150B of the General Statutes  
36 shall be applicable.
- 37 (5) At such time as the Commission finds it necessary  
38 it may bring an action in the name of the State in  
39 the court of the county in which the place of  
40 business is located against such person to enjoin  
41 such person from engaging in or continuing such  
42 violation or doing any act or acts in furtherance  
43 thereof. In any such action, an order or judgment  
44 may be entered awarding such temporary or permanent



- 1 injunction as may be deemed proper; provided, that  
2 before any such action is brought the Commission  
3 shall give the cemetery at least 20 days' notice in  
4 writing, stating the alleged violation and giving  
5 the cemetery an opportunity within the 20-day  
6 period to cure the violation. In addition to all  
7 other means provided by law for the enforcement of  
8 a temporary restraining order, temporary  
9 injunction, or permanent injunction, the court  
10 shall have the power and jurisdiction to impound  
11 and to appoint a receiver for the property and  
12 business of the defendant, including books, papers,  
13 documents, and records appertaining thereto or so  
14 much thereof as the court may deem reasonably  
15 necessary to prevent further violation of this  
16 Article through or by means of the use of said  
17 property and business. The Commission may institute  
18 proceedings against the cemetery or its officers,  
19 whereafter an examination, pursuant to this  
20 Article, a shortage in the care and maintenance  
21 trust fund, merchandise trust fund or mausoleum and  
22 belowground crypts preconstruction trust fund is  
23 discovered, to recover said shortage.
- 24 (6) Whenever any special additional audit or  
25 examination of a licensee's premises, facilities,  
26 books or records is necessary because of the  
27 failure of the licensee to comply with the  
28 requirements imposed in this Article or by the  
29 rules and regulations of the Commission, to charge  
30 a fee based on the cost of the special examination  
31 or audit, taking into consideration the salary of  
32 any employees involved in the special audit or  
33 examination and any expenses incurred.
- 34 (7) Promulgate rules and regulations requiring  
35 licensees to file with the Commission plans and  
36 specifications for the minimum quality of any  
37 product sold. The sale of any product for which  
38 plans and specifications required by the rules and  
39 regulations have not been filed or sale of any  
40 product of a lesser quality than the plans and  
41 specifications filed with the Commission is a  
42 violation of this Article.
- 43 (8) When the Commission finds that failure by a  
44 licensee to maintain a cemetery properly has caused

1                   that cemetery to be a public nuisance or a health  
2                   or safety hazard, the Commission may bring an  
3                   action for injunctive relief, against the  
4                   responsible licensee, in the superior court of the  
5                   county in which the cemetery or any part thereof is  
6                   located."

7                   Section 4. The Department of Justice through the Office  
8 of the Attorney General, Consumer Protection Division, shall  
9 ensure that private, for-profit cemetery companies operate within  
10 Article 1 of Chapter 75 of the General Statutes, titled  
11 "Monopolies, Trusts, and Consumer Protection", the antitrust and  
12 unfair trade practices laws.

13                   Section 5. This act becomes effective January 1, 2000,  
14 and is applicable to contracts entered into on or after that  
15 date.



NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
House Bill 14

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_

H14-ASK-001

Date \_\_\_\_\_, 1999

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

1 moves to amend the bill on page 3, line 3,  
2 by rewriting that line to read:  
3           "(8) A statement that the purchaser may obtain"; and  
4  
5 on page 3, between lines <sup>13</sup>19 and <sup>14</sup>20, by inserting the following new  
6 section:  
7           "Section <sup>1.2</sup>2.1. G.S. 65-66 is amended by adding a new  
8 subsection to read:  
9           '(n) A cemetery company shall not prohibit providers of cemetery  
10 products or services from providing products or services to persons  
11 having rights in a grave space, mausoleum space, or columbarium  
12 space. This subsection does not prohibit a cemetery company from  
13 adopting reasonable requirements to ensure that these providers  
14 follow procedures established by the cemetery company to fulfill its  
15 obligation to its purchasers.'".  
16

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_

VISITOR REGISTRATION SHEET

Comroe  
Name of Committee

June 22, 79  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Jocyn Henderson	CAURC
Patricia Paul	noted
Renee J. J. J.	PFIZER
Shannon Brown	Pfizer
Susan Weston	Pfizer
Tim Harrison	Pfizer
Carly Bell	Pfizer
Elizabeth W. W. W.	Pfizer, Inc.
Barbara Doyle-McTighe	Pfizer - Wake County Res.
Melanie Spencer	PFIZER
Janet Marks	Pfizer
Lezie B. B. B.	Pfizer
Christine Adair	Pfizer
Beth Butler	Pfizer
Chuck Tompkins	Pfizer
Priscilla Swensell	C.C.T.S. IIRP



SENATE COMMERCE COMMITTEE  
11:00 A.M., TUESDAY, JULY 13, 1999  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, July 13, 1999. Twenty-two members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets. Mr. Akhil Hegde of Lumberton, sponsored by Senator Weinstein, and Mr. Scott Youngblood of Raleigh, sponsored by Senator Reeves, were the Senate Pages assisting with the meeting.

Senator Soles, Chairman, called the meeting to order and the following bill was considered by the Committee:

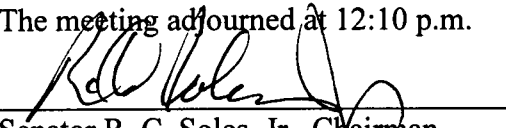
SB 1077, AN ACT TO ENHANCE AIR AND WATER QUALITY AND PROTECT THE ENVIRONMENT BY ALLOWING ELECTRIC CUSTOMERS TO PROVIDE FINANCIAL SUPPORT TO PRODUCERS OF RENEWABLE RESOURCE ENERGY. Senator Foxx moved the adoption of a Proposed Committee Substitute for the bill. Motion carried. Senator Albertson, the sponsor of the bill, was recognized for an explanation. He said SB 1077 creates a system under which certain ratepayers can contribute to or designate that a part of their electric utility bill be used for payment to small hydroelectric generators for power they produce. It also provides the rate that will be paid to the hydroelectric producers, etc. (See attached Summary prepared by Steven Rose, Committee Counsel, for complete explanation.)

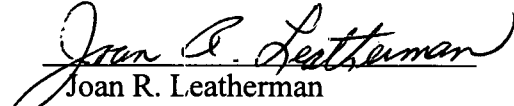
Mr. Tim Henderson spoke in favor of the bill on behalf of the small hydro producers. Speaking in opposition to the legislation were Mr. Bill Johnson with Carolina Power & Light Company, and Mr. Bob Kaylor with Duke Energy. Mrs. Rankin, Attorney with the Utilities Commission, and Committee Counsel, Steve Rose, assisted in answering questions from committee members

Senator Ballance moved that SB 1077 be given a favorable report. Senator Rucho offered a substitute motion that the bill be referred to the Commission on Deregulation. Senator Soles said that the substitute motion was out of order since the Committee did not have the authority to refer bills to other committees. Senator Hoyle offered a substitute motion to postpone the bill indefinitely. This substitute motion was withdrawn after further discussion.

The motion by Senator Ballance to give the bill a favorable report failed.

The meeting adjourned at 12:10 p.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, JULY 13, 1999  
Room 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 1077 – FREEDOM TO CHOOSE CLEAN ENERGY (Albertson)**

**ADJOURNMENT**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1077\*

Short Title: Freedom to Choose Clean Energy.

(Public)

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Sponsors: Senators Albertson; Ballance, Carpenter, Dannelly, East, Forrester, Hartsell, Jordan, Kinnaird, Martin of Guilford, Metcalf, Shaw of Cumberland, and Webster.

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Referred to: Commerce.

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENHANCE AIR AND WATER QUALITY AND PROTECT THE  
3 ENVIRONMENT BY ALLOWING ELECTRIC CUSTOMERS TO PROVIDE  
4 FINANCIAL SUPPORT TO PRODUCERS OF RENEWABLE RESOURCE  
5 ENERGY.

6 The General Assembly of North Carolina enacts:

7 Section 1. Article 7 of Chapter 62 of the General Statutes is amended by  
8 adding a new section to read:

9 "§ 62-155.1. Renewable resource energy; funding participation by electric customers.

10 (a) As used in this section:

11 (1) "Contributor" means a customer of an electric utility who  
12 voluntarily chooses to support renewable energy generation and  
13 use by regularly contributing an additional amount of one dollar  
14 (\$1.00) or more, along with payment of the customer's residential  
15 electric bill payment.

16 (2) "Eligible renewable generator" means an electric power production  
17 facility, not owned by a utility, having an installed hydroelectric  
18 capacity of five megawatts or less located at an existing dam, and  
19 relying on one or more of the following alternate eligible  
20 renewable resources for increased power production during on-  
21 peak hours, not to exceed the maximum installed hydroelectric  
22 capacity: (i) fuel cells; (ii) solar arrays and installations; (iii)



1 biomass generators; or (iv) waste, landfill gas, or gas from livestock  
2 waste.

3 (3) "Interconnection" means the connection between an electric utility  
4 and an eligible renewable generator that permits the flow of  
5 electrical energy to and from the eligible renewable generator  
6 facility, including the provisions for switching, metering,  
7 transmission, distribution, equipment, and safe operation.

8 (4) "Subscriber" means a residential customer of an electric utility  
9 who voluntarily chooses to support renewable energy generation  
10 and use by having a portion of the customer's residential electric  
11 bill payment used to pay for energy provided by eligible renewable  
12 generators.

13 (b) The General Assembly finds that it is ecologically responsible and in the  
14 public interest to enhance the feasibility of the production of renewable energy by  
15 eligible renewable generators, which reduces the need for facilities operating on fossil  
16 fuels.

17 (c) The Commission shall require each electric utility to allow its customers to  
18 support the use of energy produced by eligible renewable generators through an  
19 election made on the customer's monthly bill or by otherwise notifying the utility.  
20 Any electric utility customer may elect to become a contributor. Residential  
21 customers may elect to become subscribers or contributors, or both, and the utility  
22 shall notify all of its customers at least twice yearly of the option to do so. The  
23 Commission or the Public Staff shall determine the wording of the notification. A  
24 customer may terminate an election to become a subscriber or contributor by  
25 notifying the utility. No fee may be charged for an election to subscribe or contribute  
26 or to terminate those elections.

27 (d) The Commission shall require each electric utility to effect interconnection  
28 with eligible renewable generators in order to effect the provisions of this section.  
29 Each eligible renewable generator shall reimburse the utility for the costs of  
30 interconnection and metering equipment and the installation of that equipment to the  
31 point of connection to the utility's system at the eligible renewable generator's site, to  
32 the extent that such reimbursement has not previously been made. Eligible  
33 renewable generators shall pay the utility for any energy produced by the utility and  
34 used by the eligible renewable generator at a rate approved by the Commission.

35 (e) Except as otherwise provided in subsection (f) of this section for energy  
36 supplied during on-peak hours, the rate remitted by each electric utility to eligible  
37 renewable generators shall be determined by deducting from the Commission-  
38 approved residential retail rate charged on a per kilowatt-hour basis to the majority  
39 of residential customers of that electric utility:

40 (1) Expenses approved by the Commission and retained by the utility  
41 for billing, distribution, handling, and other services and profit,  
42 totalling up to twenty percent (20%) of that retail rate; and

43 (2) An amount equal to two percent (2%) of that retail rate, one  
44 percent (1%) of which the utility shall remit to the Wildlife

1                   Resources Fund established in G.S. 143-250 and one percent (1%)  
2                   of which the utility shall remit to the Clean Water Management  
3                   Trust Fund established in Article 13A of Chapter 113 of the  
4                   General Statutes.

5 This rate shall be remitted by the electric utility to eligible renewable generators first  
6 from amounts collected from contributors and, to the extent that those funds are not  
7 sufficient, from amounts collected from the utility's subscribers.

8       (f) For energy supplied to an electric utility during on-peak hours, a rate equal to  
9 the rate provided for in subsection (e) of this section multiplied by one and forty-  
10 three hundredths (1.43) shall be remitted by the electric utility to eligible renewable  
11 generators. This higher rate is intended to encourage on-peak production in order to  
12 reduce air pollutants, to offset demand for higher-priced energy during on-peak  
13 hours, and to compensate eligible renewable generators for higher costs during on-  
14 peak hours.

15       (g) If subscription demand exceeds energy available from eligible renewable  
16 generators, each utility shall provide its subscribers with the deficit energy at the  
17 applicable residential rate and apportion the amount of subscribers' electric bills  
18 payable to eligible renewable generators on the basis of kilowatt-hours supplied by  
19 eligible renewable generators during the billing period.

20       (h) If amounts collected from both subscribers and contributors are insufficient to  
21 pay for all energy supplied by eligible renewable generators, the available funds shall  
22 be apportioned to them on the basis of kilowatt-hours supplied by each generator.

23       (i) Contracts providing for interconnection and services under this section shall be  
24 for a period of 15 years unless by mutual agreement the utility and an eligible  
25 renewable generator negotiate a shorter term. The Commission shall prescribe  
26 standard terms and conditions for those contracts and shall permit cancellation of a  
27 contract if an eligible renewable generator fails to deliver power within 30 months  
28 after a contract is entered into or fails to deliver power for 360 consecutive days after  
29 the date that power is first delivered under the contract.

30       (j) On or before April 15 of each year, each electric utility shall submit to the  
31 Commission a report covering the preceding calendar year certifying the number of  
32 subscribers and contributors electing to support eligible renewable energy generators,  
33 the kilowatt-hour and dollar amount of the subscribers served, the dollar amount  
34 collected from contributors, and the surplus funds, if any, remaining from amounts  
35 collected from contributors.

36       (k) The Commission shall require each electric utility to create an escrow account  
37 for any surplus amounts collected from contributors. The fund shall be used for  
38 years in which insufficient funds are collected to remit to eligible renewable  
39 generators at the rate provided for in subsection (e) of this section. Any surplus in  
40 excess of two years' anticipated funding shall be disbursed annually by the utility to  
41 the Clean Water Management Trust Fund established in Article 13A of Chapter 113  
42 of the General Statutes."

1           Section 2. This act is effective when it becomes law and applies to the  
2 provision of electric power supplied by eligible renewable generators, as defined in  
3 G.S. 62-155.1(a)(2), on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

SENATE BILL 1077\*  
Proposed Committee Substitute S1077-PCS6704-LL

Short Title: Freedom to Choose Clean Energy.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENHANCE AIR AND WATER QUALITY AND PROTECT THE  
3 ENVIRONMENT BY ALLOWING ELECTRIC CUSTOMERS TO PROVIDE  
4 FINANCIAL SUPPORT TO PRODUCERS OF RENEWABLE RESOURCE  
5 ENERGY.

6 The General Assembly of North Carolina enacts:

7 Section 1. Article 7 of Chapter 62 of the General Statutes is amended by  
8 adding a new section to read:

9 "**§ 62-155.1. Renewable resource energy; funding participation by electric customers.**

10 (a) As used in this section:

11 (1) 'Contributor' means a customer of an electric utility who  
12 voluntarily chooses to support renewable energy generation and  
13 use by regularly contributing an additional amount of one dollar  
14 (\$1.00) or more, along with payment of the customer's electric bill  
15 payment.

16 (2) 'Eligible renewable generator' means an electric power production  
17 facility, not owned by a utility, having an installed hydroelectric  
18 capacity of five megawatts or less located at an existing dam, and  
19 relying on one or more of the following alternate eligible  
20 renewable resources for increased power production during on-  
21 peak hours, not to exceed the maximum installed hydroelectric  
22 capacity: (i) fuel cells; (ii) solar arrays and installations; (iii)

1 biomass generators; or (iv) waste, landfill gas, or gas from livestock  
2 waste.

3 (3) 'Interconnection' means the connection between an electric utility  
4 and an eligible renewable generator that permits the flow of  
5 electrical energy to and from the eligible renewable generator  
6 facility, including the provisions for switching, metering,  
7 transmission, distribution, equipment, and safe operation.

8 (4) 'Subscriber' means a residential customer of an electric utility who  
9 voluntarily chooses to support renewable energy generation and  
10 use by having a portion of the customer's residential electric bill  
11 payment used to pay for energy provided by eligible renewable  
12 generators.

13 (b) The General Assembly finds that it is ecologically responsible and in the  
14 public interest to enhance the feasibility of the production of renewable energy by  
15 eligible renewable generators, which reduces the need for facilities operating on fossil  
16 fuels.

17 (c) The Commission shall require each electric utility to allow its customers to  
18 support the use of energy produced by eligible renewable generators through an  
19 election made on the customer's monthly bill or by otherwise notifying the utility.  
20 Any electric utility customer may elect to become a contributor. Residential  
21 customers may elect to become subscribers or contributors, or both, and the utility  
22 shall notify all of its customers at least twice yearly of the option to do so. The  
23 Commission shall determine the wording of the notification. A customer may  
24 terminate an election to become a subscriber or contributor by notifying the utility.  
25 No fee may be charged for an election to subscribe or contribute or to terminate  
26 those elections.

27 (d) The Commission shall require each electric utility to effect interconnection  
28 with eligible renewable generators in order to effect the provisions of this section.  
29 Each eligible renewable generator shall reimburse the utility for the costs of  
30 interconnection and metering equipment and the installation of that equipment to the  
31 point of connection to the utility's system at the eligible renewable generator's site, to  
32 the extent that such reimbursement has not previously been made. Eligible  
33 renewable generators shall pay the utility for any energy produced by the utility and  
34 used by the eligible renewable generator at a rate approved by the Commission.

35 (e) Except as otherwise provided in subsection (f) of this section for energy  
36 supplied during on-peak hours, the rate remitted by each electric utility to eligible  
37 renewable generators shall be determined by deducting from the Commission-  
38 approved residential retail rate charged on a per kilowatt-hour basis to the majority  
39 of residential customers of that electric utility:

40 (1) Expenses approved by the Commission and retained by the utility  
41 for billing, distribution, handling, and other services and profit,  
42 totalling up to twenty percent (20%) of that retail rate; and

43 (2) An amount equal to two percent (2%) of that retail rate, one  
44 percent (1%) of which the utility shall remit to the Wildlife

1                   Resources Fund established in G.S. 143-250 and one percent (1%)  
2                   of which the utility shall remit to the Clean Water Management  
3                   Trust Fund established in Article 13A of Chapter 113 of the  
4                   General Statutes.

5 This rate shall be remitted by the electric utility to eligible renewable generators first  
6 from amounts collected from contributors and, to the extent that those funds are not  
7 sufficient, from amounts collected from the utility's subscribers.

8       Notwithstanding the provisions of this subsection, to the extent that the  
9 Commission finds that the electric utility incurs expenses in addition to the amount  
10 provided for in subdivision (1) of this subsection other than those that are offset by  
11 expenses not incurred because of the energy produced by the eligible renewable  
12 generators, the Commission may adjust the utility's rates so as to allow it to maintain  
13 its ability to earn a fair return for its shareholders as provided for in G.S. 62-133.

14       (f) For energy supplied to an electric utility during on-peak hours, a rate equal to  
15 the rate provided for in subsection (e) of this section multiplied by one and forty-  
16 three hundredths shall be remitted by the electric utility to eligible renewable  
17 generators. This higher rate is intended to encourage on-peak production in order to  
18 reduce air pollutants, to offset demand for higher-priced energy during on-peak  
19 hours, and to compensate eligible renewable generators for higher costs during on-  
20 peak hours.

