1999

SENATE JUDICIARY II COMMITTEE

MINUTES

SENATE JUDICIARY II COMMITTEE MEMBERS

CHAIRMAN

BRAD MILLER
Room 621 Legislative Office Building
733-9349
Cornelia McMillan, Legislative Assistant

VICE-CHAIRS

FRANK BALLANCE
Room 523 Legislative Office Building
715-3032
Irma Avent, Legislative Assistant

FOUNTAIN ODOM
300B Legislative Office Building
733-5707
Anne Wilson/Sharon Nelson, Legislative Assistants

KAY HAGAN
519 Legislative Office Building
733-5856
Beth Wiley, Legislative Assistant

WALTER DALTON
409 Legislative Office Building
715-3038
Sally Curry, Legislative Assistant

RANKING MINORITY

BOB SHAW
1129 Legislative Building
715-3050
Sheila DeWitt, Legislative Assistant

MEMBERS

HOWARD LEE
406 Legislative Office Building
715-3030
Betty Stoddard/Lynne Hamlet, Legislative Assistants

HAMILTON HORTON
1117 Legislative Building
733-7850
Genie Clark, Legislative Assistant

BILL MARTIN
411 Legislative Office Building
715-3042
Joyce Hodge, Legislative Assistant

***ROBERT RUCHO**
1113 Legislative Building
733-5650
Kristi Bunn, Legislative Assistant

JOHN KERR
526 Legislative Office Building
733-5621
Evelyn Hartsell/Sylvia Sears, Legislative Assistants

KEN MOORE
1419 Legislative Building
715-0706
Heidi Yates, Legislative Assistant

DAN ROBINSON
2113 Legislative Building
733-5880
Jean Robinson, Legislative Assistant

JIM FORRESTER
1121 Legislative Building
733-5708
Mary Watson, Legislative Assistant

ELLIE KINNAIRD
2115 Legislative Building
733-5804
Kathie Young, Legislative Assistant

**Withdrew from committee 7/15/99*

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY II Valid Through 2-SEP-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 95	MICHAUX	SMALL LOAN REVISIONS	S -REF TO COM ON JUDICII	04-21-99	
H 160	GOODWIN	INCREASE CHILD ABUSE PENALTY	*R -CH. SL 99-0451	03-24-99	07-12-99
H 160	GOODWIN	INCREASE CHILD ABUSE PENALTY	*R -CH. SL 99-0451	07-14-99	07-20-99
H 162=	CULPEPPER	1999 TECHNICAL CORRECTIONS	*R -CH. SL 99-0456	04-27-99	07-19-99
H 201=	CULPEPPER	APPOINTMENT OF SUCCESSOR TRUSTEES	R -CH. SL 99-0118	03-18-99	05-18-99
H 214	JEFFUS	LAND RECORDS STATUTES TECH. MODS	R -CH. SL 99-0119	03-22-99	05-18-99
H 222	MITCHELL	STRENGTHEN LITTERING LAW	*R -CH. SL 99-0454	04-26-99	06-10-99
H 290	BADDOUR	AMEND CRIME VICTIMS COMP. ACT	R -CH. SL 99-0269	04-12-99	06-24-99
H 304=	EARLE	CHILD CARE SUBSIDY FRAUD	R -CH. SL 99-0279	04-21-99	05-20-99
H 328=	BRASWELL	SENT. COMMN/CRIM LAW CHANGES	*R -CH. SL 99-0408	04-08-99	07-19-99
H 331=	BOWIE	SENTENCING SERVICES PROGRAM	*R -CH. SL 99-0306	04-01-99	06-29-99
H 438	EDWARDS	HOUSING AUTHORITY EXEMPTION	*R -CH. SL 99-0409	04-27-99	07-14-99
H 477=	JEFFUS	COMMUNITY COLLEGE CAMPUS POLICE	R -CH. SL 99-0068	04-21-99	05-06-99
H 478=	JARRELL	THREATEN COURT OFFICERS	*R -CH. SL 99-0398	04-21-99	07-19-99
H 494	HACKNEY	UNIFORM CHILD-CUSTODY ACT	*R -CH. SL 99-0223	04-22-99	06-02-99
H 495	HACKNEY	FAMILY LAW ARBITRATION ACT	*R -CH. SL 99-0185	04-14-99	06-02-99
H 604	THOMAS	CLARIFY ATTY-IN-FACT GIFTS	R -CH. SL 99-0385	04-13-99	07-08-99
H 644=	GULLEY J	QUICK TAKE NOTICE OF APPEAL	*R -CH. SL 99-0410	05-05-99	07-19-99
H 660	NESBITT	COLLECTION AGENCY DEFINITION	R -CH. SL 99-0419	04-12-99	07-12-99
H 661	NESBITT	JUVENILE COMMUNITY SERVICE	*R -CH. SL 99-0444	04-08-99	07-12-99
H 670	EDDINS	EXPEDITE DEATH PENALTY CASES	S -REF TO COM ON JUDICII	04-22-99	
H 685=	BRIDGEMAN	ARREST WARRANTS/COPIES	*R -CH. SL 99-0399	04-14-99	07-14-99
H 763=	MITCHELL	TEACHER/STUDENT/NO SEX ACTS	*S -REF TO COM ON JUDICII	04-22-99	
H 885	LUEBKE	SELF-SERVE STORAGE/LATE PAYMENTS	*R -CH. SL 99-0416	04-26-99	07-12-99
H 898	MCALLISTER	CHILD BICYCLE SAFETY ACT	*S -REF TO COM ON JUDICII	04-29-99	
H 938=	SEXTON	FIREARMS/AMMUN. PREEMPTION	*S -REF TO COM ON JUDICII	04-28-99	
H 939	GOODWIN	RAISE SMALL CLAIMS AMT	*R -CH. SL 99-0411	04-26-99	07-12-99
H 958	EDWARDS	CONFID. MEDICAL INFO/CLARIFICATION	R -CH. SL 99-0272	04-26-99	06-24-99
H 959	RUSSELL	COCK FIGHTING/INCREASE PENALTY	*S -REF TO COM ON JUDICII	05-03-99	
H 968	NESBITT	AMEND CONTESTED CASE PROCEDURE	*S -RE-REF COM ON JUDICII	05-19-99	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY II Valid Through 2-SEP-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 973	HILL	MARRIAGE LICENSE CHANGE	*S -REF TO COM ON JUDICII	04-29-99	
H 975	BRASWELL	SAVAN EXEMPTION	*R -CH. SL 99-0169	04-28-99	05-18-99
H 979	BADDOUR	MODIFY RIGHTS OF DECEDENT'S SPOUSE	*S -REF TO COM ON JUDICII	04-27-99	
H 980=	BADDOUR	WORKERS' COMP./THIRD PARTY ACTIONS	*R -CH. SL 99-0194	05-05-99	06-01-99
H 991	BADDOUR	WORKERS' COMP AND UIM INSURANCE	*R -CH. SL 99-0195	05-05-99	06-01-99
H1021	HILL	REVISE UCC FILINGS PROCEDURES	*S -RE-REF COM ON JUDICII	04-27-99	06-01-99
H1021	HILL	REVISE UCC FILINGS PROCEDURES	*S -RE-REF COM ON JUDICII	06-16-99	
H1022	ALLEN	UNLAWFUL USE OF DRIVERS LICENSE	*R -CH. SL 99-0299	04-28-99	06-29-99
H1032=	CULPEPPER	UNDERGROUND UTILITY DAMAGE AMEND.	S -RE-REF COM ON RULES &	05-03-99	05-04-99
H1065=	DECKER	CONCEALED HANDGUNS/RECIPROCITY	*S -REF TO COM ON JUDICII	05-03-99	
H1074	ALEXANDER	ELECTION LAW CHANGES - 1	*R -CH. SL 99-0426	04-28-99	07-07-99
H1100	HAIRE	REMOVAL/RESIGNATION OF TRUSTEES	*S -REF TO COM ON JUDICII	04-26-99	
H1135=	HACKNEY	1999 GOVERNOR'S DWI AMENDMENTS	*R -CH. SL 99-0406	06-29-99	07-19-99
H1135=	HACKNEY	1999 GOVERNOR'S DWI AMENDMENTS	*R -CH. SL 99-0406	07-20-99	07-20-99
H1192	KINNEY	TRACING CRIME WEAPONS	*R -CH. SL 99-0225	04-27-99	06-15-99
H1209	PRESTON	PERSONAL WATERCRAFT SAFETY	*R -CH. SL 99-0447	05-03-99	06-10-99
H1209	PRESTON	PERSONAL WATERCRAFT SAFETY	*R -CH. SL 99-0447	06-14-99	07-14-99
H1245	CLARY	3RD DEGREE SEX OFFENSE	*S -REF TO COM ON JUDICII	04-29-99	
S 8	HOYLE	SESSION LIMITS IMPLEMENTING	H -REF TO COM ON RULES	01-28-99	02-23-99
S 9	HOYLE	SESSION LENGTH LIMITS	H -REF TO COM ON RULES	01-28-99	02-23-99
S 24	DALTON	PRELITIGATION INS. INFO./MEDIATION	S -RE-REF COM ON RULES &	02-03-99	06-30-99
S 41	REEVES	REQUIRE RENTAL PROPERTY HEAT	*R -CH. SL 99-0014	02-04-99	02-18-99
S 62	HORTON	VALIDATING CERTAIN NOTARIAL ACTS	*R -CH. SL 99-0021	02-10-99	02-18-99
S 63	ALLRAN	SESSION LENGTH LIMITS-2	S -REF TO COM ON JUDICII	02-10-99	
S 76=	BALLANCE	TRAFFIC ENFORCEMENT STATISTICS	*R -CH. SL 99-0026	02-15-99	03-04-99
S 109	MILLER B	LOBBYIST DISCLOSURE	H -REF TO COM ON RULES	02-16-99	04-20-99
S 186	RUCHO	ABSENTEE VOTING CHANGES	S -REF TO COM ON JUDICII	03-01-99	
S 220	SHAW R	GRADUATED LICENSE SUPERVISORS	S -REF TO COM ON JUDICII	03-03-99	
S 232	MARTIN W	BO THOMAS- BICYCLE SAFETY ACT	S -REF TO COM ON JUDICII	03-04-99	
S 243=	SHAW R	COMMUNITY COLLEGE CAMPUS POLICE	S -REF TO COM ON JUDICII	03-04-99	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY II Valid Through 2-SEP-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 252	HORTON	CHILD ABUSE PENALTY	S -REF TO COM ON JUDICII	03-08-99	
S 290	MILLER B	LOBBYING LAW AMENDMENTS	*R -CH. SL 99-0338	03-08-99	03-15-99
S 291=	PHILLIPS	CHILD CARE SUBSIDY FRAUD	S -RE-REF COM ON APPROPR	03-08-99	03-22-99
S 310	MILLER B	AMEND TIME FOR NOTICE OF APPEAL	*R -CH. SL 99-0309	03-10-99	03-15-99
S 311	MILLER B	MODIFY SUMMONS UNDER RULE 4	H -RE-REF COM ON JUDICII	03-10-99	03-15-99
S 329	HAGAN	NEW LAPSE STATUTE	*R -CH. SL 99-0145	03-11-99	03-24-99
S 334	BALLANCE	NO DEATH PENALTY/MENTALLY RETARDED	S -REF TO COM ON JUDICII	03-11-99	
S 359=	PHILLIPS	ENHANCE CHILD WELFARE SERVICES	S -REF TO COM ON JUDICII	03-15-99	
S 383	JORDAN	CHILD SUPPORT ATTORNEY CHANGE	S -REF TO COM ON JUDICII	03-16-99	
S 392	KINNAIRD	CAMPUS VOTER REGISTRATION	S -RE-REF COM ON JUDICII	04-14-99	
S 393	MILLER B	WRITTEN MOTIONS/SUPPORTING BRIEFS	*H -REF TO COM ON RULES	03-17-99	03-24-99
S 398	SHAW R	GREENSBORO RED LIGHT CAMERAS	*H -REF TO COM ON JUDICIV	03-17-99	04-08-99
S 414	KINNAIRD	CLOSE LOOPHOLE MIN. HOUS. STAND	*H -CONF COM APPOINTED	03-18-99	03-30-99
S 446=	**REEVES**	**SEAT BELTS ON NEW SCHOOL BUSES**	**S -REF TO COM ON JUDICII**	**03-22-99**	
S 455	LEE	DIVIDE SUPERIOR COURT 19B	S -RE-REF COM ON APPROPR	03-22-99	04-22-99
S 522=	RUCHO	"QUICK TAKE" NOTICE OF APPEAL	S -REF TO COM ON JUDICII	03-25-99	
S 525	HAGAN	PERSONAL REP. QUALIFICATIONS	*R -CH. SL 99-0133	03-25-99	04-01-99
S 526	HAGAN	MOD. AND TERM. OF IRREVOCABLE TRUSTS	*R -CH. SL 99-0266	03-25-99	04-15-99
S 538	JORDAN	CHILD SUPPORT COLLECTION CHARGE	S -REF TO COM ON JUDICII	03-29-99	
S 544	HORTON	LIMIT SCH. APPEALS/LARGE COUNTIES	S -REF TO COM ON JUDICII	03-29-99	
S 558	MILLER B	STANDARDIZE LAW ENF. DISCIPLINE	S -REF TO COM ON JUDICII	03-29-99	
S 568=	KINNAIRD	ABSENTEE VOTING CHANGES	*R -CH. SL 99-0455	03-29-99	04-08-99
S 582	HORTON	ELECTRONIC PAWN RECORDS	SF-POSTPONED INDEFINITELY	03-29-99	04-27-99
S 673=	JORDAN	THREATEN COURT OFFICERS	S -REF TO COM ON JUDICII	03-31-99	
S 690	DALTON	DISTRICT COURT ELECTIONS NONPARTISAN	H -RE-REF COM ON RULES	04-01-99	04-06-99
S 693	KINNAIRD	PROSECUTION BONDS/WHEN REQUIRED	R -CH. SL 99-0106	04-01-99	04-15-99
S 742=	DALTON	TEACHER/STUDENT/NO SEX ACTS-2	*R -CH. SL 99-0300	04-05-99	04-15-99
S 750	DALTON	HONORING LATTIMORE	S -ADOPTED	04-05-99	04-06-99
S 756=	HORTON	INCREASE AUTO INSURANCE COVERAGE	*R -CH. SL 99-0228	04-05-99	04-15-99
S 759	KINNAIRD	SEXUAL PRIVACY ACT	S -REF TO COM ON JUDICII	04-05-99	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — SENATE: JUDICIARY II — Valid Through 2-SEP-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 767	MILLER B	LOBBYIST WAITING PERIOD	*H -REF TO COM ON RULES	04-06-99	04-19-99
S 768=	MILLER B	WORKERS' COMP/THIRD PARTY ACTIONS	S -REF TO COM ON JUDICII	04-06-99	
S 812	REEVES	ALCOHOLIC BEVERAGE SALES	R -CH. SL 99-0322	04-12-99	04-22-99
S 814=	GULLEY W	MATTHEW SHEPARD MEMORIAL ACT	S -REF TO COM ON JUDICII	04-12-99	
S 816	KINNAIRD	PRIVACY PROTECTION ACT	S -REF TO COM ON JUDICII	04-12-99	
S 851=	JORDAN	N.H./PENDER JUDICIAL DISTRICTS	S -RE-REF COM ON APPROPR	04-13-99	04-27-99
S 867	GULLEY W	REAL ESTATE LICENSURE LAW CHANGES	*R -CH. SL 99-0229	04-13-99	04-28-99
S 877	KERR	WORKERS' COMP./NATIONAL/STATE GUARD	*R -CH. SL 99-0418	04-13-99	04-22-99
S 906=	LEE	UNDERGROUND UTILITY DAMAGE AMEND	S -REF TO COM ON JUDICII	04-14-99	
S 920	FORRESTER	UPDATE CONT. SUBSTANCE SCHEDULES	*R -CH. SL 99-0165	04-14-99	04-28-99
S 921	MILLER B	AMEND RULE 55	R -CH. SL 99-0187	04-14-99	04-20-99
S 923	MILLER B	UNDERINSURED MOTORISTS/WORKERS' COMP	S -REF TO COM ON JUDICII	04-14-99	
S 925=	MILLER B	STATE TORT CLAIMS/PUBLIC DUTY	S -REF TO COM ON JUDICII	04-14-99	
S 929	REEVES	ABATEMENT OF NUISANCES	*R -CH. SL 99-0371	04-14-99	04-27-99
S 931	KINNAIRD	FELONY MURDER/LIFE IMPRISONMENT	S -REF TO COM ON JUDICII	04-14-99	
S 955	DALTON	PROPER TRIAL DIVISION/COUNSEL FEES	S -RE-REF COM ON RULES &	04-15-99	04-27-99
S 956	DALTON	THREATS AGAINST CHILDREN/SPOUSE	*R -CH. SL 99-0262	04-15-99	04-22-99
S 984	MILLER B	ACCOUNTANT/CPA AUDITS	*S -RE-REF COM ON FINANCE	04-26-99	04-27-99
S 989=	ODOM	1999 GOVERNOR'S DWI AMENDMENTS	S -REF TO COM ON JUDICII	04-15-99	
S 991	BALLANCE	RACIAL JUSTICE ACT	S -REF TO COM ON JUDICII	04-15-99	
S 992	BALLANCE	WORKERS' COMP. FOR PRISONERS	*S -RE-REF COM ON APPROPR	04-15-99	04-22-99
S 994	ODOM	AMEND BAIL BOND LAWS	S -REF TO COM ON JUDICII	04-15-99	
S 995	ODOM	POLICE PEER COUNSELOR PRIVILEGE	*R -CH. SL 99-0374	04-15-99	04-27-99
S 997	ODOM	LARCENY/LAW ENFORCEMENT EQUIPMENT	S -REF TO COM ON JUDICII	04-15-99	
S 999=	ODOM	FIREARMS/AMMUN. PREEMPTION	*S -RE-REF COM ON JUDICII	04-15-99	04-27-99
S 999=	ODOM	FIREARMS/AMMUN. PREEMPTION	*S -RE-REF COM ON JUDICII	04-28-99	
S1001	ODOM	TRAFFICKING IN MDA/MDMA	S -REF TO COM ON JUDICII	04-15-99	
S1002=	MOORE K	CONCEALED HANDGUNS/RECIPROCITY	S -REF TO COM ON JUDICII	04-15-99	
S1003	KINNAIRD	GIFTS BY GUARDIANS	*R -CH. SL 99-0270	04-15-99	04-28-99
S1018	DALTON	MARRIAGE LICENSES	*R -CH. SL 99-0375	04-15-99	04-20-99