21       (g) If subscription demand exceeds energy available from eligible renewable  
22 generators, each utility shall provide its subscribers with the deficit energy at the  
23 applicable residential rate and apportion the amount of subscribers' electric bills  
24 payable to eligible renewable generators on the basis of kilowatt-hours supplied by  
25 eligible renewable generators during the billing period.

26       (h) If amounts collected from both subscribers and contributors are insufficient to  
27 pay for all energy supplied by eligible renewable generators, the available funds shall  
28 be apportioned to them on the basis of kilowatt-hours supplied by each generator.

29       (i) Contracts providing for interconnection and services under this section shall be  
30 for a period of 15 years unless by mutual agreement the utility and an eligible  
31 renewable generator negotiate a shorter term. The Commission shall prescribe  
32 standard terms and conditions for those contracts and shall permit cancellation of a  
33 contract if an eligible renewable generator fails to deliver power within 30 months  
34 after a contract is entered into or fails to deliver power for 360 consecutive days after  
35 the date that power is first delivered under the contract.

36       (j) On or before April 15 of each year, each electric utility shall submit to the  
37 Commission a report covering the preceding calendar year certifying the number of  
38 subscribers and contributors electing to support eligible renewable energy generators,  
39 the kilowatt-hour and dollar amount of the subscribers served, the dollar amount  
40 collected from contributors, and the surplus funds, if any, remaining from amounts  
41 collected from contributors.

42       (k) The Commission shall require each electric utility to create an escrow account  
43 for any surplus amounts collected from contributors. The fund shall be used for  
44 years in which insufficient funds are collected to remit to eligible renewable

1 generators at the rate provided for in subsection (e) of this section. Any surplus in  
2 excess of two years' anticipated funding shall be disbursed annually by the utility to  
3 the Clean Water Management Trust Fund established in Article 13A of Chapter 113  
4 of the General Statutes."

5           Section 2. This act is effective when it becomes law and applies to the  
6 provision of electric power supplied by eligible renewable generators, as defined in  
7 G.S. 62-155.1(a)(2), on or after that date.



BILL ANALYSIS

# S1077: Freedom to Choose Clean Energy

**Committee:** Senate Commerce Committee  
**Date:** July 13, 1999  
**Version:** Proposed Committee  
Substitute

**Introduced by:** Sen. Albertson  
**Summary by:** Steven Rose  
Committee Counsel

**SUMMARY:** Senate Bill 1077 amends Chapter 62 of the General Statutes to create a system under which certain ratepayers can contribute to or designate that a part of their electric utility bill be used for payment to small hydroelectric generators for power they produce and put on the utility grid. It also provides the rate that will be paid to the hydroelectric producers, the amount to be paid to the public utility for transporting the power and for billing and other services, and provides that 1% of the retail rate is remitted to the Wildlife Resources Fund and 1% to the Clean Water Management Trust Fund. The provisions of this act will be contained in a new G.S. 62-155.1.

G.S. 62-155.1(a) contains definitions applicable to this section. It defines two classes of electric utility customers who may participate. "Contributors" are those customers who regularly contribute additional amounts, not less than one dollar per month, with the payment of their electric bill. "Subscribers" are residential customers who voluntarily choose to have a portion of their residential electric bill payment used to pay for energy provided by eligible renewable generators. "Eligible renewable generators" are hydroelectric generation plants not owned by a utility, having a capacity of five megawatts or less, and being located at an existing dam. These hydroelectric units must have an alternate source of power for increased production during on-peak hours which must use fuel cells, solar installations, biomass generators, or waste, landfill gas, or livestock waste gas.

G.S. 62-155.1(b) contains a finding by the General Assembly that it is ecologically responsible and in the public interest to enhance feasibility of production of renewable energy.

G.S. 62-155.1(c) requires the Utilities Commission to require electric utilities to allow their customers to participate in this program. Any electric utility customer may elect to be a contributor. Residential customers may elect to become subscribers or contributors or both. The wording of the notification to customers of the ability to take advantage of this plan shall be determined by the Commission.

G.S. 62-155.1(d) requires the Commission to require electric utilities to provide interconnection with eligible renewable generators and the utility grid, with the eligible generator reimbursing the utility for the cost of interconnection and metering.

G.S. 62-155.1(e) sets forth the rate to be paid by the electric utility to the eligible renewable generators. That rate is the approved residential rate charged to the majority of the residential customers of the utility, minus expenses and profit of the public utility and minus a 1% contribution to the Wildlife Resources Fund and a 1% contribution to Clean Water Management Trust Fund. The utilities' expenses are to be approved by the Commission but may not exceed 20% of the retail rate. The rate specified is to be paid first from amounts collected from contributors, and to the extent that those funds are insufficient, from



amounts collected from subscribers. If the utility's expenses are greater than that amount, the Commission may adjust the utility's rates to ensure that it earns a fair return for its shareholders.

**G.S. 62-155.1(f)** provides a different rate for on-peak hours. That rate is the rate specified in subsection (e) multiplied by 1.43.

**G.S. 62-155.1(g)** provides that if subscription demand exceeds energy available from eligible renewable generators, the public utility must make up the deficit. The amount of the subscribers' electric bill payable to the renewable generators will then be apportioned on the basis of power supplied by the renewable generators.

**G.S. 62-155.1(h)** provides that if the amounts collected from subscribers and contributors are insufficient to pay for the energy supplied by the eligible renewable generators, those funds are apportioned to the generators on a kilowatt-hours supplied basis.

**G.S. 62-155.1(i)** provides that the interconnection contracts be for 15 years unless the utility and the renewable generator negotiate a shorter term. The Utilities Commission prescribes standard terms. Contracts may be cancelled if the generator fails to deliver within 30 months after entering into the contract or fails to deliver for 360 consecutive days after the date power is first delivered.

**G.S. 62-155.1(j)** requires each electric utility to report annually to the Commission on the number of subscribers and contributors, the kilowatt-hours and dollar amount of subscribers served, the amount collected from contributors, and any surplus remaining from contributions.

**G.S. 62-155.1(k)** requires each electric utility to create an escrow account for surplus amounts collected from contributors. The escrow account is to be used when insufficient funds are collected to remit to renewable generators at the rate prescribed in subsection (e). Any surplus in excess of two years anticipated funding is dispersed to the Clean Water Management Trust Fund.

The act is effective when it becomes law and applies to the provision of electric power by eligible renewable generators on or after that date.

NOTE: The provisions of Senate Bill 1077 raise the question of whether or not this plan amounts to a purchase of the electricity from the hydroelectric producer by the regulated utility. If it is such a purchase, it would be governed by the Public Utility Regulatory Policies Act of 1978 (federal law) and by G.S. 62-156. Both of these statutes provide that the amount paid to small hydroelectric power producers must not exceed the public utilities' avoided cost of the power. In other words, the public utility pays the small hydro producer the amount it would have cost the utility to generate or buy the same amount of power. PURPA preempts state laws on purchases of power by utilities from small hydroelectric power producers where the state and federal law are in conflict.

## Comments on SB 1077 by Carolina Power & Light

- **Carolina Power & Light opposes this proposal.** This legislation is the latest attempt by the owners of small hydroelectric facilities to keep their rates artificially high. We object to any proposal that bypasses the state's regulatory process and requires power companies to pay an inflated price for power which federal law says we must purchase.
- **This legislation is a potential violation of federal law.** The Public Utility Regulatory Policy Act of 1978 clearly states that jurisdiction in this matter rests with the Federal Energy Regulatory Commission and that the rates to be paid qualifying facilities, such as hydroelectric projects, cannot exceed a utility's avoided cost, which are defined as those costs the utility would incur, but for, the purchase from the QF. The FERC has issued rules which say that no electric utility shall pay more than avoided costs for such purchases and has issued orders holding that states cannot require utilities to pay QF's more than their avoided costs. This bill requires utilities to pay a rate for this power that is unrelated to the utilities' avoided cost and is unrelated to the actual costs incurred by the utility.
- **This legislation circumvents the work of the Study Commission on the Future of Electric Service in North Carolina.** One of the primary functions of the Study Commission is to address "customer choice of electric providers." (Sec. 2, SB 38, SL 1997-40). The bill purports to be a "customer choice" proposal which, if it is, should be debated and decided by the Study Commission as a part of the larger debate on retail competition in North Carolina. This proposal allows electric customers to make a donation to small hydroelectric producers and then choose to receive power from those facilities; this is a subject to be undertaken by the study commission. The proposal would make a radical change to the laws relating to provision of electricity in North Carolina.
- **Environmental benefits of this bill are limited.** These small hydro operations displace virtually none of the generation of the investor-owned utilities. The total installed capacity of the small hydro owners on CP&L's system is 20 MW, less than one-half of one percent of CP&L's coal-fired capacity. During 1998, the electricity generated by the hydro plants on CP&L's system was the equivalent of 57 hours of production of one coal-fired plant.
- **This bill will require power companies and their customers to subsidize the small hydro producers.** The proposal establishes a complex system where apparently only residential customers may donate money to an escrow fund to pay for renewable energy. One of the questions we have about the proposal is what happens if insufficient funds are collected into the escrow account. We suspect that CP&L will cover the shortfall. Also, the proposal sets a rate that utilities must pay for this power that does not cover the utilities' cost of delivering power or any costs for administering this program. These costs are apparently intended to be forced upon utility customers.
- **The proposal is misleading.** Despite the title of the bill, there is no "freedom to choose" in this legislation. It simply creates a mechanism for CP&L's customers to make a monthly donation to private businesspeople who operate hydroelectric facilities.

Contact: Gene Upchurch, 546-3302

# WHY DESTROY OUR HERITAGE ?

*Large Utilities try to eliminate  
Small Clean Power Producers*



- ◆ Freedom to Choose Clean Energy : S1077 & H1136
- ◆ Promotes Clean Electricity - Stops Air Pollution.
- ◆ Help Protect, Restore Small Hydro Electric Projects.

N.C. Small Power Producers Group  
Contact John Hagen (336) 274-2044

## Clean Air – Clean Hydro

Private small hydro represents 98% of North Carolina's clean renewable resource energy. It is in jeopardy of being destroyed.

Small hydro operators chose correctly when they chose to redevelop abandoned dams to make clean power and serve the public interest. Our nation and state had asked for help to conserve fossil fuel, and reduce the nation's dependence on foreign oil. We answered that call. Congress, the Legislature, and the utilities encouraged and induced us with promises of fair treatment and fair pay, so we put our hearts, minds, into building projects.

That we are in trouble today because we made a bad business decision is simply not true. North Carolina's clean energy industry is in trouble today, because of the bad business of the past 15 years. We are in trouble because the utilities have gained almost absolute control of the rates we are paid, because we are forced to sell only to them at the rates they choose, and because the Utilities Commission does not have the authority to correct the situation. Our plight is not all our fault.

We believed we would be treated fairly. We were led to believe that. And we invested on the basis of those beliefs, along with our belief in the rightness of what we were doing.

Duke told us, "We appreciate your interest in installing a generator and interconnecting with Duke. **Duke encourages the development of qualifying facilities for the advancement of the company's load management program and for the conservation of natural resources.**" (Emphasis added.)

CP&L canvassed dams and put their owners and hydro developers together to build projects. They held out reasonable rates into the future. Look at the next page, it shows what CP&L told small hydro they could expect.

But today, instead of the cooperation and fairness promised by the utilities and the government, we are forced onto an unlevel playing field where we have to sell our power only to the utilities, and do so at their price, regardless that it is so low as to kill us. The rate offered today is less, even, than that held out in 1981.

The legislature, not the utilities should dictate North Carolina's clean energy policy. Utility control of rates is destroying North Carolina's clean energy resources, and that is contrary to the public interest. We should keep, and develop, our clean energy resources. If the old way doesn't work, and it doesn't, a new, fair way must be found. This bill is our attempt to do that.

North Carolina wants and needs clean energy. In 1981, the legislature passed the law that created us. In 1996 it voted unanimously to restore rights taken from us by overzealous bureaucrats, and thus protected us.

Carolina Power & Light Company

Projected Avoided Costs

	(1) Total Avoided Energy Cost (¢/KWH) <u>Peak</u>	(2) Energy <u>Off-peak</u>	5	10	15
			.0361	.0417	.0533
1981	2.797	2.075 22,051	24700	32876	36044
82	3.468	2.410 27,342	24700		
83	3.253	2.474 25,646	24700		
84	3.382	2.598 26,664	24700		
85	3.494	2.790 27,547	24700		
86	4.362	3.237 <del>26,250</del> 34,390	<del>24,700</del> 35,907		
87	4.189	3.219 33,026	35,907		
88	4.729	3.524 37,283	35,907		
89	5.124	3.732 40,398	35,907		
90	5.745	4.160 45,293	35,907	32,876	
91	5.798	4.403 <del>319,640</del> 45,711	57,623	65,752	
92	6.673	4.910 52,610	57,623		
93	7.589	5.364 59,832	57,623		
94	10.145	6.676 79,983	57,623		
95	10.034	6.928 79,108	57,623		
			636,884	591,150	657,520
					549,660

REQUIREMENTS APPLICATION CONDITIONS STANDBY

CC 65  
93



5

In 1997, this Committee stepped in to temporarily stop the loss of several projects, by protecting their contracts until the end of the Deregulation Study Commission. In the event, the deregulation work did not finish on time, in December of 1998, and the study was extended. The protection, however, was not extended. The utilities began canceling contracts and North Carolina's clean energy industry began to die.

We have been working hard and continuously since February of this year, when the contracts began to be cancelled, to stop the destruction.

If we are not successful, by year's end about 20 projects on Duke and CP&L's systems will lose their contracts. Two projects have taken new contracts at rates established about 4 years ago and might scrimp by barring any disaster. None have taken a new contract at today's rates. If forced to do so, those projects will be walking bankruptcies. A major dam repair, a canal wall washed out, a generator burned up, and its over for them. Them working hard to survive will accomplish one thing. They will die tired.

Following is a list of contracts expiring (or expired) soon:

1.	Harden	02/ 1999
2.	Lake Lure	02/ 1999
3.	Coltrane	01/ 1999
4.	Buck Creek	08/ 1999
5.	Clearwater	12/ 1999
6.	Glenco	03/ 1999 (Shut down)
7.	Brushy Mtn.	09/ 2000
8.	Harden Two	12/ 2000
9.	Harden Three	12/ 2000
10.	Carbonton	02/ 2000
11.	Cox Lake	02/ 1999 (Shut down)
12.	Deep River	07/ 1999
13.	High Falls	09/ 1999
14.	K&K	12/ 1999
15.	L&S	02/ 2000
16.	Lake	03/ 2000
17.	Upchurch	02/ 2000
18.	Lockville	06/ 2000
19.	Madison	11/ 1999
20.	Milburnie	10/ <del>2000</del> 1999

Twenty of thirty-three projects will either be lost when their contracts expire by 2001.

Of all North Carolina's small projects only one, Avalon, has a contract that will last more than 10 years at a rate that might permit its survival, 4.76 cents. But that rate is marginal, and not sufficient for further development.

Private small hydro brings good to North Carolina. Hiking trails cross our projects. Fishing, kayaking, canoeing, boating, swimming, and skiing goes on at our lakes. Our power is clean, and there's no cleanup afterwards. And our clean energy offsets pollution.

The utilities attempt to diminish our environmental contributions by calling them "limited". But, the effect of every separate thing done to reduce pollution is limited. If just one single thing was not, it could solve the pollution problem by itself, and there would be no problem.

Duke and CP&L point out that they can pollute thousands of times more than we can clean up. One says that in 57 hours just one big coal plant can pollute as much as we can clean up in a year. The other says they can pollute as much in 21 hours as all the small hydro plants that will be lost between now and 2000 could displace. These arguments make a tremendous case for protecting developing small hydro, not doing away with it.

Because the police can't fix the whole problem of crime, should we do away with them? No. We should work harder to fix the broken parts of the judicial system that unreasonably hamper them and prevent them from being more effective. Getting rid of small hydro won't help the pollution problem; it will make it worse.

Small hydro offsets 250 tons of oxides of nitrogen per year. That's equivalent to 25 major EPA polluters, or more than 150 million miles of automobile operation. We displace 5 % of the seventeen tons a day reduction target sought by DENR and the Governor's clean air initiative. Eighty-five percent of the 17 tons-a-day target is supposed to come from cleaner fuel and improved emission controls on cars. But DENR is hunting for sources of the other 15%. Our contribution equals almost 30% of the missing 15%, and that's not insignificant.

The cleaner fuel and more stringent inspections will not be free. There is talk of raising inspection fees to thirty or forty dollars. Low sulfur gas will cost more. Even limiting the number of miles each of us can drive has even been put forward as a partial solution. The people, one way or the other will pay for all the extra mandates. Should we not do everything possible to limit the cost and impact on them by preserving what clean energy we have, rather than letting it be destroyed and replaced by fossil fuel energy simply because the electric utilities would rather not fool with it.

Only the utilities opposed this bill. Not passing it will be good for them, but not for anybody else. Small projects will fail. Families will loose their homes and farms. Banks will suffer defaults on loans. Pollution and fossil fuel consumption will increase. Demands will increase for cleaner fuel, more car inspections, and higher fees. The people will pay. And, they will have to buy dirty power in place of lost clean power while they pay. The utilities, though, will win. They will stuff a small fist full of dollars in their pockets.

This bill puts control of North Carolina's clean energy policy back in the hands of the people through the legislature. The people chose to have clean energy in North Carolina, and they have not expressed a desire to do away with it.

Even the deregulation issue has been used as a tool to try to stop this bill. Deregulation may come, and it may not. But North Carolina's largest clean energy resource is being destroyed today. This problem needs to be fixed today.

If deregulation does come, then we believe that each provider selling in the state and using the common grid should participate in this program and make it available to their customers. That would prevent out of state providers having an advantage over the traditional utilities, and let the system work in the deregulated market place.

This bill allows a unique relationship between customers who want to support clean power and private small hydro projects that make it. It provides fair pay for small hydro and fair compensation for the utilities. It doesn't cost the consumer any more.

It ties providing clean power to the distribution system and the public monopolies that control, and will control it if deregulation occurs. The advantages of the monopoly come with a price, to serve in the public interest. This program should be made part of that price. If the grid operators cooperate to keep bringing clean power to the people, they will serve the public interest.

The tie to the grid operator is appropriate. The grid operators will serve all the customers regardless of supplier. And, without access to the grid, clean energy can not get to the people.

The relationship between the retail buyer and the clean energy generator is clear, but indirect. It is similar to a homeowner making a purchase from a mail order house through UPS. UPS delivers the product, collects the money, and pays the vendor. UPS does not buy the product, or own it. They deliver it and get paid for doing that. That's the role the utilities will play. The Utilities Commission will determine a fair rate for those services.

Mr. Smith or Mrs. Jones won't be able to choose a particular provider, that is what deregulation is all about. What Mr. Smith gets to choose is the **type** of energy he wants to pay for. Letting him choose to use clean energy is not deregulation. It is just good policy. Supporting clean energy and a clean environment, not deregulation, is what this bill is all about. And if deregulation, or even studying it, means destroying or discouraging clean power, then maybe we don't need it.