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY II Valid Through 2-SEP-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1019	DALTON	LTD. ENTRY BY SURVEYOR	H -RE-REF COM ON RULES	04-15-99	04-20-99
S1060	HAGAN	DIVISION OF TRUSTS	*R -CH. SL 99-0144	04-15-99	04-26-99
S1074	REEVES	YEAR 2000 CONSUMER PROTECTION ACT	*R -CH. SL 99-0308	04-15-99	04-27-99
S1096	GARROU	NO GUNS AT SCHOOL LAW/SCHOOL EMPLOYE	*R -CH. SL 99-0211	04-15-99	04-27-99
S1098=	WEBSTER	FIREARMS/AMMUN. PREEMPTION	S -REF TO COM ON JUDICII	04-15-99	
S1102	KINNAIRD	DEATH PENALTY MORATORIUM	S -REF TO COM ON JUDICII	04-15-99	
S1113	KERR	WORKERS' COMP/MED. PROVIDER CONTACT	*R -CH. SL 99-0150	04-26-99	04-28-99
S1126	HORTON	REPEAL PENAL BOND EXCEPTION	S -REF TO COM ON JUDICII	04-15-99	
S1129	JORDAN	GUILTY PLEAS/AUDIO & VIDEO TRANS	S -REF TO COM ON JUDICII	04-15-99	
S1130	JORDAN	SPEEDIER TRIALS	S -REF TO COM ON JUDICII	04-15-99	
S1142	MARTIN W	DESIGNATE COMM. OF INDIAN AFFAIRS	*H -REF TO COM ON MIL&VET	04-15-99	04-22-99

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SENATE JUDICIARY II COMMITTEE

FEBRUARY 11, 1999

ROOM 1124

SB 8	Session Limits Implementing.	Senator Hoyle
SB 9	Session Length Limits.	Senator Hoyle
Adjournment		

SENATE JUDICIARY II COMMITTEE

FEBRUARY 11, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, February 11, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

Senator Hoyle was introduced to explain **SB 9,** Session Length Limits. Senator Miller recognized Senator Allran to discuss SB 63, Session Length Limits 2. Senator Allran explained that his bill was similar to SB 9 except that it does not extend the terms of Senators.

Senator Moore moved to amend SB 9 to provide two questions on a referendum ballot. The motion carried unanimously. Senator Miller recognized Jerry Cohen, Director of the Bill Drafting Division of the General Assembly, to discuss staggered terms. Senator Moore again moved to amend SB 9 to limit the number of legislative days from 135 to 120. Senator Hoyle requested that the amendment be withdrawn. Senator Moore withdrew the amendment.

The meeting adjourned at 11:00 a.m.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 8

Short Title: Session Limits Implementing. (Public)

Sponsors: Senators Hoyle; Ballance, Carter, Cooper, Dalton, Dannelly, Jordan, Kerr, Lee, Lucas, Martin of Pitt, Odom, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Robinson, Soles, Warren, and Wellons.

Referred to: Judiciary II.

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-11.1 reads as rewritten:

"**§ 120-11.1. Time of meeting.**

The regular session of the Senate and House of Representatives shall be held biennially beginning at 12:00 noon on the ~~third Wednesday after the second Monday in January~~ first Monday in December next after their election."

Section 2. G.S. 163-1 is amended in the table by rewriting the "DATE OF ELECTION" entries for State Senator to read: "Tuesday next after the first Monday in November 2002 and every four years thereafter".