The legislation combines two elements of systems used in Maine and in Washington State. The check box mechanism comes from Maine, and to sell at retail rates comes from Washington State. Washington State has lots of clean hydropower, but it still recognizes the importance of encouraging small private projects by arranging for them to get reasonable rates for their power. Should North Carolina, a state that ranks among the



top ten polluters per unit of energy in the nation, not be at least as motivated as Washington State, one of the cleanest, to protect what clean power we have, and to develop more.

For simplicity this bill ties pay for small hydro to a percentage of the retail rate. It does away with the bookkeeping nightmare that is the PURPA system. The present system is arcane, confusing, expensive, complicated, and counterproductive. It is destroying the very entity it was designed to protect and encourage. The retail rate is not subject to manipulation, and anybody can work it out with a pencil and paper. Because it is so simple, whatever it does cost to administer will be paid back many times by not having to deal with the avoided cost proceedings.

The utilities already meter and bill, or pay, both customers and small hydro projects. That won't change, so it's a wash. Only the mechanics of the math will, and that will be simplified.

To give you an idea of how simple this is compared to the old way, here is the transcript from one avoided cost proceeding. Of course the transcript doesn't represent all the work that went in to generating it. It cost small hydro more than \$40,000.00 to participate that one time. We don't know how much the state spent, or the utilities, but forty thousand dollars is more than many of our projects make in a year. We can't afford that, particularly when it does no good. We took up a collection, paid our money, and wasted it.

Our salvation, if we have one, is with the legislature because for us to survive, the system must be changed. The Utility Commission does not have the power to change the system. The legislature does.

Small hydro, collectively, grosses about 3.5 million dollars a year. That's a few thousandths of one percent of what the utilities earn. We will not hurt them, even if we are able to double our output, from a financial standpoint we would still be lost in their rounding errors. But, if the legislature passes this bill, we will be able to keep on making our environmental contributions. And they are disproportionately large, compared to our small size.

What is just as important is that we will be able to grow, and that means we can do even more.

What is maybe most important is that this bill will let the legislature and the people, not the utilities, decide whether the state's renewable resource energy policy.

This bill will save us. And by saving us, North Carolina's largest clean energy resource will be saved.

Thank you.

**NORTH CAROLINA  
SMALL HYDRO ELECTRIC  
PROJECTS**

**SMALL POWER PRODUCERS  
AS LARGE AS 80  
MEGAWATTS**

**OLD APPROACH (PURPA)**

**UTILITIES PURCHASED POWER  
AND SET RATES**

**NO CLEAN POWER**

**ELIGIBLE RENEWABLE  
GENERATORS  
5 MEGAWATTS OR LESS**

**NEW VOLUNATRY APPROACH  
SENATE BILL 1077  
HOUSE BILL 1136**

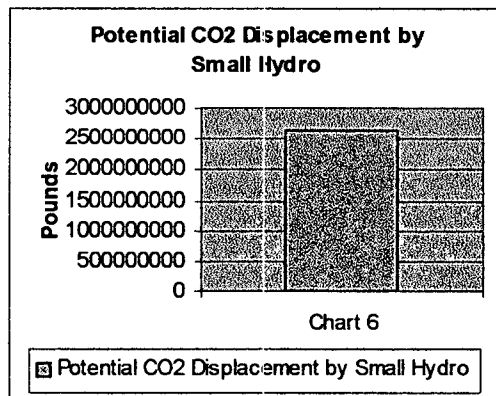
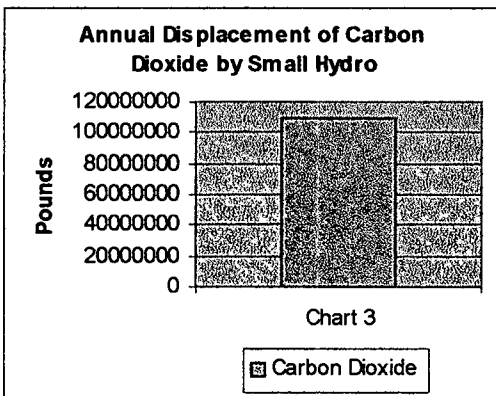
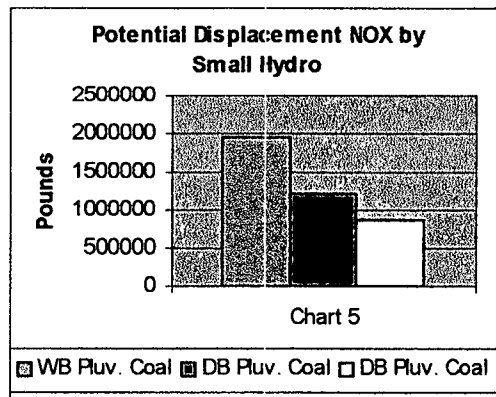
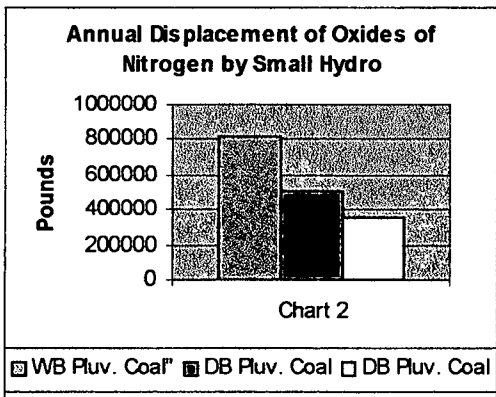
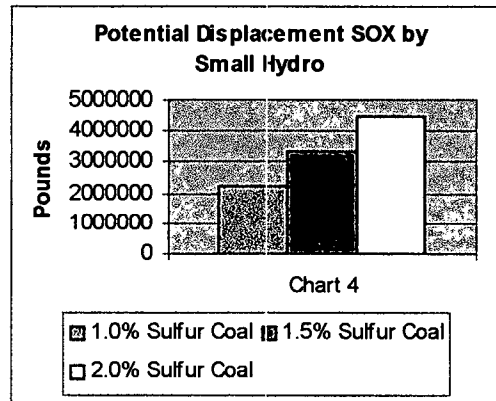
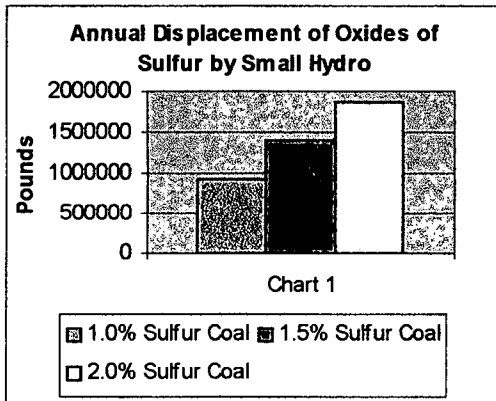
**PARTICIPANTS PAY FOR  
POWER  
LEGISLATURE SETS RATES**

**NORTH CAROLINA'S  
ONLY CLEAN  
RENEWABLE RESOURCE  
ENERGY WILL BE  
PRESERVED AND  
DEVELOPED**

**NORTH CAROLINA SMALL HYDRO ELECTRIC**  
**PARTNERS IN CLEAN AIR**

The several charts of this page are devoted to three of the broadly noxious atmospheric pollutants produced by the combustion of fossil fuels.

Small hydro projects reduce the emission of oxides of nitrogen by approximately half a million pounds per year. That equivalent to reducing automobile operations by 150 million miles a year.



\*1.5 grams/mile

# C&PL

Send inquiries and non-standard return envelope payments to:  
C&PL, PO Box 222, Haw River NC 20672

## Customer Bill

**Mr. Could B. Anybody**  
222 Blue Sky Drive  
Riverville, NC 27777

Account Number	222 222 2222
Usage Period	April 15 - May 14
Payment Received - May 14	.00
Date Mailed	May 20, 1999
Total Due	\$ 100.00
Payment Due	May 31

For information on payment locations, please call (222) 555-1212, 24 hours a day, 7 days a week.

Thank you for your last payment!

### Usage

Meter Number	BR549
Readings : May 14	12
April 15	9
Meter Constant	X 250
Kwh Usage	750

### Billing

222 Sunset Drive, KWH-R (CHAN 4) - 31 Days	
Basic customer charge	12.00
Security light	6.49
Energy charge	915 kwh x \$0.08559 78.32
3% North Carolina sales tax	3.19
<b>Total due</b>	<b>\$ 100.00</b>

This bill is subject to a 1% per month late payment charge after 6/10/99

For information, contact customer service at (222) 555-1212, Mon-Fri 7 AM-9 PM. Monday is our busiest day. You may want to reach us Tuesday - Friday. Thank You

continued on next page

For P.O. Change 336

### Return Portion VOLUNTARY

Renewable Energy Option  
I'll help protect the environment, North Carolina wildlife resources and clean water by supporting the use of RENEWABLE RESOURCE ENERGY made by small independent renewable resource generators. I would like to

- Subscribe part of my regular electric bill payment to pay for Renewable Resource Energy.
- Contribute \$ \_\_\_\_\_ Per month in addition to my regular bill.

Send payments in return envelope to:

Mr. Could B. Anybody  
222 Blue Sky Drive  
Riverville, NC 27777

If your name, mailing address or phone number has changed, please indicate on the back of this stub.

Please enclose (but do not attach) this portion of your bill with your payment made payable to C&PL and return in the envelope provided

Account Number	222 222 2222
Usage period	April 15 - May 14
Date Mailed	May 20, 1999
Total due	\$ 100.00
Payment due	May 31

C&PL  
HAWRIVER NC 20672

## Return Portion

### VOLUNTARY

## Renewable Energy Option

I'll help protect the environment, North Carolina wildlife resources and clean water by supporting the use of **RENEWABLE RESOURCE ENERGY** made by small independent renewable resource generators. I would like to

- Subscribe part of my regular electric bill payment to pay for **Renewable Resource Energy**.
- Contribute \$ \_\_\_\_\_ Per month in addition to my regular bill.

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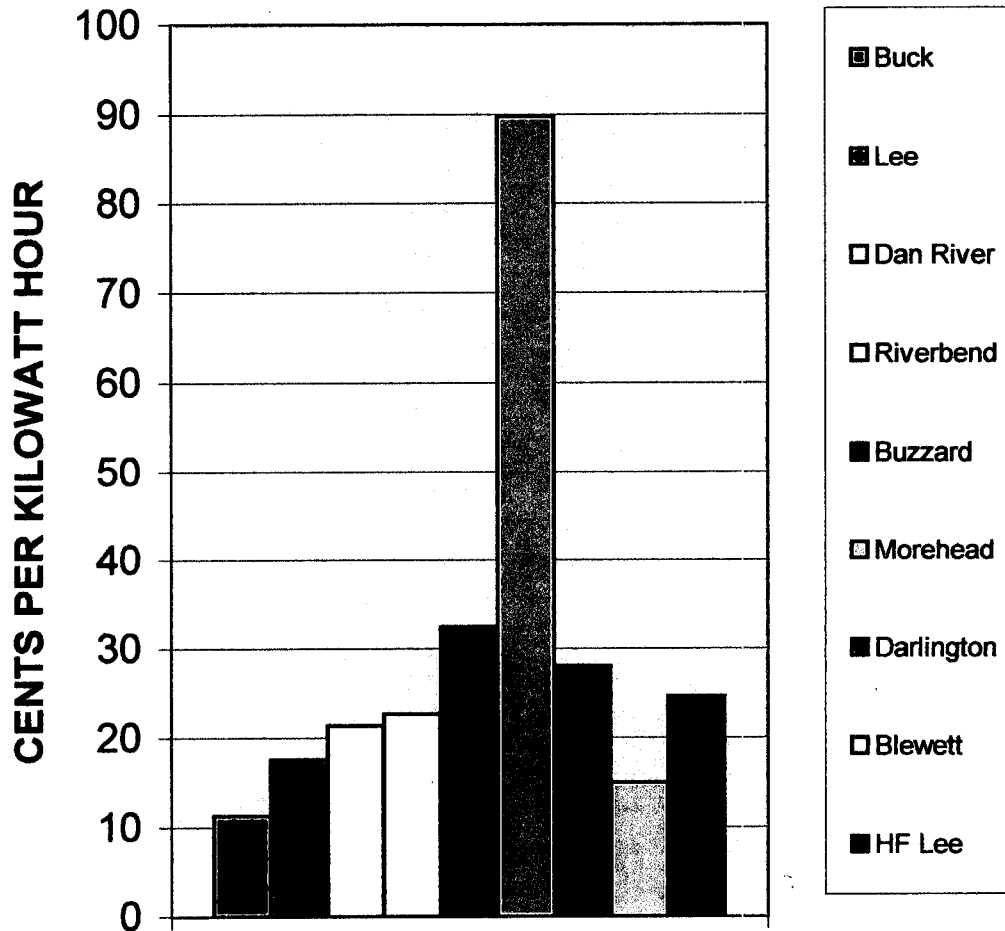
If your name, mailing address or phone number has changed, please indicate on the back of this stub.

Please enclose (but do not attach) this portion of your bill with your payment made payable to C&PL and return in the envelope provided

Account Number	222 222 2222
Usage period	April 15 - May 14
Date Mailed	May 20, 1999
Total due	\$ 100.00
Payment due	May 31

C&PL  
HAWRIVER NC 20672

## COMBUSTION TURBINES - COST OF OPERATION



**ONE YEAR'S OPERATION, NOT INCLUDING CAPITAL COST, EXCEEDED \$14 MILLION. THESE EXPENSIVE GENERATORS WILL OPERATE MORE IF SMALL HYDRO'S ENERGY CONTRIBUTION IS LOST.**

VISITOR REGISTRATION SHEET

①

COMMERCE

Name of Committee

7-13-99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

John Hagon	Small Hydro
Bruce Coy	Small Hydro
Steve Cook	Small Hydro
Jim Henderson	Small Hydro
Mike Allen	Small Hydro
Elizabeth Henderson	Small Hydro
Brenda Dougherty	Sprint
Paul Ford	NSA
Doug Lassiter	McClees Consulting
Henri McClees	McClees Consulting
Mark Gason	Capital Group
Andrew C Givens	CARDINAL ENERGY SERVICE
Sherril Strowd	Energy Division
John Ranzus	NCSDS
Michelle Lee	NCSDS

VISITOR REGISTRATION SHEET

Commencement

Name of Committee

7-13-99

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
JR Baker	self
Ann Duncan	Womble Carlyle
Carolee Perigo	ZDA, PA
David Foster	NC RA
Dennis Patterson	AD
John Cyrus	N.C. State College
Bill H. Baker	NC House member
Mary Smith	NC SEPS
Forrest	NC SEPS
ROGER ORBO	USA
Don Utom	DEUK
Amfagwakine	DENR

VISITOR REGISTRATION SHEET

*Commerce*

Name of Committee

*7-13-99*

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
<i>Rep Hill</i>	



SENATE COMMERCE COMMITTEE  
11:00 A.M., TUESDAY, JUNE 13, 2000  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES

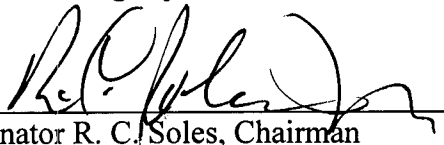
A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, June 13, 2000. Seventeen members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets. Mr. Ernest A. Brooks III, sponsored by Senator Balance, Parks Talton, sponsored by Senator Rand, and Ms. Jennifer Amundsen, sponsored by Senator Carrington, were the Senate Pages assisting with the meeting.

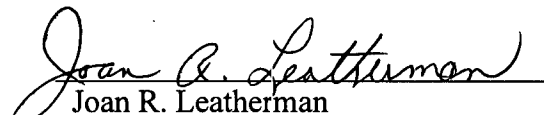
Senator Soles, Chairman, called the meeting to order and the Committee considered the following bill:

SB 1183, AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF THE NORTH CAROLINA RAILROAD STUDY COMMISSION. Senator Soles read a letter to the Committee from President Sam Hunt, North Carolina Railroad Company, in support of the legislation. (Copy attached.) Senator Warren moved that a proposed Committee Substitute for SB 1183 be adopted. Motion carried.

Senator Dalton, the bill sponsor, was recognized to explain the Committee Substitute. (See attached Summary prepared by Committee Counsel.) Senator Dalton sent forward an amendment to the Committee Substitute and Senator Hoyle moved the adoption of the amendment, as read. Following questions from the Committee and remarks by Mr. Scott Saylor, Counsel to the North Carolina Railroad, and Mr. Lyman Cooper, Resident Vice President of CSX, Senator Dalton moved that the Committee Substitute, as amended, be rolled into a new Committee Substitute and that it be given a favorable report. Motion carried.

The meeting adjourned at 11:45 a.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, JUNE 13, 2000  
Room 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 1183, NCRR AMENDMENTS (SENATOR DALTON)**

**ADJOURNMENT**

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair**

Wednesday, June 14, 2000

SENATOR SOLES,  
submits the following with recommendations as to passage:

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

S.B. 1183	NARR Amendments	
	Draft Number:	PCS7783
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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D

SENATE BILL 1183  
Proposed Committee Substitute S1183-PCS7783-SU004

Short Title: NCRR Amendments.

(Public)

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Sponsors:

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Referred to:

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May 9, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF  
3 THE NORTH CAROLINA RAILROAD STUDY COMMISSION.  
4 Whereas, during the 1997 Session of the General Assembly the State  
5 provided funds to buy the stock of all of the private shareholders so that the railroad  
6 right-of-way could be preserved as a company asset for future economic growth; and  
7 Whereas, the North Carolina Railroad Company is a private corporation  
8 with all of the voting stock owned by the State of North Carolina and all of the  
9 members of the Board of Directors appointed by the Governor and the General  
10 Assembly; and  
11 Whereas, as a private corporation the North Carolina Railroad Company  
12 is uniquely situated to respond to the needs of the State and to quickly and efficiently  
13 develop transportation and economic development improvements for the State; and  
14 Whereas, certain statutory amendments are critically necessary for the  
15 North Carolina Railroad Company to fulfill its potential for the benefit of the State of  
16 North Carolina and its people; Now, therefore,  
17 The General Assembly of North Carolina enacts:  
18 Section 1. Section 54 of Chapter 82 of the Laws of 1848-49, as added by  
19 Chapter 1046 of the 1951 Session Laws, and as amended by subsection (d) of Section  
20 32.30 of S.L. 1997-443, reads as rewritten:  
21 "No stock owned by the State of North Carolina in the North Carolina Railroad  
22 Company shall be sold or transferred except with the prior consent of the General  
23 Assembly, except as part of a transaction or series of transactions relating to (i) a plan

1 of merger or consolidation of that company with another company, and where the  
2 State will be the owner of all of the voting stock in the merged or consolidated  
3 ~~corporation.~~ corporation; (ii) a transfer of the stock of that company to a corporation,  
4 limited liability company, or any other entity that is wholly owned by the State; or  
5 (iii) the reorganization of that company."

6 Section 2. Notwithstanding the provisions of G.S. 136-16.6, in order to  
7 increase the capital of the North Carolina Railroad Company, any dividends of the  
8 North Carolina Railroad Company received by the State shall be applied to reduce  
9 the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as  
10 amended by subsection (d) of Section 27.11 of S.L. 1999-237. Any dividends of the  
11 North Carolina Railroad Company received by the State shall be used by the  
12 Department of Transportation for the improvement of the property of the North  
13 Carolina Railroad Company as recommended and approved by the Board of  
14 Directors of the North Carolina Railroad Company.