Section 3. G.S. 163-1 is further amended in the table by rewriting the "TERM OF OFFICE" entries for State Senator to read: "Four years".

Section 4. Sections 1 through 3 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 1 through 5 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Section 1 of this act becomes

effective with respect to members of the General Assembly elected in 2000, and Sections 2 and 3 become effective with respect to Senators elected in 2002.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 9

Short Title: Session Length Limits. (Public)

Sponsors: Senators Hoyle; Garwood, Kerr, and Purcell.

Referred to: Judiciary II.

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE.

The General Assembly of North Carolina enacts:

Section 1. Section 11(1) of Article II of the Constitution of North Carolina reads as rewritten:

"(1) **Regular sessions.** The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Beginning with the regular session in 2001, during an odd-numbered year the General Assembly shall remain in session for no more than 135 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days. The month of December following the beginning of the term is also included in the calculation. If the General Assembly upon convening of the regular session meets for not more than two consecutive calendar days and then adjourns for not less than 30 days, that period of adjournment shall be excluded from the 135 days. If the regular session meets in even-numbered years, the General Assembly shall remain in session for no more than 60 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days, but the month in December following the election is excluded from the calculation. Any reconvened session called under Section 5 of Article III of this Constitution shall be excluded from the calculations of this section. Neither house shall proceed upon public business unless a majority of all of its members are actually present. No valid action, other than a resolution of adjournment, may be taken by the General Assembly after the time limits prescribed in this section have expired."

Section 2. Section 9 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 9. Term of office.**

The term of office of Senators and Representatives shall commence on the first ~~day of January~~ Monday in December next after their election."

Section 3. Section 2 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 2. Number of Senators.**

The Senate shall be composed of 50 Senators, ~~biennially~~ quadrennially chosen by ballot."

Section 4. Section 8 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 8. Elections.**

The election for members of the ~~General Assembly~~ House of Representatives shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law. The election for members of the Senate shall be held for the respective districts in 2002 and every four years thereafter, at the places and on the day prescribed by law."

Section 5. Section 14(1) of Article II of the Constitution of North Carolina reads as rewritten:

"(1) **President Pro Tempore - ~~succession to~~ acting presidency.** The Senate shall elect from its membership a President Pro Tempore, who shall become Acting President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve as Acting President of the Senate ~~until the expiration of his term of office as Senator.~~ until:

(a) That person ceases to be President Pro Tempore; or

(b) The qualification of a new Lieutenant Governor

whichever comes first."

Section 6. The amendments set out in Sections 1 through 5 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments limiting the length of the legislative session and making the term of members of the Senate four years, beginning with members elected in 2002."

Section 7. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 through 5 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The constitutional amendments shall apply to members of the Senate elected in the 2002 general

election so that they shall serve four-year terms, but Section 2 applies beginning with members of the General Assembly elected in the 2000 general election. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

Section 8. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ALB-1 Page 1 of 1

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

<VT=1

moves to amend the bill on page 1, line 16, through page 2, line 2, by rewriting those lines to read:

"Section 4(a). Section 1 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 1 and 2 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Section 1 of this act becomes effective with respect to members of the General Assembly elected in 2000.

Section 4(b). Sections 2 and 3 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 3 through 5 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Sections 2 and 3 become effective with respect to Senators elected in 2002."

SIGNED Jon Moon
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 9

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

S9-ALB-1 Page 1 of 2

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 2, line 31, through page 3, line 4, by rewriting those lines to read:

"Section 6(a). The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments limiting the length of the legislative session."

Section 6(b). The amendments set out in Sections 3 through 5 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments making the term of members of the Senate four years, beginning with members elected in 2002."

Section 7(a). If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 9

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

S9-ALB-1 Page 2 of 2

the Secretary of State. Section 2 applies beginning with members of the General Assembly elected in the 2000 general election.

Section 7(b). If a majority of votes cast on the question are in favor of the amendments set out in Sections 3 through 5 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The constitutional amendments shall apply to members of the Senate elected in the 2002 general election so that they shall serve four-year terms.

Section 7(c). The Secretary of State shall enroll the amendments so certified among the permanent records of that office."

SIGNED Jer Mor
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. 9

COMMITTEE SUBSTITUTE _____

DATE 2/11/99

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

Rep.)
) Moore
Sen.)

1 moves to amend the bill on page 1, line 10

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "135", insert "120" in its place ,

4 and again on page 1, line 15

5

6

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11

12

13

14

15

16

17

18

19

SIGNED Ken Moore

ADOPTED _____ FAILED _____ TABLED _____

-withdrawn-

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

North Carolina General Assembly
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February 11, 1999

MEMORANDUM

TO: Senator Brad Miller, Chair, Senate Judiciary II Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **Senate Bill 9 (Session Length Limits)**
Senate Bill 8 (Session Limits Implementing)

Senate Bill 9, introduced by Senator Hoyle, would amend the State Constitution to limit the length of legislative sessions and provide four-year terms for members of the N.C. Senate. Senate Bill 8 makes statutory changes that would implement the constitutional amendments and which would take effect when the voters approve the amendments.

Senate Bill 9 would limit the odd-numbered year "long sessions" to 135 calendar days. The period may be extended by joint resolution once during each regular session, by not more than 10 days. As provided in Senate Bill 8, the session would begin on the first Monday in December following the election. The month of December following the beginning of the term is included in the 135-day calculation, but if the General Assembly meets for not more than 2 days and adjourns for 30 days or more, the period of adjournment is excluded. *By way of example, if these proposals had been in effect at the time of the November 1998 elections, the General Assembly would have convened on Monday, December 7. Assuming the legislature met for two days and adjourned on the 8th to reconvene on January 27, the session would now be scheduled to adjourn on June 9. Upon joint resolution, the time could be extended to June 19.* During the period from 1975-1998, the longest odd-numbered year session ran from January 11, 1989 through August 12, 1989 a period of 214 calendar days; the 1997 Regular Session ran from January 29 through August 28, a period of 212 calendar days.

Senate Bill 9 would limit the even-numbered year "short sessions" to 60 calendar days. This period may also be extended by joint resolution once during each regular session, by not more than 10 days. The month of December following the election (preceding the even-numbered year) is excluded from the calculation.

- **Any reconvened session called by the Governor is excluded from the calculations.**

- **No action other than adjournment may be taken by the General Assembly after the time limits have expired.**

- **The term of office for Senators and Representatives elected in 2000 (and thereafter) would begin on the first Monday in December, following their election.**

- **Beginning with elections in the year 2002, Senators would be elected to four-year terms. This puts elections for the State Senate in non-presidential, non-gubernatorial years.** For that reason, the bill would amend the Constitution to provide that the President Pro Tempore becomes Acting President of the Senate until the person ceases to be President Pro Tempore or until the qualification of a new Lieutenant Governor, whichever comes first. Under current law, the President Pro Tempore of the senate becomes President of the Senate, under specified conditions, *until the expiration of his term of office as Senator.*

The proposed Constitutional Amendments would be put to the voters at the general election in November 2000. If the Amendments are approved, statutory changes set out in Senate Bill 8 would implement the Amendments.

National Conference of State Legislatures

Limits on Regular Session Length

Legislative Management About State Legislatures

All state legislatures except the seven that are highlighted meet annually. Six of the seven biennial legislatures hold their regular sessions in the odd year; the seventh--Kentucky--holds its regular session in the even year.

Currently, only 11 states do not place a limit on the length of regular session. The remaining 39 set limits through a variety of ways. Constitutional provisions establish the limits in 29 states. Indirect limits on legislator compensation, per diem or mileage reimbursement are in effect in 4 states. Statutory provisions set the restrictions in 3, and another 3 use chamber rules.

State	Session Limit	Limit set by	Cite
Alabama	30 L in 105 C	Constitution	Constitutional Amendment 339
Alaska	120 C	Constitution	Article II, Section 8
Arizona	Sat of week in which 100th C falls	Chamber rule	Senate Rule 27 and House Rule 2
Arkansas	60 C	Constitution	Article V, Section 17
California	Odd-Sept 12 Even-Aug 31	Chamber rule	Joint Rules 51 and 61
Colorado	120 C	Constitution	Article V, Section 7
Connecticut	Odd-Wed after 1st Mon in June Even- Wed after 1st Mon in May	Constitution	Article III, Section 2
Delaware	June 30	Constitution	Article II, Section 4
Florida	60 C	Constitution	Article III, Section 3 (d)
Georgia	40 L	Constitution	Article III, Section IV, Para. I (a)
Hawaii	60 L	Constitution	Article III, Section 10
Idaho	None	NA	
Illinois	None	NA	
Indiana	Odd-Apr 29	Statute	Statutes 2-2.1-1-2 and 2-2.1-1-3

	Even-Mar 14		
Iowa	Odd-110 C Even-100 C	Indirect	Statute 2.10- limits the number of days for which legislators may receive per diem
Kansas	Odd-None Even-90 C	Constitution	Article II, Section 8
Kentucky	60 L or Apr 15	Constitution	Section 42
Louisiana	Odd-60 L in 85 C Even-30 L in 45 C	Constitution	Article III, Section 2
Maine	Odd-3rd Wed in June Even-3rd Wed in Apr	Statute	Statute 3-2
Maryland	90 C	Constitution	Article III, Sections 15
Massachusetts	Formal sessions: Odd-3rd Wed in November Even-July 31 Informal sessions: None	Chamber rule	Joint Rules 12, 12 (a) and 12 (b)
State	**Session Limit**	**Limit set by**	**Cite**
Michigan	None	NA	
Minnesota	120 L or 1st Mon after 3rd Sat in May	Constitution	Article IV, Section 12
Mississippi	90 C except year after gub elect, then 125 C	Constitution	Article IV, Section 36
Missouri	May 30	Constitution	Article III, Sections 20 and 20(a)
Montana	90 L	Constitution	Article V, Section 6
Nebraska	Odd-90 L Even-60 L	Constitution	Article III, Section 10
Nevada	120 C	Constitution	Constitutional amendment adopted November 1998
New Hampshire	45 L or July 1	Indirect	Part 2, Article 15-- limits the number of days for which legislators may receive mileage
New Jersey	None	NA	
New Mexico	Odd-60 C Even-30 C	Constitution	Article IV, Section 5

New York	None	NA	
North Carolina	None	NA	
North Dakota	80 L	Constitution	Article IV, Section 7
Ohio	None	NA	
Oklahoma	Last Fri in May	Constitution	Article V, Section 26
Oregon	None	NA	
Pennsylvania	None	NA	
Rhode Island	60 L	Indirect	Article VI, Section 3-- limits the number of days for which legislators may receive compensation and mileage
South Carolina	1st Thurs in June	Statute	Statute 2-1-180
South Dakota	Odd-40 L Even-35 L	Constitution	Article III, Sections 6
Tennessee	90 L	Indirect	Article II, Section 23-- limits the number of days for which legislators may receive expenses and travel expenses
Texas	140 C	Constitution	Article 3, Section 24 (b)
Utah	45 C	Constitution	Article VI, Section 16
Vermont	None	NA	
Virginia	Odd-30 C Even-60 C	Constitution	Article IV, Section 6
Washington	Odd-105 C Even-60 C	Constitution	Article II, Section 12
West Virginia	60 C	Constitution	Article VI, Sections 22
Wisconsin	None	NA	
Wyoming	Odd-40 L Even-20 L	Constitution	Article III, Sections 6