15 Section 3. Effective January 1, 2000, interest shall not be accrued or  
16 otherwise charged on the remaining balance of the obligations described in subsection  
17 (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11  
18 of S.L. 1999-237. Interest accrued on those obligations relating to periods prior to  
19 January 1, 2000, shall be deemed paid and contributed by the State to the capital of  
20 the North Carolina Railroad Company.

21 Section 4. G.S. 124-1 reads as rewritten:

22 "**§ 124-1. ~~Governor and Council to control~~ Control of internal improvements.**

23 The Governor and Council of State shall have charge of all the State's interest in  
24 all railroads, canals and other works of internal improvements. The Board of  
25 Directors of a State-owned railroad company, as defined in G.S. 124-11, shall be  
26 responsible for managing its affairs and for reporting as set forth in G.S. 124-3."

27 Section 5. G.S. 124-2 is repealed.

28 Section 6. G.S. 124-3 reads as rewritten:

29 "**§ 124-3. Report of railroad, canal, etc.; contents.**

30 The president or other chief officer of every railroad, canal, or other public work  
31 of internal improvement in which the State owns an interest, shall, ~~when required to~~  
32 ~~do so by the Governor,~~ report annually to the Joint Legislative Commission on  
33 Governmental Operations. ~~make or cause to be made to the Governor and Council~~  
34 ~~of State a written report of its affairs.~~ This report shall show:

- 35 (1) Number of shares owned by the State.
- 36 (2) Number of shares owned otherwise.
- 37 (3) ~~Face~~ Par value of ~~such~~ the shares.
- 38 (4) ~~Market value of each of such shares.~~
- 39 (5) ~~Amount of bonded debt, and for what purpose contracted.~~
- 40 (6) ~~Amount of other debt, and how incurred.~~
- 41 (7) ~~If interest on bonded debt has been punctually paid as agreed; if~~  
42 ~~not, how much in arrears.~~
- 43 (8) ~~Amount of gross receipts for past year, and from what sources~~  
44 ~~derived.~~



1 authorized by a State-owned railroad company shall be presumed  
2 to be for the purpose of preserving and protecting its railroad  
3 corridor and franchise.

4 (2) Condemnation in fee simple. -- A State-owned railroad company  
5 may exercise the power of eminent domain to acquire property in  
6 fee simple for the purposes specified in G.S. 40A-3(a)(4). Exercise  
7 of the power granted pursuant to this section shall be in  
8 accordance with the procedures of Article 2 of Chapter 40A of  
9 the General Statutes. Title to and right of possession of property  
10 acquired pursuant to this section shall vest in accordance with  
11 G.S. 40A-42(a).

12 **"§ 124-13. Effect on State-owned railroad company charter.**

13 Nothing in this Article repeals or modifies any State-owned company charter."

14 Section 11. Chapter 136 of the General Statutes is amended by adding a  
15 new section to read:

16 **"§ 136-199. Property interest of a railroad company.**

17 In the absence of clear and unambiguous language to the contrary, a conveyance of  
18 property or presumptive grant to a railroad company shall be presumed to include all  
19 subsurface rights below and all air rights above the property except for any valid  
20 encumbrance of record."

21 Section 12. G.S. 40A-5(a) reads as rewritten:

22 "(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of  
23 eminent domain with respect to property owned by the State of North Carolina or a  
24 State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking.  
25 The State's consent shall be given by the Council of State, or by the Secretary of  
26 Administration if the Council of State delegates this authority to ~~him~~ the Secretary.  
27 In a condemnation proceeding against State property consented to by the State, the  
28 only issue shall be the compensation to be paid for the property."

29 Section 13. Chapter 124 of the General Statutes is amended by adding a  
30 new Article to read:

31 **"ARTICLE 3.**

32 **"Summary Removal of Encroachments.**

33 **"§ 124-21. Procedure for summary removal of encroachments upon railroad property.**

34 Any encroachment upon (i) State-owned railroad company property, as defined in  
35 G.S. 124-11, or (ii) the use or occupancy of State-owned railroad company property,  
36 without authority granted pursuant to G.S. 62-180 and G.S. 62-183 and without the  
37 express permission of the State-owned railroad company and after written demand is  
38 made upon the encroaching party for removal of the encroachment, may be removed  
39 from the State-owned railroad company property in the manner prescribed in this  
40 Article. The written demand made upon the encroaching party required by this  
41 section shall include a copy of this Article and shall be delivered by certified mail  
42 return receipt requested to the last known address of the encroaching party. This  
43 section shall not apply to claims subject to federal jurisdiction between railroad  
44 companies.

1 **"§ 124-22. Filing of complaint.**

2 The State-owned railroad company shall file a complaint for the removal of the  
3 encroachment with the clerk of superior court in the county in which the  
4 encroachment exists. If the encroachment exists in more than one county, the State-  
5 owned railroad company may file in any county where any of the encroachments  
6 exist for the removal of encroachments owned or operated by the same defendant.

7 **"§ 124-23. Summons issued by the clerk of superior court.**

8 When the State-owned railroad company files a complaint pursuant to this Article  
9 and requests the clerk to issue an order for the removal of any encroachment from  
10 State-owned railroad company property, the clerk shall issue a summons, along with  
11 a copy of this Article, requiring the defendant to appear at a certain time and place  
12 not to exceed 60 days from the service of the summons to answer the complaint. The  
13 State-owned railroad company shall not claim damages for the encroachment or the  
14 removal of the encroachment in this proceeding but may seek that recovery by  
15 separate action in a court of competent jurisdiction.

16 **"§ 124-24. Service of summons.**

17 The summons shall be served in accordance with Rule 4 of the North Carolina  
18 Rules of Civil Procedure.

19 **"§ 124-25. Judgment by confession or where State-owned railroad company has**  
20 **proved case.**

21 The summons shall be returned according to its tenor, and if on its return it  
22 appears to have been duly served, and if (i) the State-owned railroad company proves  
23 the State-owned railroad company's ownership of an easement, lease, license, right-  
24 of-way, or any other interest in the property at issue; and (ii) defendant fails to prove  
25 that defendant's use of the property does not interfere with the property interest  
26 owned or held by the State-owned railroad company by a preponderance of the  
27 evidence, or in lieu of (i) and (ii) above, the defendant admits the allegations of the  
28 complaint, judgment shall be issued by the clerk that all of the encroachments shall  
29 be removed by the defendant from the State-owned railroad company property  
30 within 15 days of the judgment. If the defendant fails to remove the encroachment  
31 within the time prescribed in this section, the clerk may order the sheriff of the  
32 relevant county to remove the encroachment or to effect other remedies as directed  
33 by the clerk and all costs for removal shall be taxed upon defendant by the clerk and  
34 paid to the State-owned railroad company.

35 **"§ 124-26. Trial by the clerk of superior court.**

36 If the defendant, by the defendant's answer, denies any material allegation in the  
37 complaint, the clerk of superior court shall hear the evidence and give judgment as  
38 the clerk shall find the facts to be.

39 **"§ 124-27. Appeal.**

40 Upon appeal from a judgment rendered in accordance with G.S. 124-25 or G.S.  
41 124-26 to the superior court as provided in Article 27A of Chapter 1 of the General  
42 Statutes, either party may demand that the case be tried at the first session of the  
43 superior court after the appeal is docketed. The presiding judge, in the judge's  
44 discretion, may first try any pending case in which the rights of the parties or the



1 public demand it. The prescribing judge may order repleading or further pleading by  
2 some or all of the parties in accordance with the Rules of Civil Procedure; may try  
3 the action on stipulation as to the issue; or may try it on the pleadings as filed. If the  
4 case has not been previously continued in superior court, the court shall continue the  
5 case for an appropriate period of time if any party initiates discovery or files a motion  
6 to allow further pleadings as provided in this section, or for summary judgment  
7 pursuant to Rule 56 of the Rules of Civil Procedure.

8 During an appeal by the defendant from a judgment for the State-owned railroad  
9 company under this Article, a stay of execution of judgment shall not be available to  
10 the defendant and the State-owned railroad company may proceed with removal of  
11 the encroachment in accordance with G.S. 124-25. In the event it is determined,  
12 after the exhaustion of all appellate remedies of the State-owned railroad company,  
13 that (i) the State-owned railroad company did not possess ownership of an easement,  
14 lease, license, right-of-way, or any other interest in the property at issue, or (ii) the  
15 defendant's use of the subject property did not interfere with the property interest  
16 owned or held by the State-owned railroad company, the State-owned railroad  
17 company shall reimburse the defendant for the value of the property removed,  
18 determined as of the time of removal, by the State-owned railroad company pursuant  
19 to a judgment or order issued according to G.S. 124-25 and that reimbursement shall  
20 be the defendant's sole remedy for the wrongful removal of any encroachment. In  
21 lieu of providing the foregoing reimbursement, the State-owned railroad company  
22 may elect to condemn the property in accordance with this Article or Chapter 40A  
23 with the value of the property taken being determined as of the date the judgment  
24 was rendered in the hearing before the clerk pursuant to G.S. 124-26, and the value  
25 of the property taken pursuant to the condemnation shall be the defendant's sole  
26 remedy for the wrongful removal of any encroachment."

27 Section 14. Chapter 14 of the General Statutes is amended by adding a  
28 new section to read:

29 "**§ 14-280.1. Trespassing on railroad right-of-way.**

30 (a) Offense. -- A person commits the offense of trespassing on railroad right-of-  
31 way if he enters and remains on the railroad right-of-way without the consent of the  
32 railroad company or the person operating the railroad or without any authority  
33 granted pursuant to G.S. 62-180 and G.S. 62-183.

34 (b) Crossings. -- Nothing in this section shall apply to a person crossing the  
35 railroad right-of-way at a public or private crossing.

36 (c) Legally Abandoned Rights-of-Way. -- This section shall not apply to any right-  
37 of-way that has been legally abandoned pursuant to an order of a federal or state  
38 agency having jurisdiction over the right-of-way and is not being used for railroad  
39 services.

40 (d) Classification. -- Trespassing on railroad right-of-way is a Class 2  
41 misdemeanor."

42 Section 15. G.S. 97-13(a) reads as rewritten:

43 "(a) Employees of Certain Railroads. -- This Article shall not apply to railroads or  
44 railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter

1 60 or any section thereof relating to the liability of railroads for injuries to employees,  
2 nor upon the trial of any action in tort for injuries not coming under the provisions  
3 of this Article, shall any provision herein be placed in evidence or be permitted to be  
4 argued to the jury. Provided, however, that the foregoing exemption to railroads and  
5 railroad employees shall not apply to employees of a State-owned railroad company,  
6 as defined in G.S. 124-11, or to electric street railroads or employees thereof; and  
7 this Article shall apply to electric street railroads and employees thereof and to this  
8 extent the provisions of Article 8 of Chapter 60 are hereby amended."

9 Section 16. Section 27.25.(k) of S.L. 1999-237 reads as rewritten:

10 "Section 27.25.(k) Report. -- The ~~commission~~ Commission shall submit ~~a final~~ an  
11 interim report to the General Assembly on or before May 1, 2000. The Commission  
12 shall submit a final report to the General Assembly by January 15, 2001. Upon filing  
13 of the final report, the Commission shall terminate."

14 Section 17. This act becomes effective December 1, 2000. Section 13 of  
15 this act becomes effective December 1, 2000, and applies to offenses occurring on or  
16 after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1183

Short Title: NCRR Amendments.

(Public)

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Sponsors: Senators Dalton; Carter, Garrou, Hartsell, Kerr, Lee, Metcalf, and Wellons.

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Referred to: Commerce.

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May 9, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF  
3 THE NORTH CAROLINA RAILROAD STUDY COMMISSION.

4 Whereas, during the 1997 Session of the General Assembly the State  
5 provided funds to buy the stock of all of the private shareholders so that the railroad  
6 right-of-way could be preserved as a company asset for future economic growth; and

7 Whereas, the North Carolina Railroad Company is a private corporation  
8 with all of the voting stock owned by the State of North Carolina and all of the  
9 members of the Board of Directors appointed by the Governor and the General  
10 Assembly; and

11 Whereas, as a private corporation the North Carolina Railroad Company  
12 is uniquely situated to respond to the needs of the State and to quickly and efficiently  
13 develop transportation and economic development improvements for the State; and

14 Whereas, certain statutory amendments are critically necessary for the  
15 North Carolina Railroad Company to fulfill its potential for the benefit of the State of  
16 North Carolina and its people; Now, therefore,

17 The General Assembly of North Carolina enacts:

18 Section 1. Section 54 of Chapter 82 of the Laws of 1848-49, as added by  
19 Chapter 1046 of the 1951 Session Laws, and as amended by subsection (d) of Section  
20 32.30 of S.L. 1997-443, reads as rewritten:

21 "No stock owned by the State of North Carolina in the North Carolina Railroad  
22 Company shall be sold or transferred except with the prior consent of the General  
23 Assembly, except as part of a transaction or series of transactions relating to (i) a plan

1 State will be the owner of all of the voting stock in the merged or consolidated  
2 ~~corporation; corporation; (ii) a transfer of the stock of that company to a corporation,~~  
3 limited liability company, or any other entity that is wholly owned by the State; or  
4 (iii) the reorganization of that company."

5 Section 2. Notwithstanding the provisions of G.S. 136-16.6, in order to  
6 increase the capital of the North Carolina Railroad Company, any dividends of the  
7 North Carolina Railroad Company received by the State shall be applied to reduce  
8 the obligations described in subsection (c) of Section 32.30 of S.L. 1997-443, as  
9 amended by subsection (d) of Section 27.11 of S.L. 1999-237. Any dividends of the  
10 North Carolina Railroad Company received by the State shall be used by the  
11 Department of Transportation for the improvement of the property of the North  
12 Carolina Railroad as recommended and approved by the Board of Directors of the  
13 North Carolina Railroad Company.

14 Section 3. Effective January 1, 2000, interest shall not be accrued or  
15 otherwise charged on the remaining balance of the obligations described in subsection  
16 (c) of Section 32.30 of S.L. 1997-443, as amended by subsection (d) of Section 27.11  
17 of S.L. 1999-237. Interest accrued on those obligations relating to periods prior to  
18 January 1, 2000, shall be deemed paid and contributed by the State to the capital of  
19 the North Carolina Railroad Company.

20 Section 4. G.S. 124-1 reads as rewritten:

21 "~~§ 124-1. Governor and Council to control~~ Control of internal improvements.

22 The Governor and Council of State shall have charge of all the State's interest in  
23 all railroads, canals and other works of internal improvements. The Board of  
24 Directors of a State-owned railroad company, as defined in G.S. 124-11, shall be  
25 responsible for managing its affairs and for reporting as set forth in G.S. 124-3."

26 Section 5. G.S. 124-2 is repealed.

27 Section 6. G.S. 124-3 reads as rewritten:

28 "~~§ 124-3. Report of railroad, canal, etc.; contents.~~

29 The president or other chief officer of every railroad, canal, or other public work  
30 of internal improvement in which the State owns an interest, shall, ~~when required to~~  
31 ~~do so by the Governor, report annually to the Joint Legislative Commission on~~  
32 ~~Governmental Operations, make or cause to be made to the Governor and Council~~  
33 ~~of State a written report of its affairs.~~ This report shall show:

- 34 (1) Number of shares owned by the State.
- 35 (2) Number of shares owned otherwise.
- 36 (3) Face Par value of ~~such the~~ shares.
- 37 (4) ~~Market value of each of such shares.~~
- 38 (5) ~~Amount of bonded debt, and for what purpose contracted.~~
- 39 (6) ~~Amount of other debt, and how incurred.~~
- 40 (7) ~~If interest on bonded debt has been punctually paid as agreed; if~~  
41 ~~not, how much in arrears.~~
- 42 (8) ~~Amount of gross receipts for past year, and from what sources~~  
43 ~~derived.~~
- 44 (9) ~~An itemized account of expenditures for past year.~~



1 to be for the purpose of preserving and protecting its railroad  
2 corridor and franchise.

3 (2) Condemnation in fee simple. -- A State-owned railroad company  
4 may exercise the power of eminent domain to acquire property in  
5 fee simple for the purposes specified in G.S. 40A-3(a)(4). Exercise  
6 of the power granted pursuant to this section shall be in  
7 accordance with the procedures of Article 2 of Chapter 40A of  
8 the General Statutes. Title to and right of possession of property  
9 acquired pursuant to this section shall vest in accordance with  
10 G.S. 40A-42(a).

11 "§ 124-13. Effect on State-owned railroad company charter.

12 Nothing in this Article repeals or modifies any State-owned company charter."

13 Section 11. Chapter 136 of the General Statutes is amended by adding a  
14 new section to read:

15 "§ 136-199. Property interest of a State-owned railroad company.

16 In the absence of clear and unambiguous language to the contrary, a conveyance of  
17 property or presumptive grant to a State-owned railroad company shall be presumed  
18 to include all subsurface rights below and all air rights above the property."

19 Section 12. G.S. 40A-5(a) reads as rewritten:

20 "(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of  
21 eminent domain with respect to property owned by the State of North Carolina or a  
22 State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking.  
23 The State's consent shall be given by the Council of State, or by the Secretary of  
24 Administration if the Council of State delegates this authority to ~~him~~ the Secretary.  
25 In a condemnation proceeding against State property consented to by the State, the  
26 only issue shall be the compensation to be paid for the property."

27 Section 13. G.S. 62-180 reads as rewritten:

28 "§ 62-180. Use of railroads and public highways.

29 Any person operating electric power, telegraph or telephone lines or authorized by  
30 law to establish ~~such~~ those lines, has the right to construct, maintain and operate ~~such~~  
31 those lines along any railroad or public highway, but ~~such~~ those lines shall be so  
32 constructed and maintained as not to obstruct or hinder unreasonably the usual travel  
33 on ~~such~~ the railroad or highway. Any right to construct, maintain, and operate these  
34 lines along any railroad shall be acquired only by agreement or eminent domain as  
35 provided in G.S. 62-185."

36 Section 14. Chapter 124 of the General Statutes is amended by adding a  
37 new Article to read:

38 "ARTICLE 3.

39 "Summary Removal of Encroachments.

40 "§ 124-21. Procedure for summary removal of encroachments upon railroad property.

41 Any encroachment upon (i) State-owned railroad company property, as defined in  
42 G.S. 124-11, or (ii) the use or occupancy of State-owned railroad company property,  
43 without the express permission of the State-owned railroad company and after written  
44 demand is made upon the encroaching party for removal of the encroachment, may

1 be removed from the State-owned railroad company property in the manner  
2 prescribed in this Article. The written demand made upon the encroaching party  
3 required by this section shall include a copy of this Article and shall be delivered by  
4 certified mail return receipt requested to the last known address of the encroaching  
5 party.

6 **"§ 124-22. Filing of complaint.**

7 The State-owned railroad company shall file a complaint for the removal of the  
8 encroachment with the clerk of superior court in the county in which the  
9 encroachment exists. If the encroachment exists in more than one county, the State-  
10 owned railroad company may file in any county where any of the encroachments  
11 exist for the removal of encroachments owned or operated by the same defendant.