Key:

C = calendar day
L = legislative day

As of November 4, 1998

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1965											
First Session	1187	616	1803	1209	93	1302	72.22%	2/03 - 6/17	116	116	136
Extra Session	3	1	4	2	2	4	100%	11/15 - 11/17	3	3	3
1966											
Extra Session	16	9	25	7	4	11	44.0%	1/10 - 1/14	5	5	5
1965 Biennium Totals Including Extra Sessions	**1206**	**626**	**1832**	**1218**	**99**	**1317**	**71.88%**		**124**	**124**	**144**
1967 (no other sessions during the biennium)											
First Session	1433	750	2183	1273	87	1360	62.30%	2/08 - 7/06	128	128	149
1969 (no other sessions during the biennium)											
First Session	1437	910	2347	1305	122	1427	60.80%	1/15 - 7/02	145	145	169
1971											
First Session	1591	998	2589	1238	125	1363	52.65%	1/13 - 7/21	160*	160*	190

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1971 Second Session	19	13	32	10	14	24		10/26 - 10/30	5	5	5
1971 Biennium Totals	**1610**	**1011**	**2621**	**1248**	**139**	**1387**	**52.92%**		**165***	**165***	**195**
1973 First Session	1362	955	2317	826	117	943	40.70%	1/10 - 5/24	97	97	135
1974 Second Session	831	553	1384	656	69	725		1/16 - 4/13	64	64	88
1973 Biennium Totals	**2193**	**1508**	**3701**	**1482**	**186**	**1668**	**45.07%**		**161**	**161**	**223**
1975 First Session	1284	952	2236	975	121	1096	49.02%	1/15 - 6/26	117	117	163
1976 Second Session	57	18	75	7	7	14		5/03 - 5/14	10	10	12

* This figure includes Saturdays on which, according to the IOG session was opened, attended and closed by the Wake County delegates without any business being accomplished.

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1975-76 Biennium Totals	**1341**	**970**	**2311**	**982**	**128**	**1110**	**48.03%**		**127**	**127**	**175**
1977 First Session	1534	917	2451	1131	99	1230	50.18%	1/12 - 7/01	123	123	170
1978 Second Session	162	113	275	167	36	203		5/31 - 6/16	13	13	17
1977-78 Biennium Totals	**1696**	**1030**	**2726**	**1298**	**135**	**1433**	**52.57%**		**136**	**136**	**187**
1979 First Session	1535	945	2480	1077	84	1161	46.81%	1/10 - 6/08	108	107	150
1980 Second Session	240	162	402	255	20	275		6/05 - 6/25	15	15	21
1979-80 Biennium Totals	**1775**	**1107**	**2882**	**1332**	**104**	**1436**	**49.83%**		**123**	**122**	**171**

* This figure includes Saturdays on which, according to the IOG, session was opened, attended and closed by the Wake County delegates without any business being accomplished.

[1] **Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.**

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1981											
Regular Session	1384	772	2156	970	66	1048	48.61%	1/14 - 7/10	127	126	178
1981 Extra Session (to amend adjournment resolution)	--	2	2	--	2	2	100%	10/5 - 10/5	1	1	1
Second Regular Session	44	18	62	159	14	173		10/5 - 10/10	6	6	6
Third Regular Session (Redistricting)	2	1	3	1	1	2		10/29 - 10/30	2	2	2
1982											
First Extra Session 1982 (Redistricting)	7	2	9	7	1	8	88.88%	2/09 - 2/11	3	3	3
Second Extra Session 1982 (Redistricting)	7	1	8	3	3	6	75.0%	4/26 - 4/27	2	2	2
Regular Session	246	81	327	270	19	289		6/02 - 6/23	17	15	22
1981-82 Biennium Totals Including Extra Sessions	**1690**	**877**	**2567**	**1410**	**106**	**1528**	**59.53%**		**158**	**155**	**214**
1983											
Regular Session	1476	701	2177	929	55	984	45.20%	1/12 - 7/22	138	137	192

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
Extra Session	6	1	7	6	1	7	100%	8/26 - 8/26	1	1	1
1984											
Second Extra Session	6	2	8	7	1	8	100%	3/07 - 3/08	2	2	2
Regular Session	325	201	526	187	41	228		6/07 - 7/07	23	22	31
1983-84 Biennium Totals Including Extra Sessions	**1813**	**905**	**2718**	**1129**	**98**	**1227**	**45.14%**		**164**	**162**	**226**
1985											
First Session	1424	854	2278	793	34	827	36.30%	2/05 - 7/18	118	118	164
1986											
Extra Session	9	4	13	7	1	8	61.54%	2/18 - 2/18	1	1	1
Regular Session	718	454	1172	239	25	264		6/05 - 7/16	29	30	42
1985-86 Biennium Totals Including the Extra Session	**2151**	**1312**	**3463**	**1039**	**60**	**1099**	**31.74%**		**148**	**149**	**207**

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1987											
First Session											
	2166	1557	3723	879	37	916	24.60%	2/09 - 8/14	134	135	187
1988											
Regular Session											
	493	312	805	233	12	245		6/02 - 7/12	28	28	41
1987-88 Biennium Totals											
	2659	**1869**	**4528**	**1112**	**49**	**1161**	**25.64%**		**162**	**163**	**228**
1989											
First Session											
	2038	1337	3375	802	34	836	24.77%	1/11 - 8/12	137	128	214
Extra Session											
	1	5	6	1	--	1	16.67%	12/07 - 12/07	1	1	1
1990											
Extra Session											
	1	1	2	1	--	1	50.0%	3/06 - 3/06	1	1	1
Regular Session											
	375	295	670	270	42	312		5/21 - 7/28	46	42	69
1989-90 Biennium Totals Including Extra Sessions											
	2415	**1638**	**4053**	**1074**	**76**	**1150**	**28.37%**		**185**	**172**	**285**
1991											

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
First Session											
	1314	966	2280	761	30	791	34.69%	1/30 - 7/16	106	99	168
1991-92 Extra Session											
First Convening (redistricting - primaries)											
	13	6	19					12/30 - 12/30 91 91	1	1	1
Second Convening (redistricting - Dare County, High Point, & House & Senate)											
	3	1	4					1/13 - 1/14 92 92	2	2	2
Third Convening (redistricting - Congr., Employment Sec. Reserve Fund Threshold, & technical corrections)											
	--	1	1					1/22 - 1/24 92 92	3	3	3
Fourth Convening (alteration of 1992 electoral time table)											
	3	--	3					2/03 - 2/03 92 92	1	1	1
Extra Session Totals											
	19	**8**	**27**	**9**	**4**	**13**	**48.15%**		**7**	**7**	**7**
1992											
Regular Session											
	372	311	683	283	46	329		5/26 - 7/25	42	41	61
1991-92 Biennium Totals Including the Extra Session											
	1705	**1285**	**2990**	**1053**	**80**	**1133**	**37.89%**		**155**	**147**	**236**
1993											
First Session											
	1499	1299	2798	558	31	589**	21.05%	1/27 - 7/24	110	109	179

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS

** There were 5 bills passed and assigned chapter numbers which were not signed and therefor not ratified during the 1993 Regular Session All but one, HB 1319/Chapt. 560, were signed early in the 1995 Regular Session and retained the chapter numbers originally assigned in 1993. They are Chapters 556, 557, 559, & 562. Chapt. #560 was used at the beginning of the 1995 Regular Session for another ratified bill.

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1994											
Extra/First (Special Session on Crime)	232	179	411	28	2	30	7.30%	2/08 - 3/26	32	31	47
1994 Regular Session	635	427	1062	220	10	230		5/24 - 7/17	35	35	55
1993-94 Biennium Totals Including Extra Session	**2366**	**1905**	**4271**	**806**	**43**	**849**	**19.88%**		**177**	**175**	**281**
1995											
Regular Session	1070	1103	2173	546	15	561	25.82%	1/25 - 7/29	108	109	186
1996											
First Extra Session (Unemployment Tax)	3	2	5	1	1	2	40.0%	2/21 - 2/21	1	1	1
Regular Session	389	392	781	211	14	225		5/13 - 6/21	27	25	40
1996 Second Extra Session (Budget)	80	50	130	20	1	21	16.15%	7/8 - 8/3	19	20	27
1995-96 Biennium Totals Including Extra Sessions	**1542**	**1547**	**3089**	**778**	**31**	**809**	**26.19%**		**155**	**155**	**254**

[1] **Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.**

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1997											
Regular Session	1245	1089	2334	528	33	561	24.04%	1/29 - 8/28	123	123	212
1998											
Extra Session (Uninsured Children)	5	3	8	1	1	2	25%	3/24 - 4/30	23	22	38
Regular Session	520	516	1036	230	14	244	23.55%	5/11 - 10/29	100	101	172

[1] **Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.**

National Conference of State Legislatures

1999 Legislative Session Calendar

(As of November 10, 1998)

About State Legislatures NCSL Home Page

	Regular Session		
State	**Convenes**	**Adjourns**	**Comments**
Alabama	Mar-02	Jun-14	Organizational session begins 1/12/99
Alaska	Jan-19	May-19	
Arizona	Jan-11	Apr-24	
Arkansas	Jan-11	Mar-11	
California	Jan-04	mid Sept	Organizational session begins 12/7/98
Colorado	Jan-6	May-5	Starting early to hold swearing in ceremony for governor
Connecticut	Jan-06	Jun-09	
Delaware	Jan-12	Jun-30	
Florida	Mar-02	Apr-30	Organizational session begins 11/17/98
Georgia	Jan-11	mid Mar	
Hawaii	Jan-20	early May	
Idaho	Jan-11	late Mar	Organizational session 12/3-4/98
Illinois	Jan-13	*	Anticipate recessing for summer 5/28/99
Indiana	Jan-11	Apr-30	
Iowa	Jan-11	late Apr	
Kansas	Jan-11	Apr 10	Possible veto session on 4/28/99
Kentucky	No Regular Session		Organizational session begins 1/5/99
Louisiana	Mar-29	Jun-21	
Maine	Dec-02-98	Jun-16	
Maryland	Jan-13	Apr-12	
Massachusetts	Jan-06	*	
Michigan	Jan-13	*	
Minnesota	Jan-05	May-17	
Mississippi	Jan-05	Apr-04	
Missouri	Jan-06	May-30	
Montana	Jan-04	mid Apr	
Nebraska	Jan-06	early Jun	
Nevada	Feb 1	May 31	Constitutional amendment changed convening date and session length
New Hampshire	Jan-6	late Jun	
New Jersey	Jan-12	*	
New Mexico	Jan-19	Mar-20	
New York	Jan-06	*	
North Carolina	Jan-27	late Jul	
North Dakota	Jan-05	Apr-28	Organizational session 12/8-10/98
Ohio	Jan-04	*	

Oklahoma	Feb-01	May-28	Organizational session 1/5/99
Oregon	Jan-11	early Jul	
Pennsylvania	Jan-05	*	
Rhode Island	Jan-05	late Jun	
South Carolina	Jan-12	Jun-03	
South Dakota	Jan-12	Mar-05	Veto consideration 3/23/99
Tennessee	Feb-02	late May	Organizational session begins 1/12/99
Texas	Jan-12	May-31	
Utah	Jan-18	Mar-03	
Vermont	Jan-06	early May	
Virginia	Jan-13	Feb-27	
Washington	Jan-11	Apr-25	
West Virginia	Jan-13	Mar-13	
Wisconsin	Jan-04	*	
Wyoming	Jan-12	early Mar	
Puerto Rico	Jan-11	Jun-30	Second portion of session runs Sept-Oct.
District of Columbia	Jan-02	*	

* Legislature meets throughout the year



VISITOR REGISTRATION SHEET

Judiciary #2 — Feb 10, 1999

Name of Committee — Date

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	SEANC
Leslie Bedford	NCAJ
Cecil Cannon	NCAE
Barry Smith	Freedom Newspapers
Alicia Gregory	Poyner & Spruill
WALTER PRICE	Charlotte Chamber
BILL SCOGGIN	NC BAR ASSOC.
HUGH TILSON	NCHA
Mary Smith	Glaxo - Wellcome
Evelyn Abernethy	UNC-CH
Amy Jo Barr	NCMS
Lu-Ann Coe	F[3]
Jan Curtis	NCASA
Scott Hammack	NCAIC
John Bason	UNC-TV
Jim Black	NCAFT
PG	NCTD
AC	NCPMA

VISITOR REGISTRATION SHEET

Name of Committee

Date
May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
David Simmons	ZOA, PA
Garrett Perdue	"
Lucius PULLEN	~~ATTORNEY~~
Andy Ellen	NCRMA
Fran Preston	NCRMA
Bernard Allen	509
L Logan	ENR
[illegible]	NCFPC
[illegible]	NCPDL

SENATE JUDICIARY II COMMITTEE

FEBRUARY 16, 1999

ROOM 1124

SB 8	Session Limits Implementing.	Senator Hoyle
SB 9	Session Length Limits.	Senator Hoyle

Adjournment

SENATE JUDICIARY II COMMITTEE

FEBRUARY 16, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, February 16, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

Senator Miller called the meeting to order to continue the discussion of SB 8, Session Limits Implementing, and SB 9, Session Length Limits. He announced that Senator Hoyle had requested that a public hearing be scheduled for the following week. Jerry Cohen, Director of the Bill Drafting Division of the General Assembly, was recognized to explain the different options surrounding the issue of staggered terms. Leslie Bevacqua, with North Carolina Citizens for Business and Industry, spoke in favor of both SB 8 and SB 9.

Senator Miller closed the meeting with the understanding that SB 8 and SB 9 would be voted on in committee after the public hearing.

Brad SB
Senator Brad Miller, Chairman

Cornelia McMillan
Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 8

Short Title: Session Limits Implementing. (Public)

Sponsors: Senators Hoyle; Ballance, Carter, Cooper, Dalton, Dannelly, Jordan, Kerr, Lee, Lucas, Martin of Pitt, Odom, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Robinson, Soles, Warren, and Wellons.

Referred to: Judiciary II.

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-11.1 reads as rewritten:

"**§ 120-11.1. Time of meeting.**

The regular session of the Senate and House of Representatives shall be held biennially beginning at 12:00 noon on the ~~third Wednesday after the second Monday in January~~ first Monday in December next after their election."

Section 2. G.S. 163-1 is amended in the table by rewriting the "DATE OF ELECTION" entries for State Senator to read: "Tuesday next after the first Monday in November 2002 and every four years thereafter".

Section 3. G.S. 163-1 is further amended in the table by rewriting the "TERM OF OFFICE" entries for State Senator to read: "Four years".

Section 4. Sections 1 through 3 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 1 through 5 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Section 1 of this act becomes

effective with respect to members of the General Assembly elected in 2000, and Sections 2 and 3 become effective with respect to Senators elected in 2002.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 9

Short Title: Session Length Limits. (Public)

Sponsors: Senators Hoyle; Garwood, Kerr, and Purcell.

Referred to: Judiciary II.

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE.

The General Assembly of North Carolina enacts:

Section 1. Section 11(1) of Article II of the Constitution of North Carolina reads as rewritten:

"(1) **Regular sessions.** The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Beginning with the regular session in 2001, during an odd-numbered year the General Assembly shall remain in session for no more than 135 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days. The month of December following the beginning of the term is also included in the calculation. If the General Assembly upon convening of the regular session meets for not more than two consecutive calendar days and then adjourns for not less than 30 days, that period of adjournment shall be excluded from the 135 days. If the regular session meets in even-numbered years, the General Assembly shall remain in session for no more than 60 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days, but the month in December following the election is excluded from the calculation. Any reconvened session called under Section 5 of Article III of this Constitution shall be excluded from the calculations of this section. Neither house shall proceed upon public business unless a majority of all of its members are actually present. No valid action, other than a resolution of adjournment, may be taken by the General Assembly after the time limits prescribed in this section have expired."

Section 2. Section 9 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 9. Term of office.**

The term of office of Senators and Representatives shall commence on the first ~~day of January~~ Monday in December next after their election."

Section 3. Section 2 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 2. Number of Senators.**

The Senate shall be composed of 50 Senators, ~~biennially~~ quadrennially chosen by ballot."

Section 4. Section 8 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 8. Elections.**

The election for members of the ~~General Assembly~~ House of Representatives shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law. The election for members of the Senate shall be held for the respective districts in 2002 and every four years thereafter, at the places and on the day prescribed by law."

Section 5. Section 14(1) of Article II of the Constitution of North Carolina reads as rewritten:

"(1) **President Pro Tempore - ~~succession to~~ acting presidency.** The Senate shall elect from its membership a President Pro Tempore, who shall become Acting President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve as Acting President of the Senate ~~until the expiration of his term of office as Senator.~~ until:

(a) That person ceases to be President Pro Tempore; or

(b) The qualification of a new Lieutenant Governor

whichever comes first."

Section 6. The amendments set out in Sections 1 through 5 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments limiting the length of the legislative session and making the term of members of the Senate four years, beginning with members elected in 2002."

Section 7. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 through 5 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The constitutional amendments shall apply to members of the Senate elected in the 2002 general

election so that they shall serve four-year terms, but Section 2 applies beginning with members of the General Assembly elected in the 2000 general election. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

Section 8. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ALB-1 Page 1 of 1

Date_____,1999

Comm. Sub. []
Amends Title []

<VT=1

moves to amend the bill on page 1, line 16, through page 2, line 2, by rewriting those lines to read:

"Section 4(a). Section 1 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 1 and 2 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Section 1 of this act becomes effective with respect to members of the General Assembly elected in 2000.

Section 4(b). Sections 2 and 3 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 3 through 5 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Sections 2 and 3 become effective with respect to Senators elected in 2002."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 9

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

S9-ALB-1

Date_____,1999

Comm. Sub. []
Amends Title []

moves to amend the bill on page 2, line 31, through page 3, line 4, by rewriting those lines to read:

"Section 6(a). The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments limiting the length of the legislative session."

Section 6(b). The amendments set out in Sections 3 through 5 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments making the term of members of the Senate four years, beginning with members elected in 2002."

Section 7(a). If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 9

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

S9-ALB-1

the Secretary of State. Section 2 applies beginning with members of the General Assembly elected in the 2000 general election.

Section 7(b). If a majority of votes cast on the question are in favor of the amendments set out in Sections 3 through 5 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The constitutional amendments shall apply to members of the Senate elected in the 2002 general election so that they shall serve four-year terms.

Section 7(c). The Secretary of State shall enroll the amendments so certified among the permanent records of that office."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

North Carolina General Assembly
Legislative Services Office

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February 11, 1999

MEMORANDUM

TO: Senator Brad Miller, Chair, Senate Judiciary II Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **Senate Bill 9 (Session Length Limits)**
Senate Bill 8 (Session Limits Implementing)

Senate Bill 9, introduced by Senator Hoyle, would amend the State Constitution to limit the length of legislative sessions and provide four-year terms for members of the N.C. Senate. Senate Bill 8 makes statutory changes that would implement the constitutional amendments and which would take effect when the voters approve the amendments.

Senate Bill 9 would limit the odd-numbered year "long sessions" to 135 calendar days. The period may be extended by joint resolution once during each regular session, by not more than 10 days. As provided in Senate Bill 8, the session would begin on the first Monday in December following the election. The month of December following the beginning of the term is included in the 135-day calculation, but if the General Assembly meets for not more than 2 days and adjourns for 30 days or more, the period of adjournment is excluded. *By way of example, if these proposals had been in effect at the time of the November 1998 elections, the General Assembly would have convened on Monday, December 7. Assuming the legislature met for two days and adjourned on the 8th to reconvene on January 27, the session would now be scheduled to adjourn on June 9. Upon joint resolution, the time could be extended to June 19.* During the period from 1975-1998, the longest odd-numbered year session ran from January 11, 1989 through August 12, 1989 a period of 214 calendar days; the 1997 Regular Session ran from January 29 through August 28, a period of 212 calendar days.

Senate Bill 9 would limit the even-numbered year "short sessions" to 60 calendar days. This period may also be extended by joint resolution once during each regular session, by not more than 10 days. The month of December following the election (preceding the even-numbered year) is excluded from the calculation.

- **Any reconvened session called by the Governor is excluded from the calculations.**

- **No action other than adjournment may be taken by the General Assembly after the time limits have expired.**

- **The term of office for Senators and Representatives elected in 2000 (and thereafter) would begin on the first Monday in December, following their election.**

- **Beginning with elections in the year 2002, Senators would be elected to four-year terms. This puts elections for the State Senate in non-presidential, non-gubernatorial years.** For that reason, the bill would amend the Constitution to provide that the President Pro Tempore becomes Acting President of the Senate until the person ceases to be President Pro Tempore or until the qualification of a new Lieutenant Governor, whichever comes first. Under current law, the President Pro Tempore of the senate becomes President of the Senate, under specified conditions, *until the expiration of his term of office as Senator.*

The proposed Constitutional Amendments would be put to the voters at the general election in November 2000. If the Amendments are approved, statutory changes set out in Senate Bill 8 would implement the Amendments.

Limits on Regular Session Length

Legislative Management About State Legislatures

All state legislatures except the seven that are highlighted meet annually. Six of the seven biennial legislatures hold their regular sessions in the odd year; the seventh--Kentucky--holds its regular session in the even year.

Currently, only 11 states do not place a limit on the length of regular session. The remaining 39 set limits through a variety of ways. Constitutional provisions establish the limits in 29 states. Indirect limits on legislator compensation, per diem or mileage reimbursement are in effect in 4 states. Statutory provisions set the restrictions in 3, and another 3 use chamber rules.