12 **"§ 124-23. Summons issued by the clerk of superior court.**

13 When the State-owned railroad company files a complaint pursuant to this Article  
14 and requests the clerk to issue an order for the removal of any encroachment from  
15 State-owned railroad company property, the clerk shall issue a summons, along with  
16 a copy of this Article, requiring the defendant to appear at a certain time and place  
17 not to exceed 60 days from the service of the summons to answer the complaint. The  
18 State-owned railroad company shall not claim damages for the encroachment or the  
19 removal of the encroachment in this proceeding but may seek that recovery by  
20 separate action in a court of competent jurisdiction.

21 **"§ 124-24. Service of summons.**

22 The summons shall be served in accordance with Rule 4 of the North Carolina  
23 Rules of Civil Procedure.

24 **"§ 124-25. Judgment by confession or where State-owned railroad company has**  
25 **proved case.**

26 The summons shall be returned according to its tenor, and if on its return it  
27 appears to have been duly served, and if (i) the State-owned railroad company proves  
28 the State-owned railroad company's ownership of an easement, lease, license, right-  
29 of-way, or any other interest in the property at issue; and (ii) defendant fails to prove  
30 that defendant's use of the property does not interfere with the property interest  
31 owned or held by the State-owned railroad company by a preponderance of the  
32 evidence, or in lieu of (i) and (ii) above, the defendant admits the allegations of the  
33 complaint, judgment shall be issued by the clerk that all of the encroachments shall  
34 be removed by the defendant from the State-owned railroad company property  
35 within 15 days of the judgment. If the defendant fails to remove the encroachment  
36 within the time prescribed in this section, the clerk may order the sheriff of the  
37 relevant county to remove the encroachment or to effect other remedies as directed  
38 by the clerk and all costs for removal shall be taxed upon defendant by the clerk and  
39 paid to the State-owned railroad company.

40 **"§ 124-26. Trial by the clerk of superior court.**

41 If the defendant, by the defendant's answer, denies any material allegation in the  
42 complaint, the clerk of superior court shall hear the evidence and give judgment as  
43 the clerk shall find the facts to be.

44 **"§ 124-27. Appeal.**

1 Upon appeal from a judgment rendered in accordance with G.S. 124-25 or G.S.  
2 124-26 to the superior court as provided in Article 27A of Chapter 1 of the General  
3 Statutes, either party may demand that the case be tried at the first session of the  
4 superior court after the appeal is docketed. The presiding judge, in the judge's  
5 discretion, may first try any pending case in which the rights of the parties or the  
6 public demand it. The prescribing judge may order repleading or further pleading by  
7 some or all of the parties in accordance with the Rules of Civil Procedure; may try  
8 the action on stipulation as to the issue; or may try it on the pleadings as filed. If the  
9 case has not been previously continued in superior court, the court shall continue the  
10 case for an appropriate period of time if any party initiates discovery or files a motion  
11 to allow further pleadings as provided in this section, or for summary judgment  
12 pursuant to Rule 56 of the Rules of Civil Procedure.

13 During an appeal by the defendant from a judgment for the State-owned railroad  
14 company under this Article, a stay of execution of judgment shall not be available to  
15 the defendant and the State-owned railroad company may proceed with removal of  
16 the encroachment in accordance with G.S. 124-25. In the event it is determined,  
17 after the exhaustion of all appellate remedies of the State-owned railroad company,  
18 that (i) the State-owned railroad company did not possess ownership of an easement,  
19 lease, license, right-of-way, or any other interest in the property at issue, or (ii) the  
20 defendant's use of the subject property did not interfere with the property interest  
21 owned or held by the State-owned railroad company, the State-owned railroad  
22 company shall reimburse the defendant for the value of the property removed,  
23 determined as of the time of removal, by the State-owned railroad company pursuant  
24 to a judgment or order issued according to G.S. 124-25 and that reimbursement shall  
25 be the defendant's sole remedy for the wrongful removal of any encroachment. In  
26 lieu of providing the foregoing reimbursement, the State-owned railroad company  
27 may elect to condemn the property in accordance with this Article or Chapter 40A  
28 with the value of the property taken being determined as of the date the judgment  
29 was rendered in the hearing before the clerk pursuant to G.S. 124-26, and the value  
30 of the property taken pursuant to the condemnation shall be the defendant's sole  
31 remedy for the wrongful removal of any encroachment."

32 Section 15. Chapter 14 of the General Statutes is amended by adding a  
33 new section to read:

34 **"§ 14-280.1. Trespassing on railroad right-of-way.**

35 (a) Offense. -- A person commits the offense of trespassing on railroad right-of-  
36 way if he enters and remains on the railroad right-of-way without the consent of the  
37 railroad company or the person operating the road.

38 (b) Crossings. -- Nothing in this section shall apply to a person crossing the  
39 railroad right-of-way at a public or private crossing.

40 (c) Legally abandoned rights-of-way. -- This section shall not apply to any right-of-  
41 way that has been legally abandoned pursuant to an order of a federal or state agency  
42 having jurisdiction over the right-of-way and is not being used for railroad services.

43 (d) Classification. -- Trespassing on railroad right-of-way is a Class 2  
44 misdemeanor."



1 Section 16. G.S. 97-13(a) reads as rewritten:

2 "(a) Employees of Certain Railroads. -- This Article shall not apply to railroads or  
3 railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter  
4 60 or any section thereof relating to the liability of railroads for injuries to employees,  
5 nor upon the trial of any action in tort for injuries not coming under the provisions  
6 of this Article, shall any provision herein be placed in evidence or be permitted to be  
7 argued to the jury. Provided, however, that the foregoing exemption to railroads and  
8 railroad employees shall not apply to employees of a State-owned railroad company,  
9 as defined in G.S. 124-11, or to electric street railroads or employees thereof; and  
10 this Article shall apply to electric street railroads and employees thereof and to this  
11 extent the provisions of Article 8 of Chapter 60 are hereby amended."

12 Section 17. Section 27.25(k) of S.L. 1999-237 reads as rewritten:

13 "Section 27.25(k) Report. -- The ~~commission~~ Commission shall submit a ~~final~~  
14 interim report to the General Assembly on or before May 1, 2000. The Commission  
15 shall submit a final report to the General Assembly by January 15, 2001. Upon filing  
16 of the final report, the Commission shall terminate."

17 Section 18. This act becomes effective December 1, 2000. Section 14 of  
18 this act becomes effective December 1, 2000, and applies to offenses occurring on or  
19 after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

S1183-CSSU-001

PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL 1183

THIS IS A DRAFT 13-JUN-00 10:47:25

ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: NCRR Amendments.

(Public)

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Sponsors:

---

Referred to:

---

May 9, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE FUTURE OF THE  
3 NORTH CAROLINA RAILROAD STUDY COMMISSION.

4 Whereas, during the 1997 Session of the General Assembly  
5 the State provided funds to buy the stock of all of the private  
6 shareholders so that the railroad right-of-way could be preserved  
7 as a company asset for future economic growth; and

8 Whereas, the North Carolina Railroad Company is a  
9 private corporation with all of the voting stock owned by the  
10 State of North Carolina and all of the members of the Board of  
11 Directors appointed by the Governor and the General Assembly; and

12 Whereas, as a private corporation the North Carolina  
13 Railroad Company is uniquely situated to respond to the needs of  
14 the State and to quickly and efficiently develop transportation  
15 and economic development improvements for the State; and

16 Whereas, certain statutory amendments are critically  
17 necessary for the North Carolina Railroad Company to fulfill its  
18 potential for the benefit of the State of North Carolina and its  
19 people; Now, therefore,

20 The General Assembly of North Carolina enacts:

1 Section 1. Section 54 of Chapter 82 of the Laws of  
2 1848-49, as added by Chapter 1046 of the 1951 Session Laws, and  
3 as amended by subsection (d) of Section 32.30 of S.L. 1997-443,  
4 reads as rewritten:

5 "No stock owned by the State of North Carolina in the North  
6 Carolina Railroad Company shall be sold or transferred except  
7 with the prior consent of the General Assembly, except as part of  
8 a transaction or series of transactions relating to (i) a plan of  
9 merger or consolidation of that company with another company, and  
10 where the State will be the owner of all of the voting stock in  
11 the merged or consolidated ~~corporation.~~ corporation; (ii) a  
12 transfer of the stock of that company to a corporation, limited  
13 liability company, or any other entity that is wholly owned by  
14 the State; or (iii) the reorganization of that company."

15 Section 2. Notwithstanding the provisions of G.S. 136-  
16 16.6, in order to increase the capital of the North Carolina  
17 Railroad Company, any dividends of the North Carolina Railroad  
18 Company received by the State shall be applied to reduce the  
19 obligations described in subsection (c) of Section 32.30 of S.L.  
20 1997-443, as amended by subsection (d) of Section 27.11 of S.L.  
21 1999-237. Any dividends of the North Carolina Railroad Company  
22 received by the State shall be used by the Department of  
23 Transportation for the improvement of the property of the North  
24 Carolina Railroad as recommended and approved by the Board of  
25 Directors of the North Carolina Railroad Company.

26 Section 3. Effective January 1, 2000, interest shall not  
27 be accrued or otherwise charged on the remaining balance of the  
28 obligations described in subsection (c) of Section 32.30 of S.L.  
29 1997-443, as amended by subsection (d) of Section 27.11 of S.L.  
30 1999-237. Interest accrued on those obligations relating to  
31 periods prior to January 1, 2000, shall be deemed paid and  
32 contributed by the State to the capital of the North Carolina  
33 Railroad Company.

34 Section 4. G.S. 124-1 reads as rewritten:  
35 "~~§ 124-1. Governor and Council to control~~ Control of internal  
36 improvements.

37 The Governor and Council of State shall have charge of all the  
38 State's interest in all railroads, canals and other works of  
39 internal improvements. The Board of Directors of a State-owned  
40 railroad company, as defined in G.S. 124-11, shall be responsible  
41 for managing its affairs and for reporting as set forth in G.S.  
42 124-3."

43 Section 5. G.S. 124-2 is repealed.

44 Section 6. G.S. 124-3 reads as rewritten:

1 "§ 124-3. Report of railroad, canal, etc.; contents.

2 The president or other chief officer of every railroad, canal,  
3 or other public work of internal improvement in which the State  
4 owns an interest, shall, ~~when required to do so by the Governor,~~  
5 report annually to the Joint Legislative Commission on  
6 Governmental Operations. ~~make or cause to be made to the Governor~~  
7 ~~and Council of State a written report of its affairs.~~ This  
8 report shall show:

- 9 (1) Number of shares owned by the State.
- 10 (2) Number of shares owned otherwise.
- 11 (3) Face Par value of such the shares.
- 12 ~~(4) Market value of each of such shares.~~
- 13 ~~(5) Amount of bonded debt, and for what purpose~~  
14 ~~contracted.~~
- 15 ~~(6) Amount of other debt, and how incurred.~~
- 16 ~~(7) If interest on bonded debt has been punctually~~  
17 ~~paid as agreed; if not, how much in arrears.~~
- 18 ~~(8) Amount of gross receipts for past year, and from~~  
19 ~~what sources derived.~~
- 20 ~~(9) An itemized account of expenditures for past year.~~
- 21 ~~(10) Any lease or sale of said property, or any part~~  
22 ~~thereof, to whom made, for what consideration, and~~  
23 ~~for what length of time.~~
- 24 ~~(11) Suits at law pending against his company~~  
25 ~~concerning its bonded debt, or in which title to~~  
26 ~~all or any part of such road or canal is~~  
27 ~~concerned.~~
- 28 ~~(12) Any sales of stock owned by the State, by whose~~  
29 ~~order made, and disposition of the proceeds.~~
- 30 (4) Annual financial statements, including notes,  
31 audited by an independent certified public  
32 accounting firm.
- 33 (5) Any sales of stock owned by the State, by whose  
34 order made, and disposition of the proceeds.
- 35 (6) Acquisitions or dispositions of real property  
36 since the last report.

37 ~~Any person failing to report as required by this section shall~~  
38 ~~be guilty of a Class 1 misdemeanor."~~

39 Section 7. G.S. 124-4 is repealed.

40 Section 8. G.S. 124-5 reads as rewritten:

41 "§ 124-5. Approval of encumbrance on State's interest in  
42 corporations.

43 (a) No corporation or company in which the State owns the  
44 majority of any class of voting stock shall sell, lease,

1 mortgage, or otherwise encumber its franchise, right-of-way, or  
2 other property, except by and with the approval and consent of  
3 the Governor and Council of State.

4 (b) No State-owned railroad company, as defined in G.S. 124-11,  
5 shall sell, lease, mortgage, or otherwise encumber its franchise,  
6 right-of-way, or other property, except by and with the approval  
7 and consent of the Board of Directors of that corporation. The  
8 president or other chief officer shall report these acquisitions  
9 and dispositions in accordance with G.S. 124-3(6)."

10 Section 9. Sections 124-1 through 124-7 of Chapter 124  
11 of the General Statutes are recodified as Article 1 of that  
12 Chapter to be entitled "Internal Improvements."

13 Section 10. Chapter 124 of the General Statutes is  
14 amended by adding a new Article to read:

15 "ARTICLE 2.

16 "State-Owned Railroad Company.

17 "§ 124-11. Definition.

18 'State-owned railroad company'. -- A railroad company in which  
19 the State owns all of the voting stock.

20 "§ 124-12. Powers of a State-owned railroad company.

21 A State-owned railroad company shall have, in addition to the  
22 powers of any railroad corporation, the power to:

23 (1) Lease, license, or improve property. -- A State-  
24 owned railroad company may lease, license, or  
25 improve its right-of-way and property, whether  
26 held by easement, presumptive grant, express  
27 grant, or otherwise, for any purpose. Any use or  
28 improvement authorized by a State-owned railroad  
29 company shall be presumed to be for the purpose of  
30 preserving and protecting its railroad corridor  
31 and franchise.

32 (2) Condemnation in fee simple. -- A State-owned  
33 railroad company may exercise the power of eminent  
34 domain to acquire property in fee simple for the  
35 purposes specified in G.S. 40A-3(a)(4). Exercise  
36 of the power granted pursuant to this section  
37 shall be in accordance with the procedures of  
38 Article 2 of Chapter 40A of the General Statutes.  
39 Title to and right of possession of property  
40 acquired pursuant to this section shall vest in  
41 accordance with G.S. 40A-42(a).

42 "§ 124-13. Effect on State-owned railroad company charter.

43 Nothing in this Article repeals or modifies any State-owned  
44 company charter."

1 Section 11. Chapter 136 of the General Statutes is  
2 amended by adding a new section to read:

3 "§ 136-199. Property interest of a railroad company.

4 In the absence of clear and unambiguous language to the  
5 contrary, a conveyance of property or presumptive grant to a  
6 railroad company shall be presumed to include all subsurface  
7 rights below and all air rights above the property except for any  
8 valid encumbrance of record.

9 Section 12. G.S. 40A-5(a) reads as rewritten:

10 "(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not  
11 possess the power of eminent domain with respect to property  
12 owned by the State of North Carolina or a State-owned railroad as  
13 defined in G.S. 124-11 unless the State consents to the taking.  
14 The State's consent shall be given by the Council of State, or by  
15 the Secretary of Administration if the Council of State delegates  
16 this authority to ~~him~~ the Secretary. In a condemnation  
17 proceeding against State property consented to by the State, the  
18 only issue shall be the compensation to be paid for the  
19 property."

20 Section 13. Chapter 124 of the General Statutes is  
21 amended by adding a new Article to read:

22 "ARTICLE 3.

23 "Summary Removal of Encroachments.

24 "§ 124-21. Procedure for summary removal of encroachments upon  
25 railroad property.

26 Any encroachment upon (i) State-owned railroad company  
27 property, as defined in G.S. 124-11, or (ii) the use or occupancy  
28 of State-owned railroad company property, without the authority  
29 granted pursuant to G.S. 62-180 and without the express  
30 permission of the State-owned railroad company and after written  
31 demand is made upon the encroaching party for removal of the  
32 encroachment, may be removed from the State-owned railroad  
33 company property in the manner prescribed in this Article. The  
34 written demand made upon the encroaching party required by this  
35 section shall include a copy of this Article and shall be  
36 delivered by certified mail return receipt requested to the last  
37 known address of the encroaching party. This section shall not  
38 apply to claims subject to federal jurisdiction between railroad  
39 companies.

40 "§ 124-22. Filing of complaint.

41 The State-owned railroad company shall file a complaint for the  
42 removal of the encroachment with the clerk of superior court in  
43 the county in which the encroachment exists. If the encroachment  
44 exists in more than one county, the State-owned railroad company

1 may file in any county where any of the encroachments exist for  
2 the removal of encroachments owned or operated by the same  
3 defendant.

4 "§ 124-23. Summons issued by the clerk of superior court.

5 When the State-owned railroad company files a complaint  
6 pursuant to this Article and requests the clerk to issue an order  
7 for the removal of any encroachment from State-owned railroad  
8 company property, the clerk shall issue a summons, along with a  
9 copy of this Article, requiring the defendant to appear at a  
10 certain time and place not to exceed 60 days from the service of  
11 the summons to answer the complaint. The State-owned railroad  
12 company shall not claim damages for the encroachment or the  
13 removal of the encroachment in this proceeding but may seek that  
14 recovery by separate action in a court of competent jurisdiction.

15 "§ 124-24. Service of summons.

16 The summons shall be served in accordance with Rule 4 of the  
17 North Carolina Rules of Civil Procedure.

18 "§ 124-25. Judgment by confession or where State-owned railroad  
19 company has proved case.

20 The summons shall be returned according to its tenor, and if on  
21 its return it appears to have been duly served, and if (i) the  
22 State-owned railroad company proves the State-owned railroad  
23 company's ownership of an easement, lease, license, right-of-way,  
24 or any other interest in the property at issue; and (ii)  
25 defendant fails to prove that defendant's use of the property  
26 does not interfere with the property interest owned or held by  
27 the State-owned railroad company by a preponderance of the  
28 evidence, or in lieu of (i) and (ii) above, the defendant admits  
29 the allegations of the complaint, judgment shall be issued by the  
30 clerk that all of the encroachments shall be removed by the  
31 defendant from the State-owned railroad company property within  
32 15 days of the judgment. If the defendant fails to remove the  
33 encroachment within the time prescribed in this section, the  
34 clerk may order the sheriff of the relevant county to remove the  
35 encroachment or to effect other remedies as directed by the clerk  
36 and all costs for removal shall be taxed upon defendant by the  
37 clerk and paid to the State-owned railroad company.

38 "§ 124-26. Trial by the clerk of superior court.

39 If the defendant, by the defendant's answer, denies any  
40 material allegation in the complaint, the clerk of superior court  
41 shall hear the evidence and give judgment as the clerk shall find  
42 the facts to be.

43 "§ 124-27. Appeal.

1 Upon appeal from a judgment rendered in accordance with G.S.  
2 124-25 or G.S. 124-26 to the superior court as provided in  
3 Article 27A of Chapter 1 of the General Statutes, either party  
4 may demand that the case be tried at the first session of the  
5 superior court after the appeal is docketed. The presiding judge,  
6 in the judge's discretion, may first try any pending case in  
7 which the rights of the parties or the public demand it. The  
8 prescribing judge may order repleading or further pleading by  
9 some or all of the parties in accordance with the Rules of Civil  
10 Procedure; may try the action on stipulation as to the issue; or  
11 may try it on the pleadings as filed. If the case has not been  
12 previously continued in superior court, the court shall continue  
13 the case for an appropriate period of time if any party initiates  
14 discovery or files a motion to allow further pleadings as  
15 provided in this section, or for summary judgment pursuant to  
16 Rule 56 of the Rules of Civil Procedure.

17 During an appeal by the defendant from a judgment for the  
18 State-owned railroad company under this Article, a stay of  
19 execution of judgment shall not be available to the defendant and  
20 the State-owned railroad company may proceed with removal of the  
21 encroachment in accordance with G.S. 124-25. In the event it is  
22 determined, after the exhaustion of all appellate remedies of the  
23 State-owned railroad company, that (i) the State-owned railroad  
24 company did not possess ownership of an easement, lease, license,  
25 right-of-way, or any other interest in the property at issue, or  
26 (ii) the defendant's use of the subject property did not  
27 interfere with the property interest owned or held by the State-  
28 owned railroad company, the State-owned railroad company shall  
29 reimburse the defendant for the value of the property removed,  
30 determined as of the time of removal, by the State-owned railroad  
31 company pursuant to a judgment or order issued according to G.S.  
32 124-25 and that reimbursement shall be the defendant's sole  
33 remedy for the wrongful removal of any encroachment. In lieu of  
34 providing the foregoing reimbursement, the State-owned railroad  
35 company may elect to condemn the property in accordance with this  
36 Article or Chapter 40A with the value of the property taken being  
37 determined as of the date the judgment was rendered in the  
38 hearing before the clerk pursuant to G.S. 124-26, and the value  
39 of the property taken pursuant to the condemnation shall be the  
40 defendant's sole remedy for the wrongful removal of any  
41 encroachment."

42 Section 14. Chapter 14 of the General Statutes is  
43 amended by adding a new section to read:

44 "§ 14-280.1. Trespassing on railroad right-of-way.



1 (a) Offense. -- A person commits the offense of trespassing on  
2 railroad right-of-way if he enters and remains on the railroad  
3 right-of-way without the consent of the railroad company or the  
4 person operating the road or without the authority granted  
5 pursuant to G.S. 62-180.

6 (b) Crossings. -- Nothing in this section shall apply to a  
7 person crossing the railroad right-of-way at a public or private  
8 crossing.

9 (c) Legally abandoned rights-of-way. -- This section shall not  
10 apply to any right-of-way that has been legally abandoned  
11 pursuant to an order of a federal or state agency having  
12 jurisdiction over the right-of-way and is not being used for  
13 railroad services.

14 (d) Classification. -- Trespassing on railroad right-of-way is  
15 a Class 2 misdemeanor."

16 Section 15. G.S. 97-13(a) reads as rewritten:

17 "(a) Employees of Certain Railroads. -- This Article shall not  
18 apply to railroads or railroad employees nor in any way repeal,  
19 amend, alter or affect Article 8 of Chapter 60 or any section  
20 thereof relating to the liability of railroads for injuries to  
21 employees, nor upon the trial of any action in tort for injuries  
22 not coming under the provisions of this Article, shall any  
23 provision herein be placed in evidence or be permitted to be  
24 argued to the jury. Provided, however, that the foregoing  
25 exemption to railroads and railroad employees shall not apply to  
26 employees of a State-owned railroad company, as defined in G.S.  
27 124-11, or to electric street railroads or employees thereof;  
28 and this Article shall apply to electric street railroads and  
29 employees thereof and to this extent the provisions of Article 8  
30 of Chapter 60 are hereby amended."

31 Section 16. Section 27.25(k) of S.L. 1999-237 reads as  
32 rewritten:

33 "Section 27.25(k) Report. -- The ~~commission~~ Commission shall  
34 submit ~~a final~~ an interim report to the General Assembly on or  
35 before May 1, 2000. The Commission shall submit a final report  
36 to the General Assembly by January 15, 2001. Upon filing of the  
37 final report, the Commission shall terminate."

38 Section 17. This act becomes effective December 1,  
39 2000. Section 13 of this act becomes effective December 1, 2000,  
40 and applies to offenses occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. \_\_\_\_\_

H. B. No. \_\_\_\_\_

DATE \_\_\_\_\_

S. B. No. 1183

Amendment No. \_\_\_\_\_

COMMITTEE SUBSTITUTE PC-S1183-CSSV-001

(to be filled in by  
Principal Clerk)

Rep.) \_\_\_\_\_  
Sen.) \_\_\_\_\_

1 moves to amend the bill on page 5, line 29

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORD "THE" ; AND

4 \_\_\_\_\_

5 ON PAGE 5, LINE 29,

6 BY INSERTING BETWEEN THE CITATION "G.S. 62-180"

7 AND THE WORD "AND" THE WORDS "AND G.S. 62-183";

8 AND

9 \_\_\_\_\_

10 ON PAGE 8, LINE 4,

11 BY DELETING THE WORD "ROAD" AND SUBSTITUTING

12 THE WORD "RAILROAD" ; AND

13 \_\_\_\_\_

14 ON PAGE 8, LINE 4,

15 BY <sup>DELETING</sup> THE WORDS "~~THE~~ AUTHORITY" AND SUBSTITUTING

16 THE WORDS "ANY AUTHORITY" ; AND

17 \_\_\_\_\_

18 ON PAGE 8, LINE 5;

19 BY ADDING "~~AND~~ AND G.S. 62-183." TO THE END OF THE SENTENCE,

SIGNED \_\_\_\_\_

ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



Sam Hunt  
President

To: Members of the Senate

From: Sam Hunt, President  
North Carolina Railroad Company

Date: June 12, 2000

The Legislative Study Commission on the future of our state owned railroad has recommended several changes, contained in Senate Bill 1183 and House Bill 1515, that will better provide for a well managed state property.

We believe these proposals are the right things to do if we are to protect and improve this very valuable state asset.

The Board of the NCRR, appointed by the Speaker, the President Pro Tempore and the Governor encourage you to give active support for Senate Bill 1183 and House Bill 1515.

Thank you for all you do for our State and please call me or any Board member if you have questions on this very important issue.

*Sam Hunt*

10607



For Immediate Release  
June 7, 2000

Contacts: Jeff Mann, NCRR 919-954-7601  
Susan Terpay, NSR 757-823-5204

## **NCRR Announces Start of \$10 Million Rail Improvement Project**

RALEIGH, NC – Trains travelling to and from Morehead City will soon travel faster and more efficiently as a result of a \$10 million rail improvement project. The state of North Carolina is providing funding for the project. The track maintenance and upgrading work, which will be performed by Norfolk Southern Railway Company (NSR), begins in early June in Morehead City and will extend 94 miles along the North Carolina Railroad (NCRR) corridor to Goldsboro.

“We couldn’t be more pleased to see work beginning at the port in Morehead City. This is the start of a long list of projects that will improve the NCRR corridor from here all the way to Charlotte,” said Sam Hunt, president of the North Carolina Railroad Company.

Work in Morehead City includes replacing railroad ties, adding ballast and re-working highway/rail grade crossings. The job includes the portion of the rail that runs along US 70 through the city.

“Trains will be able to move in and out of the port, and eastern North Carolina, faster and more efficiently,” said Hunt.

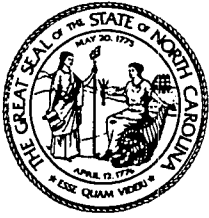
The work schedule has been designed to cause minimal disruption. During the maintenance, only two grade crossings will be closed temporarily at a time, according to NSR, which operates the rail line under a trackage rights agreement with the NCRR.

Hunt noted that the temporary closings to work on the railroad are separate from any NCDOT plans to permanently close crossings in Morehead City.

Norfolk Southern Chairman, President and CEO David Goode said, “We’re pleased to cooperate with the state and the North Carolina Railroad to improve this rail corridor, which is important to the state.”

The North Carolina Railroad Company is a state-owned corporation that owns the right-of-way and other property along the 317-mile rail corridor between Morehead City and Charlotte. In November of 1999, the company announced its intentions to develop a series of rail improvement plans that would improve passenger and freight rail service along its corridor.

###



# SENATE BILL 1183: NCRR AMENDMENTS

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** June 13, 2000  
**Version:** Proposed Committee Substitute -  
S1183-CSSU-001

**Introduced by:** Sen. Dalton  
**Summary by:** Giles Perry, Staff Attorney and  
Wendy Graf, Committee Co-  
Counsel

**SUMMARY:** *The Proposed Committee Substitute for Senate Bill 1183 amends various statutes applicable to the structure, governance, and operation of the North Carolina Railroad (NCRR). The NCRR is a railroad that runs from Charlotte to Morehead City that is now wholly owned by the State of North Carolina. This bill is a recommendation of the Future of the North Carolina Railroad Study Commission.*

### Bill Analysis

Section 1 authorizes the NCRR to reorganize into a more tax-favorable corporate structure. The NCRR is currently a for-profit corporation, taxable as a REIT (real estate investment trust). Under current federal law, in approximately five years (or perhaps sooner under proposed federal legislation), NCRR may be converted to a non-profit, tax exempt entity. This conversion may require a transfer of NCRR stock to a State-owned corporation or another form of reorganization under the federal Internal Revenue Code.

Section 2 provides that future dividends of the Railroad (approximately \$11 m/year) would be credited against its obligation to the State resulting from the NCRR buyout (currently about \$42 million). In addition, this section provides that the dividend be used by DOT to improve the NCRR as recommended and approved by the NCRR Board.

Section 3 provides that the interest on the remaining obligation of the NCRR, resulting from the buyout, will not be charged to the NCRR, and that interest accrued prior to January 1, 2000 will be deemed paid and contributed by the State to the capital of the NCRR.

Section 4 clarifies that the Board of Directors of the NCRR will manage its affairs. In addition, this section requires the Board of Directors of the NCRR to report annually to the Joint Legislative Commission on Governmental Operations on those matters set forth in G.S. 124-3.

Section 5 repeals an obsolete provision that deemed the State a shareholder in any railroad, canal or other "internal improvement" that it made an appropriation to.

Section 6 modernizes the financial reporting requirements for the NCRR, and requires the report to be made annually to the Joint Legislative Commission on Governmental Operations, and eliminates a criminal penalty for failure to report as required.

Section 7 repeals an obsolete requirement for the Governor to report on canals, railroads, and other internal improvements.

# SENATE BILL 1183

Page 2

Section 8 authorizes the NCRR to make property transactions with the approval of the Board. All property transactions would have to be reported annually to the Joint Legislative Commission of Governmental Operations. Current law requires the Governor and the Council of State to approve all NCRR property transactions

Section 9 is a technical redesignation of a group of existing statutes.

Section 10 makes four changes:

- Clarifies the powers of the NCRR to lease or license its property, and construct improvements;
- Grants the NCRR the power to condemn in fee simple, using "quick take condemnation", and limits this power to the existing condemnation powers of RRs under G.S. 40A-3(a)(4); and
- Clarifies that the provisions of this section do no repeal or modify the NCRR charter.

Section 11 clarifies that property owned by a railroad is presumed to include subsurface and air rights, unless there is clear and unambiguous language to the contrary, except for valid encumbrances of record.

Section 12 amends G.S. 40A-5(a) to prevent condemnation of any property interest held by NCRR by another private or public condemnor unless the State's consent is obtained. The State may give consent through (i) the Council of State or (ii) the Secretary of Administration if the Council of State delegates that authority to the Secretary of Administration.

Section 13 provides a new judicial procedure to allow NCRR to summarily seek removal of encroachments found on NCRR property. Under this new procedure, if NCRR believes that an adjoining landowner is encroaching on NCRR property, it can file a "summary removal of encroachment" action with the Clerk of Superior Court. If the Clerk finds that (i) NCRR owns an interest in the subject property and (ii) the encroaching party has failed to prove that the encroaching party's use of NCRR property does not interfere with the property interest owned by NCRR, then the Clerk shall render a judgment that the encroachments be removed from the subject property. A stay of execution during an appeal by the encroaching party to prevent removal of the encroachments is not available to the encroaching party. If the encroaching party ultimately prevails on appeal and removal of the encroachment is found to be improper, two remedies would be available - NCRR could reimburse the encroaching party for the value of the property removed, or condemn the property and pay just compensation.

Section 14 adds a new criminal trespassing statute making trespass on a RR right-of-way a Class 2 misdemeanor, without the necessity of the railroad posting "no trespassing" signs.

Section 15 brings the NCRR and its employees under the Workers' Compensation Act.

Section 16 authorizes the extension of the Future of the NCRR Study Commission until January 15, 2001.

Section 17 provides that that the bill would become effective December 1, 2000, and the misdemeanor trespass section would apply to acts occurring on or after that date.

S1183-SMSU-002

North Carolina Railroad Capital Improvement Plan  
2001-2005

SUMMARY - Capital Improvement	Benefit / Est. Time Savings (min.)	Funding Source(s)	Total Estimated Cost	Year of Construct.	Status
<p><b>- A) CTC &amp; Communications Cary - Greensboro</b> The installation of centralized traffic control system with communications to permit operation of trains up to a maximum speed of 79 mph and reduce delays associated with meeting and passing trains.</p>	5.2	Fed ISTEA	23,725,000	2001	Funded
<p><b>- B) Road Crossing Circuits Fether - Greensboro</b> The activation circuits will be lengthened and constant warning devices will be added to accommodate trains running at higher speeds through various crossings. Some of the crossing work is already underway between Greensboro and Charlotte</p>	2.5	Fed ISTEA	3,750,000	2001	Funded
<p><b>- C) Curve Work: Raleigh - Charlotte</b> This work includes increasing super-elevation in selected curves, slight curve realignments, modifying super-elevation on bridge decks and culverts to accommodate higher speeds</p>	6.2	Fed TEA-21 & State Contrib.	5,000,000	2001	Funded
<p><b>- D) Double Track Cox - Hoskins 9 Miles</b> This work is to improve capacity by adding a second track to reduce delays associated with meeting and passing trains. DOT studies have identified this portion of railroad as one of the most congested.</p>	Improve Reliability	Fed TEA-21 & State Contrib.	17,000,000	2001	Funded
<p><b>- E) Upgrade and Ext. McLeansville or Mebane Siding</b> This work is to improve capacity by upgrading and extending passing track to reduce delays associated with meeting and passing trains. Need to determine which siding should be extended.</p>	Incl. in CTC time	Fed TEA-21 & State Contrib.	2,165,000	2001	Funded
<p><b>- F) Upgrade track cond. between Raleigh and Selma</b> Upgrade track class between Selma and Raleigh to increase passenger speed to 59 mph for approx. 30 miles; upgrade crossing circuits</p>	5	NCR Div.	2,000,000	2001	Pending
<p><b>- G) Extend Siding in West Durham (Fuston) 1+ Mi.</b> This work is to extend passing siding and straighten curve west of Durham for approx. 1 mile segment.</p>	TBD	NCR Div.	2,000,000	2001	Pending

	Benefit / Est. Time Savings (mln.)	Funding Source(s)	Total Estimated Cost	Year of Construct.	Status
<b>SUMMARY - Capital Improvement</b>					
<b>-H) Repair/Replace Neuse River Bridge - Kingston</b> Increase load of bridge to permit 286,000 lb standard railcars as other segments of NCR.	Inc. Load Bearing	NCR Div.	2,000,000	2001	Pending
<b>- I) Double Track Junker - Hay - 12.1 Miles</b> This work is to improve capacity by adding a second track and signals to reduce delays associated with meeting and passing trains. (Only half of this section of single track will be double.)	Improve Reliability	Fed & State Contrib.	24,000,000	2002	Pending
<b>- J) Double Track Bowers - Lake 4.2 Miles</b> This work is to improve capacity by extending second track and signals to reduce delays associated with meeting and passing trains. DOT studies have identified this portion of railroad as one of the most congested.	Improve Reliability	Fed & State Contrib.	10,000,000	2002	Pending
<b>- K) Add approx. 5 mile double track Raleigh - Selma</b> This work is to improve capacity by adding a second track for approximately 5 miles between Raleigh and Selma to improve passenger/freight train performance.	TBD	TBD	10,000,000	2003 - 2004	Pending
<b>- L) CTC &amp; Communications Garner - Selma</b> This work is to add Centralized Traffic Control to raise to same standard as Raleigh - Charlotte. The Raleigh to Selma segment of the NCR is used by four passenger trains per day	TBD	NCR Div.	8,000,000	2004	Pending
<b>- M) Compl. Double Tracking of Greensboro - Charlotte</b> Double track approx 14 miles and increase speeds at certain locations, upgrade signals, etc.	TBD	NCR Div.	31,000,000	2005	Pending
<b>- N) Replace NC 54 Railroad Bridge in RTP</b> Replace existing single track RR bridge in RTP with double track bridge and accommodate regional transit operations; improve highway traffic flow and eliminate substandard clearance	TBD	NCR Div (1/2)	1,500,000	2005	Pending