State	Session Limit	Limit set by	Cite
Alabama	30 L in 105 C	Constitution	Constitutional Amendment 339
Alaska	120 C	Constitution	Article II, Section 8
Arizona	Sat of week in which 100th C falls	Chamber rule	Senate Rule 27 and House Rule 2
Arkansas	60 C	Constitution	Article V, Section 17
California	Odd-Sept 12 Even-Aug 31	Chamber rule	Joint Rules 51 and 61
Colorado	120 C	Constitution	Article V, Section 7
Connecticut	Odd-Wed after 1st Mon in June Even- Wed after 1st Mon in May	Constitution	Article III, Section 2
Delaware	June 30	Constitution	Article II, Section 4
Florida	60 C	Constitution	Article III, Section 3 (d)
Georgia	40 L	Constitution	Article III, Section IV, Para. I (a)
Hawaii	60 L	Constitution	Article III, Section 10
Idaho	None	NA	
Illinois	None	NA	
Indiana	Odd-Apr 29	Statute	Statutes 2-2.1-1-2 and 2-2.1-1-3

	Even-Mar 14		
Iowa	Odd-110 C Even-100 C	Indirect	Statute 2.10- limits the number of days for which legislators may receive per diem
Kansas	Odd-None Even-90 C	Constitution	Article II, Section 8
Kentucky	60 L or Apr 15	Constitution	Section 42
Louisiana	Odd-60 L in 85 C Even-30 L in 45 C	Constitution	Article III, Section 2
Maine	Odd-3rd Wed in June Even-3rd Wed in Apr	Statute	Statute 3-2
Maryland	90 C	Constitution	Article III, Sections 15
Massachusetts	Formal sessions: Odd-3rd Wed in November Even-July 31 Informal sessions: None	Chamber rule	Joint Rules 12, 12 (a) and 12 (b)
State	**Session Limit**	**Limit set by**	**Cite**
Michigan	None.	NA	
Minnesota	120 L or 1st Mon after 3rd Sat in May	Constitution	Article IV, Section 12
Mississippi	90 C except year after gub elect, then 125 C	Constitution	Article IV, Section 36
Missouri	May 30	Constitution	Article III, Sections 20 and 20(a)
Montana	90 L	Constitution	Article V, Section 6
Nebraska	Odd-90 L Even-60 L	Constitution	Article III, Section 10
Nevada	120 C	Constitution	Constitutional amendment adopted November 1998
New Hampshire	45 L or July 1	Indirect	Part 2, Article 15-- limits the number of days for which legislators may receive mileage
New Jersey	None	NA	
New Mexico	Odd-60 C Even-30 C	Constitution	Article IV, Section 5

New York	None	NA	
North Carolina	None	NA	
North Dakota	80 L	Constitution	Article IV, Section 7
Ohio	None	NA	
Oklahoma	Last Fri in May	Constitution	Article V, Section 26
Oregon	None	NA	
Pennsylvania	None	NA	
Rhode Island	60 L	Indirect	Article VI, Section 3-- limits the number of days for which legislators may receive compensation and mileage
South Carolina	1st Thurs in June	Statute	Statute 2-1-180
South Dakota	Odd-40 L Even-35 L	Constitution	Article III, Sections 6
Tennessee	90 L	Indirect	Article II, Section 23-- limits the number of days for which legislators may receive expenses and travel expenses
Texas	140 C	Constitution	Article 3, Section 24 (b)
Utah	45 C	Constitution	Article VI, Section 16
Vermont	None	NA	
Virginia	Odd-30 C Even-60 C	Constitution	Article IV, Section 6
Washington	Odd-105 C Even-60 C	Constitution	Article II, Section 12
West Virginia	60 C	Constitution	Article VI, Sections 22
Wisconsin	None	NA	
Wyoming	Odd-40 L Even-20 L	Constitution	Article III, Sections 6

Key:

C = calendar day
L = legislative day

As of November 4, 1998

1999 Legislative Session Calendar

(As of November 10, 1998)

About State Legislatures NCSL Home Page

State	Regular Session		Comments
	Convenes	Adjourns	
Alabama	Mar-02	Jun-14	Organizational session begins 1/12/99
Alaska	Jan-19	May-19	
Arizona	Jan-11	Apr-24	
Arkansas	Jan-11	Mar-11	
California	Jan-04	mid Sept	Organizational session begins 12/7/98
Colorado	Jan-6	May-5	Starting early to hold swearing in ceremony for governor
Connecticut	Jan-06	Jun-09	
Delaware	Jan-12	Jun-30	
Florida	Mar-02	Apr-30	Organizational session begins 11/17/98
Georgia	Jan-11	mid Mar	
Hawaii	Jan-20	early May	
Idaho	Jan-11	late Mar	Organizational session 12/3-4/98
Illinois	Jan-13	*	Anticipate recessing for summer 5/28/99
Indiana	Jan-11	Apr-30	
Iowa	Jan-11	late Apr	
Kansas	Jan-11	Apr 10	Possible veto session on 4/28/99
Kentucky	No Regular Session		Organizational session begins 1/5/99
Louisiana	Mar-29	Jun-21	
Maine	Dec-02-98	Jun-16	
Maryland	Jan-13	Apr-12	
Massachusetts	Jan-06	*	
Michigan	Jan-13	*	
Minnesota	Jan-05	May-17	
Mississippi	Jan-05	Apr-04	
Missouri	Jan-06	May-30	
Montana	Jan-04	mid Apr	
Nebraska	Jan-06	early Jun	
Nevada	Feb 1	May 31	Constitutional amendment changed convening date and session length
New Hampshire	Jan-6	late Jun	
New Jersey	Jan-12	*	
New Mexico	Jan-19	Mar-20	
New York	Jan-06	*	
North Carolina	Jan-27	late Jul	
North Dakota	Jan-05	Apr-28	Organizational session 12/8-10/98
Ohio	Jan-04	*	

Oklahoma	Feb-01	May-28	Organizational session 1/5/99
Oregon	Jan-11	early Jul	
Pennsylvania	Jan-05	*	
Rhode Island	Jan-05	late Jun	
South Carolina	Jan-12	Jun-03	
South Dakota	Jan-12	Mar-05	Veto consideration 3/23/99
Tennessee	Feb-02	late May	Organizational session begins 1/12/99
Texas	Jan-12	May-31	
Utah	Jan-18	Mar-03	
Vermont	Jan-06	early May	
Virginia	Jan-13	Feb-27	
Washington	Jan-11	Apr-25	
West Virginia	Jan-13	Mar-13	
Wisconsin	Jan-04	*	
Wyoming	Jan-12	early Mar	
Puerto Rico	Jan-11	Jun-30	Second portion of session runs Sept-Oct.
District of Columbia	Jan-02	*	

* Legislature meets throughout the year



LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1965											
First Session	1187	616	1803	1209	93	1302	72.22%	2/03 - 6/17	116	116	136
Extra Session	3	1	4	2	2	4	100%	11/15 - 11/17	3	3	3
1966											
Extra Session	16	9	25	7	4	11	44.0%	1/10 - 1/14	5	5	5
1965 Biennium Totals Including Extra Sessions	**1206**	**626**	**1832**	**1218**	**99**	**1317**	**71.88%**		**124**	**124**	**144**
1967 (no other sessions during the biennium)											
First Session	1433	750	2183	1273	87	1360	62.30%	2/08 - 7/06	128	128	149
1969 (no other sessions during the biennium)											
First Session	1437	910	2347	1305	122	1427	60.80%	1/15 - 7/02	145	145	169
1971											
First Session	1591	998	2589	1238	125	1363	52.65%	1/13 - 7/21	160*	160*	190

[1] **Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.**

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
* This figure includes Saturdays on which, according to the IOG session was opened, attended and closed by the Wake County delegates without any business being accomplished.											
1971 Second Session	19	13	32	10	14	24		10/26 - 10/30	5	5	5
1971 Biennium Totals	**1610**	**1011**	**2621**	**1248**	**139**	**1387**	**52.92%**		**165***	**165***	**195**
1973 First Session	1362	955	2317	826	117	943	40.70%	1/10 - 5/24	97	97	135
1974 Second Session	831	553	1384	656	69	725		1/16 - 4/13	64	64	88
1973 Biennium Totals	**2193**	**1508**	**3701**	**1482**	**186**	**1668**	**45.07%**		**161**	**161**	**223**
1975 First Session	1284	952	2236	975	121	1096	49.02%	1/15 - 6/26	117	117	163
1976 Second Session	57	18	75	7	7	14		5/03 - 5/14	10	10	12

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1975-76 Biennium Totals	**1341**	**970**	**2311**	**982**	**128**	**1110**	**48.03%**		**127**	**127**	**175**
1977 First Session	1534	917	2451	1131	99	1230	50.18%	1/12 - 7/01	123	123	170
1978 Second Session	162	113	275	167	36	203		5/31 - 6/16	13	13	17
1977-78 Biennium Totals	**1696**	**1030**	**2726**	**1298**	**135**	**1433**	**52.57%**		**136**	**136**	**187**
1979 First Session	1535	945	2480	1077	84	1161	46.81%	1/10 - 6/08	108	107	150
1980 Second Session	240	162	402	255	20	275		6/05 - 6/25	15	15	21
1979-80 Biennium Totals	**1775**	**1107**	**2882**	**1332**	**104**	**1436**	**49.83%**		**123**	**122**	**171**

* This figure includes Saturdays on which, according to the IOG, session was opened, attended and closed by the Wake County delegates without any business being accomplished.

[1] **Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.**

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1981											
Regular Session	1384	772	2156	970	66	1048	48.61%	1/14 - 7/10	127	126	178
1981 Extra Session (to amend adjournment resolution)	--	2	2	--	2	2	100%	10/5 - 10/5	1	1	1
Second Regular Session	44	18	62	159	14	173		10/5 - 10/10	6	6	6
Third Regular Session (Redistricting)	2	1	3	1	1	2		10/29 - 10/30	2	2	2
1982											
First Extra Session 1982 (Redistricting)	7	2	9	7	1	8	88.88%	2/09 - 2/11	3	3	3
Second Extra Session 1982 (Redistricting)	7	1	8	3	3	6	75.0%	4/26 - 4/27	2	2	2
Regular Session	246	81	327	270	19	289		6/02 - 6/23	17	15	22
1981-82 Biennium Totals Including Extra Sessions	**1690**	**877**	**2567**	**1410**	**106**	**1528**	**59.53%**		**158**	**155**	**214**
1983											
Regular Session	1476	701	2177	929	55	984	45.20%	1/12 - 7/22	138	137	192

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
Extra Session	6	1	7	6	1	7	100%	8/26 - 8/26	1	1	1
1984											
Second Extra Session	6	2	8	7	1	8	100%	3/07 - 3/08	2	2	2
Regular Session	325	201	526	187	41	228		6/07 - 7/07	23	22	31
1983-84 Biennium Totals Including Extra Sessions	**1813**	**905**	**2718**	**1129**	**98**	**1227**	**45.14%**		**164**	**162**	**226**
1985											
First Session	1424	854	2278	793	34	827	36.30%	2/05 - 7/18	118	118	164
1986											
Extra Session	9	4	13	7	1	8	61.54%	2/18 - 2/18	1	1	1
Regular Session	718	454	1172	239	25	264		6/05 - 7/16	29	30	42
1985-86 Biennium Totals Including the Extra Session	**2151**	**1312**	**3463**	**1039**	**60**	**1099**	**31.74%**		**148**	**149**	**207**