Total 142,140,000  
 Total Funded 51,640,000  
 Total Pending 90,500,000



# NCCR-SELMA (SSM) TO CHARLOTTE (CLT) IMPROVEMENTS

3/17/99

Location	Second Track w/ Signals	Upgrade Single Track & Signals	Upgrade/Install Signals	Purchase Track or ROW	Earthwork	Curve Work	Turnouts	Road Crossings	Structures <sup>1</sup>	Yard Realignments	Cost	10% Construction Contingencies	15% Planning Engineering Inspection	Total Cost
<b>Greensboro-Charlotte</b>														
Cox-Hostings(289.3-298)	\$ 8,700,000.00	\$ -	\$ -	\$ -	\$ 1,391,238.00	\$ -	\$ 2,350,000.00	\$ 1,115,750.00	\$ 49,000.00	\$ -	\$ 13,605,988.00	\$ 1,360,598.80	\$ 2,040,898.20	\$ 17,007,485.00
Bowers-Lake(309.9-314)	\$ 4,100,000.00	\$ -	\$ -	\$ -	\$ 869,598.00	\$ -	\$ 2,000,000.00	\$ 530,330.00	\$ 1,871,900.00	\$ -	\$ 5,371,828.00	\$ 937,182.80	\$ 1,405,774.20	\$ 11,714,785.00
Riad-N. Kammopolis(337.3-347.3)	\$ 10,000,000.00	\$ -	\$ -	\$ -	\$ 1,522,242.00	\$ -	\$ 2,500,000.00	\$ 1,860,800.00	\$ -	\$ -	\$ 15,883,042.00	\$ 1,588,304.20	\$ 2,382,456.30	\$ 19,853,802.50
Haydock-Junker(360.1-372.2)	\$ 12,100,000.00	\$ -	\$ -	\$ -	\$ 3,194,145.00	\$ -	\$ 2,400,000.00	\$ 1,550,320.00	\$ 1,526,490.00	\$ -	\$ 20,770,955.00	\$ 2,077,095.50	\$ 3,115,643.25	\$ 25,963,693.75
Greensboro -Charlotte(283.9-377.5)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,000,000.00	\$ -	\$ 8,000,000.00	\$ 27,262,000.00	\$ 2,726,200.00	\$ 4,089,300.00	\$ 34,077,500.00
<b>Subtotal</b>														\$ 108,617,266.25
<b>Greensboro-Raleigh</b>														
H0-H11	\$ 11,000,000.00	\$ -	\$ -	\$ -	\$ 6,795,360.00	\$ -	\$ 1,500,000.00	\$ 1,184,650.00	\$ 2,047,500.00	\$ -	\$ 22,527,520.00	\$ 2,252,752.00	\$ 3,379,128.00	\$ 28,159,400.00
H26-H36	\$ 10,000,000.00	\$ -	\$ -	\$ -	\$ 6,177,600.00	\$ -	\$ 1,600,000.00	\$ 794,780.00	\$ 840,000.00	\$ -	\$ 19,412,380.00	\$ 1,941,238.00	\$ 2,911,857.00	\$ 24,265,475.00
H47-H57	\$ 10,000,000.00	\$ -	\$ -	\$ -	\$ 6,177,600.00	\$ -	\$ 1,700,000.00	\$ 1,119,680.00	\$ 6,547,500.00	\$ -	\$ 25,544,780.00	\$ 2,554,478.00	\$ 3,831,717.00	\$ 31,930,975.00
H73-H81	\$ -	\$ -	\$ 3,000,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,750,000.00	\$ 375,000.00	\$ 562,500.00	\$ 4,687,500.00
H0-H73	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 16,880,000.00	\$ 1,688,000.00	\$ 2,532,000.00	\$ 21,000,000.00
<b>Subtotal</b>														\$ 110,143,350.00
<b>Durham-Cary (via NCRRI)</b>														
H55-H69	\$ 4,000,000.00	\$ -	\$ -	\$ -	\$ 2,471,040.00	\$ -	\$ 600,000.00	\$ 404,900.00	\$ -	\$ -	\$ 7,475,940.00	\$ 747,594.00	\$ 1,121,391.00	\$ 9,344,925.00
<b>Subtotal</b>														\$ 9,344,925.00
<b>Durham-Cary (via D&amp;S / S-line)</b>														
SDS2.3-SDS 15.3	\$ -	\$ 13,000,000.00	\$ -	\$ -	\$ 617,760.00	\$ 1,000,000.00	\$ -	\$ 394,880.00	\$ -	\$ -	\$ 28,012,640.00	\$ 2,801,264.00	\$ 4,201,896.00	\$ 35,015,800.00
Connector Track (SDS 15.3-S16B) <sup>2</sup>	\$ -	\$ 2,000,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 23,000,000.00	\$ 2,300,000.00	\$ 3,450,000.00	\$ 28,750,000.00
S16B-S165	\$ -	\$ -	\$ -	\$ 510,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,760,000.00	\$ 776,000.00	\$ 1,164,000.00	\$ 9,700,000.00
<b>Subtotal</b>														\$ 73,465,800.00
<b>Raleigh-Selma</b>														
H81-H98	\$ -	\$ -	\$ -	\$ 4,420,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,420,000.00	\$ 442,000.00	\$ 653,000.00	\$ 5,515,000.00
H98-H103	\$ 5,000,000.00	\$ -	\$ -	\$ -	\$ 3,088,800.00	\$ -	\$ 500,000.00	\$ 809,780.00	\$ -	\$ -	\$ 9,398,580.00	\$ 939,858.00	\$ 1,409,787.00	\$ 11,748,225.00
H103-H110	\$ -	\$ -	\$ -	\$ 1,820,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,820,000.00	\$ 182,000.00	\$ 273,000.00	\$ 2,275,000.00
H81-H110	\$ -	\$ -	\$ 13,050,000.00	\$ -	\$ -	\$ 1,000,000.00	\$ -	\$ 849,740.00	\$ -	\$ -	\$ 14,899,740.00	\$ 1,489,974.00	\$ 2,234,961.00	\$ 18,624,675.00
<b>Subtotal</b>														\$ 38,172,900.00
<b>Other</b>														
ISS Recommendations	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 56,164,500.00	\$ 56,164,500.00	\$ -	\$ 112,329,000.00	\$ -	\$ -	\$ 112,329,000.00
<b>Subtotal</b>														\$ 112,329,000.00
<b>Total Cost (via D&amp;S / S-line)</b>														
														\$ 442,728,316.25
<b>Total Cost (via NCRRI)</b>														
														\$ 378,607,441.25

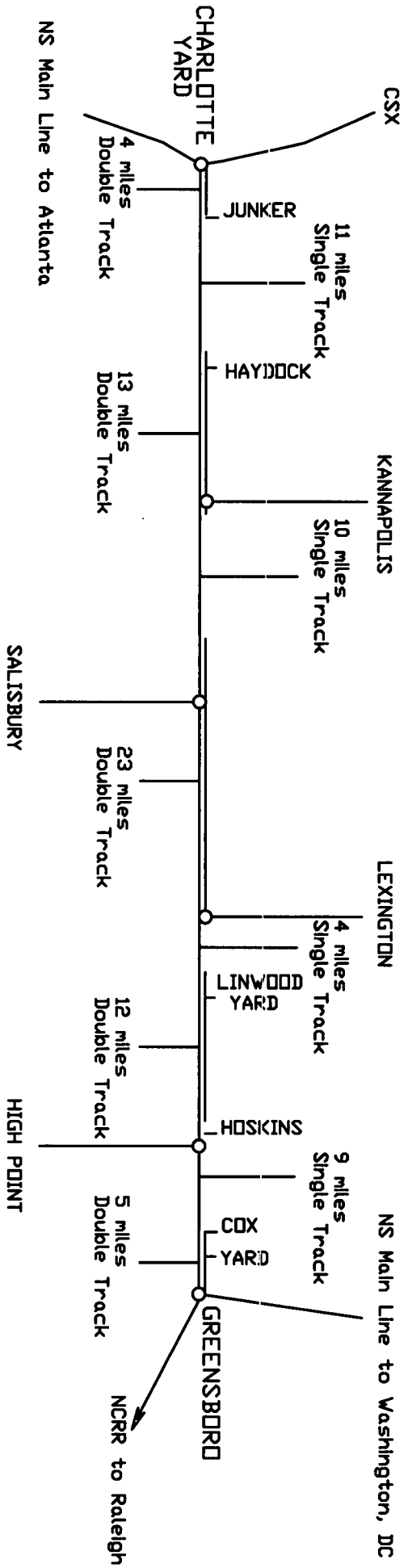
**\* PRELIMINARY ESTIMATE ONLY**  
**\* ALL COSTS ARE "ROUGH" ESTIMATES AND MUST BE VERIFIED**

**Notes:**  
 Note 1: Highway bridges need to be evaluated on a case by case basis. Further evaluation is needed for costs.  
 Note 2: \$21,000,000 estimated cost includes purchase of land, roadway alignments, new highway bridges associated with the construction of the connector.

**ATTACHMENT #1** See Attachments #2 for detailed Cost Estimates

# NCRR Track Segments - Existing

## Charlotte to Greensboro



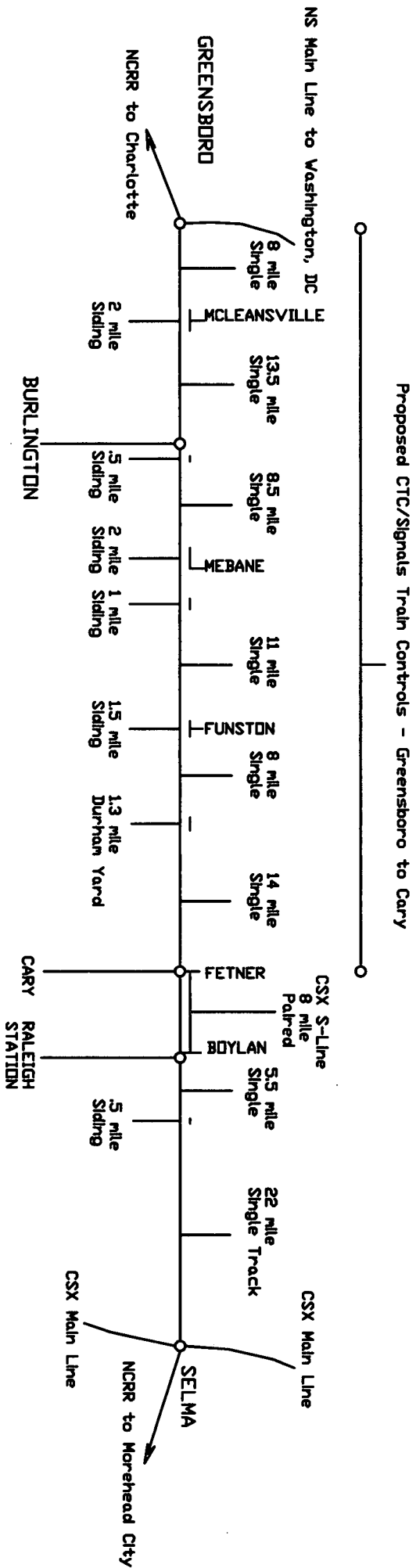
36 Freight Trains per day, Charlotte to Salisbury

42 Freight Trains per day, Salisbury to Greensboro

6 Passenger Trains per day between Charlotte and Greensboro

\* Max Passenger Speed between Charlotte and Greensboro is 79 mph.  
 \* Max Freight Speed between Charlotte and Greensboro is 60 mph.

# NCRR Track Segments - Existing Greensboro to Selma



8 Freight Trains per day, Greensboro to Raleigh

4 Passenger Trains per day, Greensboro to Selma  
2 Passenger Trains per day, Cary to Selma

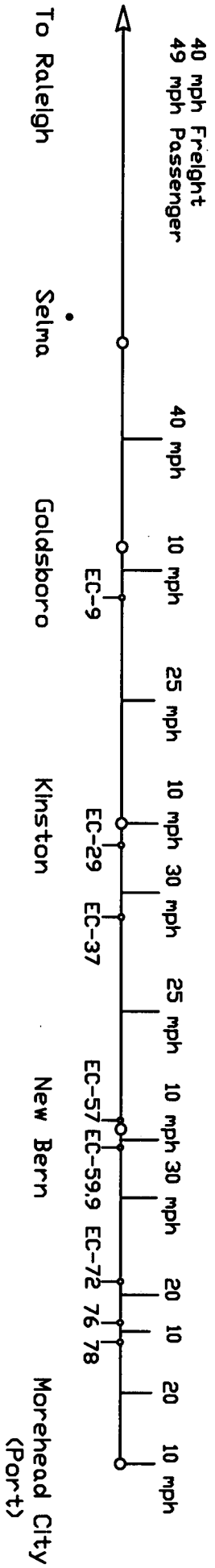
- Passenger Speed
- Max Passenger Speed between Greensboro and Raleigh is 59 mph.
  - Max Passenger Speed between Raleigh and Selma is 49 mph.

- Freight Speed
- Max Freight Speed between Greensboro and Raleigh is 49 mph.
  - Max Freight Speed between Raleigh and Selma is 40 mph.

# NCRR Track Segments - Existing

## Selma to Morehead City

Current



VISITOR REGISTRATION SHEET

COMMERCE  
Name of Committee

6-13-00  
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Sam Monroa	Spint
Mulderson	Capital Group
Don Beason	Capital Group
Alan Niles	Barley & Dixon LLP
Kin Hibbard	NCLM
Bill Scobee	KENNEDY COV. NGTON
Joyfulus	<del>None</del>
John Jordan	Jordan, Price
Georget Everett	Duke Energy
Michelle Cook	Weyhauser
Lucas Parker	Attorneys
Sam Holcomb	MCT INC.
Fabrick Simmons	NCDOT
Quarrel's Laughlin	NS
Raymond Pugh	CEX



SENATE COMMERCE COMMITTEE  
12 NOON, TUESDAY, JUNE 20, 2000  
Room 1027, STATE LEGISLATIVE BUILDING  
MINUTES


The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 12 Noon on Tuesday, June 20, 2000. Eleven members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

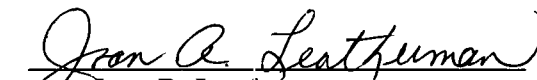
Senator Soles, Chairman, called the meeting to order and the Committee considered the following bill:

SB 1201, AN ACT TO REQUIRE RETAIL FOOD ESTABLISHMENTS TO STAMP OR ATTACH LABELS TO PREPACKAGED MEATS AND OTHER PERISHABLE FOODS SHOWING THE RECOMMENDED LAST DAY OF SALE. Senator Purcell sent forward a Committee Substitute for SB 1201 and moved its adoption. Motion carried.

Senator Hagan, the bill sponsor, was recognized to explain the legislation. (See attached Summary prepared by Trina Griffin, Committee Co-Counsel.) Senator Hagan said the proposed legislation would amend the definition of "misbranding" to include the removal of alteration of labels for meat, poultry and seafood products bearing a "sell-by" date. Following questions from various committee members, Senator Lee moved that the Committee Substitute for Senate Bill 1201 be given a favorable report and that it be referred to the Appropriations Committee. Motion carried.

The meeting adjourned at 12:30 p.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

  
\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant

**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, JUNE 20, 2000  
Room 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**SB 1201, DATE LABELS FOR PERISHABLE FOODS (Senator Hagan)**

**ADJOURNMENT**



**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair**

Tuesday, June 20, 2000

SENATOR SOLES,  
submits the following with recommendations as to passage:

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

<b>S.B. 1201</b>	<b>Date Labels for Perishable Foods</b>	
	Draft Number:	PCS3974
	Sequential Referral:	None
	Recommended Referral:	Appropriations
	Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1201

Short Title: Date Labels for Perishable Foods.

(Public)

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Sponsors: Senators Hagan; Albertson, Ballance, Carter, Garrou, Gulley, Hoyle, Kerr, Kinnaird, Lee, Lucas, Martin of Guilford, Metcalf, Miller, Moore, Perdue, Phillips, Rand, Robinson, and Wellons.

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Referred to: Commerce.

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May 10, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE RETAIL FOOD ESTABLISHMENTS TO STAMP OR  
3 ATTACH LABELS TO PREPACKAGED MEATS AND OTHER PERISHABLE  
4 FOODS SHOWING THE RECOMMENDED LAST DAY OF SALE.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. Article 12 of Chapter 106 of the General Statutes is amended  
7 by adding a new section to read:  
8 "§ 106-122.1. Labels showing recommended last day of sale for perishable foods.  
9 (a) A retail food establishment shall not sell or offer for sale prepackaged meats,  
10 poultry, seafood, or other perishable food unless there clearly and conspicuously is  
11 stamped upon the package, or a label attached thereto, showing the recommended  
12 last day of sale, indicated by month and day. The label or stamp showing the last  
13 recommended day of sale shall not be altered or removed. The packaged food shall  
14 not be rewrapped or repackaged with a last recommended day of sale different from  
15 the date on the original package.  
16 (b) This section does not prohibit the sale of food after the last recommended day  
17 of sale indicated on the stamp or label if (i) the food is wholesome and sound and (ii)  
18 the package clearly shows that the food is being sold after the last recommended day  
19 of sale.  
20 (c) The following definitions apply in this section:  
21 (1) 'Perishable food' means any food in a package form which the  
22 manufacturer, packer, or retailer, in conjunction with the

1           Department of Agriculture and Consumer Services, determines as  
2           having a significant risk of spoilage, loss of value, or loss of  
3           palatability within 90 days of the date of packaging.

4           (2) 'Prepackaged' means packaged prior to being displayed or offered  
5           for sale.

6           (3) 'Retail food establishment' means a business that prepares and sells  
7           meat or meat products, poultry, seafood, or other perishable foods  
8           to consumers at retail.

9           (d) This section shall not apply to the sale or offering for sale of fresh fruits and  
10          vegetables, canned foods, or frozen foods. This section shall not apply to perishable  
11          food products packaged under, and in compliance with, State or federal laws and  
12          regulations requiring equal or greater information than that required in this section.

13          (e) The Board of Agriculture shall adopt rules implementing the provisions of this  
14          section including record-keeping requirements. The rules shall prescribe the methods  
15          by which retail food establishments determine a recommended last day of sale  
16          consistent with public health and safety. Calculation of the recommended last day of  
17          sale shall include a reasonable period after purchase for consumption of the food."

18                 Section 2. There is appropriated from the General Fund to the  
19 Department of Agriculture and Consumer Services the sum of sixteen thousand six  
20 hundred forty-three dollars (\$16,643) for the 2000-2001 fiscal year to fund one  
21 additional Meat and Poultry Inspector I position in the Department. This  
22 appropriation is conditioned upon the availability of federal matching funds for the  
23 position in the amount of sixteen thousand six hundred forty-three dollars (\$16,643)  
24 for the 2000-2001 fiscal year.

25                 Section 3. This act shall be considered a recent act of the General  
26 Assembly for rule-making purposes and temporary rules shall be adopted by the  
27 Board of Agriculture within 90 days of the effective date of this act.

28                 Section 4. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1201  
Proposed Committee Substitute S1201-PCS3974-RF03

Short Title: Date Labels for Meat/Poultry/Seafood.

(Public)

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Sponsors:

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Referred to:

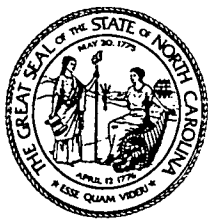
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May 10, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE DEFINITION OF "MISBRANDING" TO INCLUDE  
3 THE REMOVAL OR ALTERATION OF LABELS BEARING A "SELL-BY"  
4 DATE OR LAST RECOMMENDED DAY OF SALE.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 106-130 is amended by adding a new subdivision to read:  
7 "§ 106-130. Foods deemed misbranded. - A food shall be deemed to be misbranded:  
8 (15) If the labeling provided by the manufacturer, packer, distributor,  
9 or retailer on meat, meat products, poultry, or seafood includes a  
10 'sell-by' date or other indicator of a last recommended day of sale,  
11 and the date has been removed, obscured, or altered by any person  
12 other than the customer. This subdivision does not prohibit the  
13 removal of a label for the purpose of repackaging and relabeling a  
14 food item so long as the new package or new label does not bear a  
15 'sell-by' date or other indicator of a last recommended day of sale  
16 later than the original package. This subdivision does not prohibit  
17 relabeling of meat, meat products, poultry, or seafood that has had  
18 its shelf life extended through freezing, cooking, or other  
19 additional processing that extends the shelf life of the product."  
20 Section 2. There is appropriated from the General Fund to the  
21 Department of Agriculture and Consumer Services the sum of thirty-two thousand  
22 eight hundred seventy-six dollars (\$32,876) for the 2000-2001 fiscal year to fund an  
23 additional Food Regulatory Specialist I position for the implementation of this act.

1

Section 3. This act becomes effective July 1, 2000.



# SENATE BILL 1201: DATE LABELS FOR PERISHABLE FOODS

## BILL ANALYSIS

**Committee:** Senate Commerce  
**Date:** June 20, 2000  
**Version:** Proposed Committee Substitute  
S1201-PCS3974-RF03

**Introduced by:** Sen. Hagan  
**Summary by:** Trina Griffin  
Committee Co-Counsel

**SUMMARY:** *The proposed legislation would amend the definition of "misbranding" to include the removal or alteration of labels for meat, poultry and seafood products bearing a "sell-by" date.*

**CURRENT LAW:** The manufacture, sale or delivery of any food that is misbranded is punishable as a Class 2 misdemeanor. This prohibition against misbranded food is designed to protect consumers from false or misleading information found on food containers and labels. G.S. 106-130 identifies the conditions under which a food is deemed to be misbranded. Currently, none of these provisions specifically prohibits the alteration of a sell-by date found on meat, poultry and seafood packaging.