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1987											
First Session	2166	1557	3723	879	37	916	24.60%	2/09 - 8/14	134	135	187
1988											
Regular Session	493	312	805	233	12	245		6/02 - 7/12	28	28	41
1987-88 Biennium Totals	**2659**	**1869**	**4528**	**1112**	**49**	**1161**	**25.64%**		**162**	**163**	**228**
1989											
First Session	2038	1337	3375	802	34	836	24.77%	1/11 - 8/12	137	128	214
Extra Session	1	5	6	1	--	1	16.67%	12/07 - 12/07	1	1	1
1990											
Extra Session	1	1	2	1	--	1	50.0%	3/06 - 3/06	1	1	1
Regular Session	375	295	670	270	42	312		5/21 - 7/28	46	42	69
1989-90 Biennium Totals Including Extra Sessions	**2415**	**1638**	**4053**	**1074**	**76**	**1150**	**28.37%**		**185**	**172**	**285**
1991											

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
First Session											
	1314	966	2280	761	30	791	34.69%	1/30 - 7/16	106	99	168
1991-92 Extra Session											
First Convening (redistricting - primaries)											
	13	6	19					12/30 - 12/30 91 91	1	1	1
Second Convening (redistricting - Dare County, High Point, & House & Senate)											
	3	1	4					1/13 - 1/14 92 92	2	2	2
Third Convening (redistricting - Congr., Employment Sec. Reserve Fund Threshold, & technical corrections)											
	--	1	1					1/22 - 1/24 92 92	3	3	3
Fourth Convening (alteration of 1992 electoral time table)											
	3	--	3					2/03 - 2/03 92 92	1	1	1
Extra Session Totals											
	19	**8**	**27**	**9**	**4**	**13**	**48.15%**		**7**	**7**	**7**
1992											
Regular Session											
	372	311	683	283	46	329		5/26 - 7/25	42	41	61
1991-92 Biennium Totals Including the Extra Session											
	1705	**1285**	**2990**	**1053**	**80**	**1133**	**37.89%**		**155**	**147**	**236**
1993											
First Session											
	1499	1299	2798	558	31	589**	21.05%	1/27 - 7/24	110	109	179

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS

** There were 5 bills passed and assigned chapter numbers which were not signed and therefor not ratified during the 1993 Regular Session All but one, HB 1319/Chapt. 560, were signed early in the 1995 Regular Session and retained the chapter numbers originally assigned in 1993. They are Chapters 556, 557, 559, & 562. Chapt. #560 was used at the beginning of the 1995 Regular Session for another ratified bill.

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1994											
Extra/First (Special Session on Crime)	232	179	411	28	2	30	7.30%	2/08 - 3/26	32	31	47
1994 Regular Session	635	427	1062	220	10	230		5/24 - 7/17	35	35	55
1993-94 Biennium Totals Including Extra Session	**2366**	**1905**	**4271**	**806**	**43**	**849**	**19.88%**		**177**	**175**	**281**
1995											
Regular Session	1070	1103	2173	546	15	561	25.82%	1/25 - 7/29	108	109	186
1996											
First Extra Session (Unemployment Tax)	3	2	5	1	1	2	40.0%	2/21 - 2/21	1	1	1
Regular Session	389	392	781	211	14	225		5/13 - 6/21	27	25	40
1996 Second Extra Session (Budget)	80	50	130	20	1	21	16.15%	7/8 - 8/3	19	20	27
1995-96 Biennium Totals Including Extra Sessions	**1542**	**1547**	**3089**	**778**	**31**	**809**	**26.19%**		**155**	**155**	**254**

[1] **Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.**

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1997											
Regular Session	1245	1089	2334	528	33	561	24.04%	1/29 - 8/28	123	123	212
1998											
Extra Session (Uninsured Children)	5	3	8	1	1	2	25%	3/24 - 4/30	23	22	38
Regular Session	520	516	1036	230	14	244	23.55%	5/11 - 10/29	100	101	172

[1] **Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.**

VISITOR REGISTRATION SHEET

Judiciary #2 — Feb. 16-99

Name of Committee — Date

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bourgeois	NCCBI
Scott Hammack	NCAJL
Thad DAISE	NCAE
Andy Ellen	NC Rmp
Fran Preston	NCRMA
BILL SCOGGIN	NC BA
Eddie CAGOWell	EEBC
David Simmons	ZDA, PA
Kay Michaels	PPOD
Andy Romanet	N.C.L.M.
Brad Allen	SOS
John McMillan	NFDS
Jon Alloy	ZDAPA
Bob Q	U Comm
Jimmie Leake	Public Staff
JERRY COHEN	Bill Drafting

VISITOR REGISTRATION SHEET

Name of Committee

Date
May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mike Watson	NC. Rec. & Pk. Soc.
Robert Gibson	NCAPA
Andrew Chin	Lobbyist
[illegible]	Visitor
Barbara S. Perry	✓
[illegible]	AT&T
David Anders	PFPAC
Steve Woodson	NC Farm Bureau

SENATE JUDICIARY II COMMITTEE

FEBRUARY 18, 1999

ROOM 1124

SB 41	Require Rental Property Heat.	Senator Reeves
SB 62	Validating Certain Notarial Acts.	Senator Horton

Adjournment

SENATE JUDICIARY II COMMITTEE

FEBRUARY 18, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, February 18, 1999 in room 1124 of the Legislative Building. Ten members were present, including Senator Brad Miller, who presided.

Action was taken on the following bills:

SB 41, Require Rental Property Heat, was explained by Senator Reeves. Senator Kinnaird moved a favorable report of the bill. The motion carried unanimously. **Favorable Report.**

SB 62, Validating Certain Notarial Acts, was explained by Senator Horton. Senator Moore moved a favorable report of the bill. The motion carried unanimously. **Favorable Report.**

Brad Miller
Senator Brad Miller, Chairman

Cornelia McMillan
Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Thursday, February 18, 1999

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

FAVORABLE

S.B. **41** Require Rental Property Heat.
Sequential Referral: None
Recommended Referral: None

S.B. **62** Validating Certain Notarial Acts.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: Sen. Miller to sign.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 41

Short Title: Require Rental Property Heat. (Public)

Sponsors: Senators Reeves; and Miller.

Referred to: Judiciary II.

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT EVERY DWELLING UNIT LEASED AS RENTAL PROPERTY IN CERTAIN CITIES BE FURNISHED WITH A SOURCE OF HEAT.

The General Assembly of North Carolina enacts:

Section 1. Part 6 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-443A. Heat source required.**

(a) A city shall, by ordinance, require that by January 1, 2000, every dwelling unit leased as rental property within the city shall have, at a minimum, a central heating system or sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit.

(b) All heating systems and heating appliances shall be installed and maintained in a good and safe working condition by the owner of the dwelling unit.

(c) Portable kerosene heaters are not acceptable as a permanent source of heat as required by subsection (a) of this section but may be used as a supplementary source in single family dwellings and duplex units. An owner who has complied with subsection (a) shall not be held in violation of this section where an occupant of a dwelling unit uses a kerosene heater as a primary source of heat.

(d) This section applies only to cities with a population of 200,000 or over, according to the most recent decennial federal census.

(e) Nothing in this section shall be construed as:

(1) Diminishing the rights of or remedies available to any tenant under a lease agreement, statute, or at common law; or

(2) Prohibiting a city from adopting an ordinance with more stringent heating requirements than provided for by this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 62

Short Title: Validating Certain Notarial Acts. (Public)

Sponsors: Senators Horton; and Garwood.

Referred to: Judiciary II.

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

TO: Senate Judiciary II Committee
FROM: Ed Rossi, Committee Counsel
DATE: February 16, 1999
RE: Require Rental Property Heat, SB 41 1st Ed.

Background

This is essentially the same bill that was passed by the Senate in 1997, and held in the House Rules Committee. Senate bill 41 requires landlords to provide either central heating or heating appliances that are capable of heating one room (not counting the kitchen) to a temperature of at least 68 degrees when the outside temperature is 20 degrees. Kerosene heaters may not be the primary heat source used to comply with this temperature requirement.

Application

The bill by its terms applies to cities with populations of over 200,000 people. Thus, it potentially impacts Raleigh, Charlotte, Durham, Greensboro, and Winston-Salem.[1] Its primary impact, however, will be felt in Raleigh, the only city in the group that does not currently require landlords to provide heat in existing rental housing.[2]

---

[1] Parts of this memo rely on a News & Observer Article that ran on 2/10/99.

[2] In 1997, Raleigh passed and ordinance that will require landlords to provide heat by September 2,000.

North Carolina General Assembly
Legislative Services Office

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Research Division
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(919) 733-2578

February 18, 1999

MEMORANDUM

TO: Senator Brad Miller, Chair, Senate Judiciary II Committee

FROM: Brenda J. Carter, Committee Counsel

RE: **Senate Bill 62 (Validating Certain Notarial Acts)**

Senate Bill 62, introduced by Senator Horton, would validate acknowledgments taken or instruments notarized on or before August 1, 1998 by persons whose notarial commissions were revoked on or before January 30, 1997.

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

--**The notary** is convicted of a crime involving moral turpitude (Note: courts have defined crimes involving moral turpitude as acts of baseness, vileness, or depravity in the private and social duties that man owes to his fellowman or to society in general)
--**The notary** has had a notarial commission or professional license revoked, suspended or restricted by this or any other state
--**The notary** has engaged in official misconduct, whether or not disciplinary action resulted

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

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

This bill would be effective when it becomes law, and would apply to notarial acts performed on or before August 1, 1998.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

D. #2
Name of Committee

7/18/96
Date

May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mary Hagan	
Lynn Bonner	N4O
Robyn Savitt	NCCC
Amy Fullbright	Hunton & Williams
Kim Smith	NCLM
Steve Woodson	NC Farm Bureau
Butch Gunnells	NCSDA
Jim Hunt	NC Farm Bureau

SENATE JUDICIARY II COMMITTEE

FEBRUARY 23, 1999

ROOM 1124

SB 8	Session Limits Implementing.	Senator Hoyle
SB 9	Session Length Limits.	Senator Hoyle

Adjournment

SENATE JUDUCIARY II COMMITTEE

FEBRUARY 23, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, February 23, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

Senator Miller recognized the following people to speak to Senate Bills 8 and 9:

Lee Mortimer, a member of the 1996 Election Laws Reform Committee and a consultant in the redistricting lawsuit, spoke against session limits and four-year term limits as outlined in the bills. He proposed a full-time legislature and four-year terms with two-year accountability (see attachment).

Bill Scoggins, NC Bar Association, spoke in favor of the Session Limits bills.

Jan Crotts, Executive Director of the NC Association of School Administrators, cited the concern of school systems regarding policy and budget decisions and her support for term limits.

Eddie Caldwell, Education Is Everybody's Business Coalition, also spoke in favor of the bills.

Jerry Cohen, Director of the Bill Drafting Division of the NCGA, distributed a hand-out outlining the options discussed for Senate Bills 8 and 9 (see attachment).