**BILL ANALYSIS:** Section 1 of the bill would add a new subdivision to G.S. 106-130 stating that a food is deemed to be misbranded if the labeling provided by the manufacturer, packer, distributor or retailer on meat, poultry or seafood includes a sell-by date that has been removed, obscured, or altered by any person other than the customer. This subdivision does not prohibit the removal of a label for the purpose of repackaging and relabeling food as long as the new package bears the original sell-by date. This subdivision does not prohibit the relabeling of meat, poultry or seafood that has had its shelf life extended through freezing, cooking or other processing.

Section 2 of the bill appropriates \$32,876 for the 2000-2001 fiscal year to fund an additional Food Regulatory Specialist I position for purposes of implementing this act.

This act would become effective July 1, 2000.

VISITOR REGISTRATION SHEET

Name of Committee \_\_\_\_\_

Date \_\_\_\_\_

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME

FIRM OR AGENCY AND ADDRESS

Ann Edmondson	NCRMA
Joe Reardon	NCDA & CS
David M <sup>o</sup> Lord	NCDA & CS
Jerry Hardeshy	Food Banks
Butch Gurnells	NC Soft Drink Assoc.
Joan Basore	WNC-TV
ERIC DYER	GTN NEWS & RECORD
F. Tye	WRAL-TV
Sandy Sands	WCSR
Tom Ross	AOC
Rob Lubitz	AOC

SENATE COMMERCE COMMITTEE  
12 NOON, TUESDAY, JUNE 27, 2000  
ROOM 1027, STATE LEGISLATIVE BUILDING  
MINUTES


A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 12 Noon on Tuesday, June 27, 2000. Seven members of the Committee attended. Visitors attending the meeting are listed on the attached Visitor Registration Sheet. Ms. Catherine Clark of Durham (sponsored by Senator Gulley) and Mr. Whitney Ward of Camden County (sponsored by Senator Basnight) were the Senate Pages assisting with the meeting.

Senator Soles, Chairman, called the meeting to order and the Committee considered the following bill:

HB 1021, AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH REGARD TO THE PROCEDURE FOR FILING OF FINANCING STATEMENTS. Senator Ballantine moved the adoption of a Proposed Senate Committee Substitute for House Bill 1021. Motion carried. (Refer to attached Summary prepared by Committee Council for an explanation of the bill). Senator Ballantine sent forward a technical amendment to the Committee Substitute and moved its adoption (copy attached). Motion carried.

Senator Ballantine moved that the Senate Committee Substitute for HB 1021, as amended, be adopted and that it be rolled into a new Committee Substitute Bill. Motion carried.

The meeting adjourned at 12:15 p.m.

  
\_\_\_\_\_  
Senator R. C. Soles, Jr., Chairman

\_\_\_\_\_  
Joan R. Leatherman  
Committee Assistant



**SENATE COMMERCE COMMITTEE  
AGENDA  
TUESDAY, JUNE 27, 2000  
Room 1027  
LEGISLATIVE BUILDING**

**CALL TO ORDER:  
SENATOR SOLES, CHAIRMAN**

**HB 1021, REVISE UCC FILINGS PROCEDURES (Rep. Hill)**

**ADJOURNMENT**

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMERCE COMMITTEE REPORT  
Senator R. C. Soles, Jr., Chair**

Tuesday, June 27, 2000

SENATOR SOLES,  
submits the following with recommendations as to passage:

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,  
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

<b>H.B.(SCS)1021</b>	<b>Revise UCC Filings Procedures</b>	
	Draft Number:	PCS 7381
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: This is a second Senate Committee Substitute.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

2

HOUSE BILL 1021  
Senate Judiciary II Committee Substitute Adopted 6/1/99

Short Title: Revise UCC Filings Procedures.

(Public)

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Sponsors:

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Referred to:

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April 14, 1999

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH REGARD  
3 TO THE PROCEDURE FOR FILING OF FINANCING STATEMENTS.  
4 The General Assembly of North Carolina enacts:  
5                   Section 1. G.S. 25-9-402 reads as rewritten:  
6 "**§ 25-9-402. Formal requisites of financing statement; amendments; mortgage as**  
7 **financing statement.**  
8     (1) A financing statement is sufficient if it gives the names of the debtor and the  
9 secured party, is signed by the debtor, gives an address of the secured party from  
10 which information concerning the security interest may be obtained, gives a mailing  
11 address of the debtor and contains a statement indicating the types, or describing the  
12 items, of collateral. A financing statement may be filed before a security agreement is  
13 made or a security interest otherwise attaches. When the financing statement covers  
14 crops growing or to be grown, the statement must indicate that the collateral is or  
15 includes crops, must contain a description of the real estate concerned, and must  
16 contain the county of the debtor's residence, or where the debtor is not a resident of  
17 this State the county where the crops are growing or to be grown. When the  
18 financing statement covers timber to be cut or covers minerals or the like (including  
19 oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or when the  
20 financing statement is filed as a fixture filing (G.S. 25-9-313) and the collateral is  
21 goods which are or are to become fixtures, the statement must also comply with  
22 subsection (5). A copy of the security agreement is sufficient as a financing statement  
23 if it contains the above information and is signed by the debtor. A carbon,

1 photographic or other reproduction of a security agreement or a financing statement  
2 is sufficient as a financing statement if the security agreement so provides or if the  
3 original has been filed in this State.

4 (2) A financing statement which otherwise complies with subsection (1) is  
5 sufficient when it is signed by the secured party instead of the debtor if it is filed to  
6 perfect a security interest in

7 (a) Collateral already subject to a security interest in another  
8 jurisdiction when it is brought into this State, or when the debtor's  
9 location is changed to this State. Such a financing statement must  
10 state that the collateral was brought into this State or that the  
11 debtor's location was changed to this State under such  
12 circumstances; or

13 (b) Proceeds under G.S. 25-9-306 if the security interest in the original  
14 collateral was perfected. Such a financing statement must describe  
15 the original collateral; or

16 (c) Collateral as to which the filing has lapsed; or

17 (d) Collateral acquired after a change of name, identity or corporate  
18 structure of the debtor (subsection (7)).

19 (3) ~~A form substantially as follows is sufficient to comply with subsection (1):~~ A  
20 financing statement complies with subsection (1) of this section if it is filed (i)  
21 electronically in a format acceptable to the filing officer or (ii) on 8 1/2" x 11" paper  
22 that is carbonized or the original statement is accompanied by carbon copies and the  
23 form is substantially as follows:

24 Name of debtor (or assignor) .....

25 Address .....

26 Name of secured party (or assignee) .....

27 Address .....

28 1. This financing statement covers the following types (or items) of property:

29 (Describe) .....

30 2. (If collateral is crops) The above described crops are growing or are to be grown on:

31 (Describe Real Estate) .....

32 3. (If applicable) The above goods are to become fixtures on\* .....

33 \*Where appropriate substitute either "The above timber is standing on ....." or "The  
34 above minerals or the like (including oil and gas) or accounts will be financed at the  
35 wellhead or minehead of the well or mine located on ....."

36 (Describe Real Estate) .....

37 (If the debtor does not have an interest of record) The name of a record owner  
38 is .....

39 4. (If products of collateral are claimed) Products of the collateral are also covered.

40 (use .....

1           whichever           Signature of Debtor (or Assignor)  
 2                    is           .....  
 3           applicable)       Signature of Secured Party (or Assignee)  
 4

5       (4) A financing statement may be amended by filing a writing signed by both the  
 6 debtor and the secured party. An amendment does not extend the period of  
 7 effectiveness of a financing statement. If any amendment adds collateral, it is effective  
 8 as to the added collateral only from the filing date of the amendment. In this Article,  
 9 unless the context otherwise requires, the term "financing statement" means the  
 10 original financing statement and any amendments. Amendments shall be  
 11 accompanied by a copy of the original financing statement when filed to be effective.

12       (5) A financing statement covering timber to be cut or covering minerals or the  
 13 like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or  
 14 a financing statement filed as a fixture filing (G.S. 25-9-313) must contain a  
 15 description of the real estate. If the debtor does not have an interest of record in the  
 16 real estate, the financing statement must show the name of a record owner. A  
 17 financing statement filed as a fixture filing (G.S. 25-9-313) on a form shall have the  
 18 appropriate box checked to indicate that the collateral is, or includes, fixtures. If (a)  
 19 a copy of a security agreement is filed as a financing statement, as authorized by G.S.  
 20 25-9-402, or (b) a nonstandard form is filed, to perfect security interests in fixtures,  
 21 the secured party or other filer shall attach thereto a form financing statement with  
 22 the appropriate block checked to indicate that the collateral is, or includes, fixtures.  
 23 If a financing statement is not marked as required by this subsection, it shall not be  
 24 required to be indexed pursuant to G.S. 25-9-403(7).

25       (6) A mortgage or deed of trust is effective as a financing statement filed as a  
 26 fixture filing from the date of its recording if

- 27           (a)   The goods are described in the mortgage or deed of trust by item
- 28                    or type; and
- 29           (b)   The goods are or are to become fixtures related to the real estate
- 30                    described in the mortgage or deed of trust; and
- 31           (c)   The mortgage or deed of trust complies with the requirements for
- 32                    a financing statement in this section; and
- 33           (d)   The mortgage or deed of trust is duly recorded in the real estate
- 34                    records. Such a mortgage or deed of trust shall not be indexed or
- 35                    filed in the Uniform Commercial Code files. No fee with reference
- 36                    to such a mortgage or deed of trust is required other than the
- 37                    regular recording and satisfaction fees with respect to the mortgage
- 38                    or deed of trust.

39       (7) A financing statement sufficiently shows the name of the debtor if it gives the  
 40 individual, partnership or corporate name of the debtor, whether or not it adds other  
 41 trade names or names of partners. Where the debtor so changes his name or in the  
 42 case of an organization its name, identity or corporate structure that a filed financing  
 43 statement becomes seriously misleading, the filing is not effective to perfect a security

1 interest in collateral acquired by the debtor more than four months after the change,  
2 unless a new appropriate financing statement is filed before the expiration of that  
3 time. A filed financing statement remains effective with respect to collateral  
4 transferred by the debtor even though the secured party knows of or consents to the  
5 transfer.

6 (8) A financing statement substantially complying with the requirements of this  
7 section is effective even though it contains minor errors which are not seriously  
8 misleading.

9 (9) The Secretary of State shall have the authority to promulgate, issue and  
10 prescribe such financing statement forms and such other forms as he deems necessary  
11 to be used as standard forms for any filing contemplated by any section of this  
12 Article."

13 Section 2. G.S. 25-9-403(3) reads as rewritten:

14 "(3) A continuation statement may be filed by the secured party within six months  
15 prior to the expiration of the five-year period specified in subsection (2). Any such  
16 continuation statement must be signed by the secured party, be accompanied by a  
17 copy of the original financing statement, identify the original statement by file  
18 number and also by the most current file number if any continuation was filed and  
19 state that the original statement is still effective. A continuation statement signed by a  
20 person other than the secured party of record must be accompanied by a separate  
21 written statement of assignment signed by the secured party of record and complying  
22 with subsection (2) of G.S. 25-9-405, including payment of the required fee. Upon  
23 timely filing of the continuation statement, the effectiveness of the original statement  
24 is continued for five years after the last date to which the filing was effective  
25 whereupon it lapses in the same manner as provided in subsection (2) unless another  
26 continuation statement is filed prior to such lapse. Succeeding continuation  
27 statements may be filed in the same manner to continue the effectiveness of the  
28 original statement. Unless a statute on disposition of public records provides  
29 otherwise, the filing officer may remove a lapsed statement from the files and destroy  
30 it immediately if he has retained a microfilm or other photographic ~~record, or in~~  
31 ~~other cases after one year after the lapse.~~ record. In any event, one year after a  
32 financing or continuation statement has lapsed, the filing officer may remove the  
33 lapsed statement from any files, including computer files, and destroy it immediately.  
34 The filing officer shall so arrange matters by physical annexation of financing  
35 statements to continuation statements or other related filings, or by other means, that  
36 if he physically destroys the financing statements of a period more than five years  
37 past, those which have been continued by a continuation statement or which are still  
38 effective under subsection (6) shall be retained. Any continuation statement which is  
39 not filed in accordance with the requirements set forth herein and during the stated  
40 time periods set forth above shall be invalid."

41 Section 3. Any register of deeds office in this State that has had  
42 computer files for a period of at least five years is not required to cancel financing  
43 statements manually.

44 Section 4. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

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HOUSE BILL 1021

Senate Judiciary II Committee Substitute Adopted 6/1/99  
Proposed Senate Committee Substitute H1021-PCS5107-LT1

Short Title: Revise UCC Filings Procedures.

(Public)

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Sponsors:

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Referred to:

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April 14, 1999

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND ARTICLE 3 OF THE UNIFORM COMMERCIAL CODE.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. G.S. 25-3-506 reads as rewritten:  
5 "**§ 25-3-506. Collection of processing fee for returned checks.**  
6 A person who accepts a check in payment for goods or services or his assignee  
7 may charge and collect a processing fee, not to exceed twenty-five dollars (\$25.00),  
8 for a check on which payment has been refused by the payor bank because of  
9 insufficient funds or because the drawer did not have an account at that ~~bank if at~~  
10 ~~the time the consumer presented the check to the person, a sign:~~  
11 (1) ~~Was conspicuously posted on or in the immediate vicinity of the~~  
12 ~~cash register or other place where the check is received;~~  
13 (2) ~~Was in plain view of anyone paying for goods or services by check;~~  
14 (3) ~~Was no smaller than 8 by 11 inches; and~~  
15 (4) ~~Stated the amount of the fee that would be charged for returned~~  
16 ~~checks.~~  
17 ~~When the drawer sends a check by mail for payment of a debt and the check is~~  
18 ~~dishonored and returned, the processing fee may be collected if the drawer was given~~  
19 ~~prior written notice that a fee would be charged for returned checks. Any document~~  
20 ~~that clearly and conspicuously states the amount of the fee that will be charged for~~  
21 ~~returned checks and is delivered to the drawer or his agent, or is mailed first class~~

1 ~~mail to the drawer at his last known address as part of any document requesting~~  
2 ~~payment of a debt satisfies this notice requirement for that payment only. bank.~~

3 If a collection agency collects or seeks to collect on behalf of its principal a  
4 processing fee as specified in this section in addition to the sum payable of a check,  
5 the amount of such processing fee must be separately stated on the collection notice.  
6 The collection agency shall not collect or seek to collect from the drawer any sum  
7 other than the actual amount of the returned check and the specified processing fee."

8 Section 2. This act becomes effective October 1, 2000.





NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
House Bill 1021

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)  
Page 1 of \_\_\_\_\_

H1021-ARU-001

Date \_\_\_\_\_, 2000

Comm. Sub. [YES]  
Amends Title []  
H1021-PCS5107-LT1

Senator

1 moves to amend the bill on page 1,  
2 by changing the Short Title to read:  
3 "Amend Art. 3 UCC."; and  
4  
5 on page 2, line 8,  
6 by deleting the date "October 1, 2000." and substituting the words  
7 "October 1, 2000, and applies to checks presented by the consumer on  
8 or after that date."

SIGNED \_\_\_\_\_  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

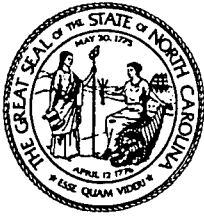
ADOPTED \_\_\_\_\_ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



1 ~~mail to the drawer at his last known address as part of any document requesting~~  
2 ~~payment of a debt satisfies this notice requirement for that payment only. bank.~~

3 If a collection agency collects or seeks to collect on behalf of its principal a  
4 processing fee as specified in this section in addition to the sum payable of a check,  
5 the amount of such processing fee must be separately stated on the collection notice.  
6 The collection agency shall not collect or seek to collect from the drawer any sum  
7 other than the actual amount of the returned check and the specified processing fee."

8 Section 2. This act becomes effective October 1, 2000, and applies to  
9 checks presented by the consumer on or after that date.



# HOUSE BILL 1021: Amend Article 3 Uniform Commercial Code

## BILL ANALYSIS

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<b>Committee:</b> Senate Commerce	<b>Introduced by:</b> Representative Hill
<b>Date:</b> June 27, 2000	<b>Summary by:</b> Wendy Graf
<b>Version:</b> Proposed Committee Substitute	<b>Committee Counsel</b>

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**SUMMARY:** *House Bill 1021 would amend Article 3 of the Uniform Commercial Code to eliminate the notice requirement for collection of a processing fee for returned checks.*

**CURRENT LAW:** G.S. 25-3-506 currently allows a person who accepts a check in payment for goods or services to charge a processing fee for returned checks only if a sign giving notice of the fee is posted in the place where the check is received. G.S. 25-3-506 also requires that prior written notice of a processing fee be given when payments are received through the mail.

G.S. 25-3-506, while codified in the North Carolina Uniform Commercial Code, is not a part of the uniform act.

**BILL ANALYSIS:** House Bill 1021 would allow collection of a processing fee for returned checks without prior notice.

**EFFECTIVE DATE:** The act becomes effective October 1, 2000.

H1021-SMSU-002



## WORTHLESS CHECK SIGNS

### BACKGROUND

In 1987, a worthless check law (25-3-506) was passed and included in the Uniform Commercial Code (UCC). The law requires merchants to post an 8½ by 11 sign in the "immediate vicinity of the cash register" stating that they may "charge and collect a processing fee, not to exceed twenty-five dollars (\$25.00)." Under this law, a merchant is prohibited from collecting the \$25 processing fee from the customer if the sign is not posted.

### PROBLEM

Requiring the posting of the sign has become impractical in the modern retail world. An 8½ by 11 sign is too large to fit on most of today's smaller cash registers. Further, most of the counter space near the register is already taken up by signs required or encouraged by the State or Federal government, regarding the sale of alcohol and tobacco. The requirement of posting the worthless check sign in "the immediate vicinity of the cash register" does not provide a retailer a clear definition of where the sign must be posted, creating confusion that may lead to litigation.

Additionally, 25-3-506 is not the exclusive remedy for the receiver of a worthless check. The retailer has the option to use other sections of the UCC (25-2-709 and 25-2-710) to recover "reasonable expenses" for a dishonored check. However, these other sections do not define "reasonable expenses" creating confusion for both the customer and the retailer.

### SOLUTION

Our four neighboring states -- Tennessee, Georgia, Virginia and South Carolina -- do not require merchants to post signs to recover processing fees for worthless checks. With all of the signs North Carolina retailers are currently posting, we should follow the lead of our neighbors and no longer require the worthless check sign.

## PASS HOUSE BILL 1021

VISITOR REGISTRATION SHEET

Commerce  
Name of Committee

6-27-00  
Date

VISITORS: Please sign below and return to Committee Clerk.

NAME

FIRM OR STATE AGENCY AND ADDRESS

BRUCE GARNER

Sec of State

Hani McClees

McClees Consulting

Rob Schofield

N.C. Justice Center

## Box 6

1. 1999 Senate Education/Higher Ed
2. 2000 Senate Education/Higher Ed
3. 1999 Senate Finance
4. 2000 Senate Finance