The following action was taken:

Senator Horton sent forth an amendment to **SB 8**, Session Limits Implementing. The motion carried unanimously. Senator Dalton proposed to again amend the bill and sent forth an amendment regarding vacancies in the General Assembly. The motion carried unanimously. Senator Kerr moved to roll the amendments into a Committee Substitute and to give the Committee Substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to Committee Substitute.**

Senator Kerr moved to roll the amendment to **SB 9,** Session Length Limits, into a Committee Substitute and to give the Committee Substitute a favorable report. The

motion carried unanimously. **Unfavorable as to bill, but favorable as to Committee Substitute.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Tuesday, February 23, 1999

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

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

S.B. **8** Session Limits Implementing.

Draft Number:	PCS3562
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **9** Session Length Limits.

Draft Number:	PCS6516
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: Sen. Miller to sign.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 8

Short Title: Session Limits Implementing. (Public)

Sponsors: Senators Hoyle; Ballance, Carter, Cooper, Dalton, Dannelly, Jordan, Kerr, Lee, Lucas, Martin of Pitt, Odom, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Robinson, Soles, Warren, and Wellons.

Referred to: Judiciary II.

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-11.1 reads as rewritten:

"**§ 120-11.1. Time of meeting.**

The regular session of the Senate and House of Representatives shall be held biennially beginning at 12:00 noon on the ~~third Wednesday after the second Monday in January~~ first Monday in December next after their election."

Section 2. G.S. 163-1 is amended in the table by rewriting the "DATE OF ELECTION" entries for State Senator to read: "Tuesday next after the first Monday in November 2002 and every four years thereafter".

Section 3. G.S. 163-1 is further amended in the table by rewriting the "TERM OF OFFICE" entries for State Senator to read: "Four years".

Section 4. Sections 1 through 3 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 1 through 5 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Section 1 of this act becomes

effective with respect to members of the General Assembly elected in 2000, and Sections 2 and 3 become effective with respect to Senators elected in 2002.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 9

Short Title: Session Length Limits. (Public)

Sponsors: Senators Hoyle; Garwood, Kerr, and Purcell.

Referred to: Judiciary II.

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE.

The General Assembly of North Carolina enacts:

Section 1. Section 11(1) of Article II of the Constitution of North Carolina reads as rewritten:

"(1) **Regular sessions.** The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Beginning with the regular session in 2001, during an odd-numbered year the General Assembly shall remain in session for no more than 135 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days. The month of December following the beginning of the term is also included in the calculation. If the General Assembly upon convening of the regular session meets for not more than two consecutive calendar days and then adjourns for not less than 30 days, that period of adjournment shall be excluded from the 135 days. If the regular session meets in even-numbered years, the General Assembly shall remain in session for no more than 60 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days, but the month in December following the election is excluded from the calculation. Any reconvened session called under Section 5 of Article III of this Constitution shall be excluded from the calculations of this section. Neither house shall proceed upon public business unless a majority of all of its members are actually present. No valid action, other than a resolution of adjournment, may be taken by the General Assembly after the time limits prescribed in this section have expired."

Section 2. Section 9 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 9. Term of office.**

The term of office of Senators and Representatives shall commence on the first ~~day of January~~ Monday in December next after their election."

Section 3. Section 2 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 2. Number of Senators.**

The Senate shall be composed of 50 Senators, ~~biennially~~ quadrennially chosen by ballot."

Section 4. Section 8 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 8. Elections.**

The election for members of the ~~General Assembly~~ House of Representatives shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law. The election for members of the Senate shall be held for the respective districts in 2002 and every four years thereafter, at the places and on the day prescribed by law."

Section 5. Section 14(1) of Article II of the Constitution of North Carolina reads as rewritten:

"(1) **President Pro Tempore - ~~succession to~~ acting presidency.** The Senate shall elect from its membership a President Pro Tempore, who shall become Acting President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve as Acting President of the Senate ~~until the expiration of his term of office as Senator.~~ until:

(a) That person ceases to be President Pro Tempore; or

(b) The qualification of a new Lieutenant Governor

whichever comes first."

Section 6. The amendments set out in Sections 1 through 5 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments limiting the length of the legislative session and making the term of members of the Senate four years, beginning with members elected in 2002."

Section 7. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 through 5 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The constitutional amendments shall apply to members of the Senate elected in the 2002 general

election so that they shall serve four-year terms, but Section 2 applies beginning with members of the General Assembly elected in the 2000 general election. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

Section 8. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ALB-1

Page 1 of 1

Date_____,1999

Comm. Sub. []
Amends Title []

<VT=1

moves to amend the bill on page 1, line 16, through page 2, line 2, by rewriting those lines to read:

"Section 4(a). Section 1 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 1 and 2 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Section 1 of this act becomes effective with respect to members of the General Assembly elected in 2000.

Section 4(b). Sections 2 and 3 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 3 through 5 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Sections 2 and 3 become effective with respect to Senators elected in 2002."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ALB-2 Page 1 of __

Date_____,1999

Comm. Sub. [PCS]
Amends Title []

moves to amend the bill on page 1, line 15,
by adding the following between lines 15 and 16:
"Section 3.1. G.S. 163-11(a) reads as rewritten:
"(a) If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended by the political party executive committee provided by this section. The Governor shall make the appointment within seven days of receiving the recommendation of the appropriate committee. If the Governor fails to make the appointment within the required period, he shall be presumed to have made the appointment and the legislative body to which the appointee was recommended is directed to seat the appointee as a member in good standing for the duration of the unexpired term.

Notwithstanding the above, if the vacancy in the Senate occurs more than 60 days prior to the next statewide election which is not the election at which a successor is to be elected for a full-four year term, then at that election a person shall be elected within the district as it was constituted at the original election for the remainder of the unexpired term, and the person appointed by the Governor under the ~~previous~~ previous paragraph shall serve only until the results of the election are certified."

Section 3.2. G.S. 163-115 reads as rewritten:"**§ 163-115. Special provisions for obtaining nominations when vacancies occur in certain offices.**

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ALB-2

(a) If a vacancy occurs in the office of the clerk of superior court, otherwise than by expiration of the term, or if the people fail to elect, the vacancy shall be filled as provided in Sec. 9(3) of Article IV of the North Carolina Constitution. If the vacancy occurs after the time for filing notice of candidacy in the primary has expired in a year when a regular election is not being held to elect a clerk of the superior court by expiration of term, then the county executive committee of each political party shall nominate a candidate whose name shall appear on the general election ballot. The candidate elected in the general election shall serve the unexpired portion of the term of the person causing the vacancy.

(b) In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of G.S. 163-13 shall apply.

(c) If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in G.S. 163-114, and the names of the nominees shall be printed on the general election ballots.

(d) If a vacancy occurs on a county board of commissioners and G.S. 153A-27 or G.S. 153A-27.1 requires that a person shall be elected to the seat vacated for the remainder of the unexpired term, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the county executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.

(e) If a vacancy occurs in the office of United States Senator, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ALB-2 Page 3 of __

by the State executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.(f) If a vacancy occurs in the office of State Senator, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the appropriate county (if the district consists of all of one county) or district executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 8
Proposed Committee Substitute S8-PCS3562-LB

Short Title: Session Limits Implementing. (Public)

Sponsors:

Referred to:

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-11.1 reads as rewritten:

"**§ 120-11.1. Time of meeting.**

The regular session of the Senate and House of Representatives shall be held biennially beginning at 12:00 noon on the ~~third Wednesday after the second Monday in January~~ first Monday in December next after their election."

Section 2. G.S. 163-1 is amended in the table by rewriting the "DATE OF ELECTION" entries for State Senator to read: "Tuesday next after the first Monday in November 2002 and every four years thereafter".

Section 3. G.S. 163-1 is further amended in the table by rewriting the "TERM OF OFFICE" entries for State Senator to read: "Four years".

Section 4. G.S. 163-11(a) reads as rewritten:

"(a) If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended by the political party executive committee provided by this section. The Governor shall make the appointment within seven days of receiving the recommendation of the appropriate committee. If the Governor fails to make the appointment within the required period, he shall be presumed to have made the appointment and the legislative body to which the

appointee was recommended is directed to seat the appointee as a member in good standing for the duration of the unexpired term.

Notwithstanding the previous paragraph, if the vacancy in the Senate occurs more than 60 days prior to the next statewide election which is not the election at which a successor is to be elected for a full four-year term, then at that election a person shall be elected within the district as it was constituted at the original election to serve the remainder of the unexpired term, and the person appointed by the Governor under the previous paragraph shall serve only until the results of the election are certified."

Section 5. G.S. 163-115 reads as rewritten:

"**§ 163-115. Special provisions for obtaining nominations when vacancies occur in certain offices.**

(a) If a vacancy occurs in the office of the clerk of superior court, otherwise than by expiration of the term, or if the people fail to elect, the vacancy shall be filled as provided in Sec. 9(3) of Article IV of the North Carolina Constitution. If the vacancy occurs after the time for filing notice of candidacy in the primary has expired in a year when a regular election is not being held to elect a clerk of the superior court by expiration of term, then the county executive committee of each political party shall nominate a candidate whose name shall appear on the general election ballot. The candidate elected in the general election shall serve the unexpired portion of the term of the person causing the vacancy.

(b) In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of G.S. 163-13 shall apply.

(c) If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in G.S. 163-114, and the names of the nominees shall be printed on the general election ballots.

(d) If a vacancy occurs on a county board of commissioners and G.S. 153A-27 or G.S. 153A-27.1 requires that a person shall be elected to the seat vacated for the remainder of the unexpired term, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the county executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.

(e) If a vacancy occurs in the office of United States Senator, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the State executive

committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.

(f) If a vacancy occurs in the office of State Senator, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the appropriate county (if the district consists of all of one county) or district executive committee of each political party, and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article."

Section 6.(a) Section 1 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 1 and 2 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Section 1 of this act becomes effective with respect to members of the General Assembly elected in 2000.

Section 6.(b) Sections 2 through 5 of this act shall take effect only upon approval of the voters of the constitutional amendments set forth in Sections 3 through 5 of AN ACT TO AMEND THE CONSTITUTION TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE. If the constitutional amendments proposed in those sections are approved by the voters, Sections 2 through 5 become effective with respect to Senators elected in 2002.

Section 7. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 9

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

S9-ALB-1 Page 1 of 2

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 2, line 31, through page 3, line 4, by rewriting those lines to read:

"Section 6(a). The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments limiting the length of the legislative session."

Section 6(b). The amendments set out in Sections 3 through 5 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments making the term of members of the Senate four years, beginning with members elected in 2002."

Section 7(a). If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 9

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

S9-ALB-1 Page 2 of 2

the Secretary of State. Section 2 applies beginning with members of the General Assembly elected in the 2000 general election.

Section 7(b). If a majority of votes cast on the question are in favor of the amendments set out in Sections 3 through 5 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The constitutional amendments shall apply to members of the Senate elected in the 2002 general election so that they shall serve four-year terms.

Section 7(c). The Secretary of State shall enroll the amendments so certified among the permanent records of that office."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

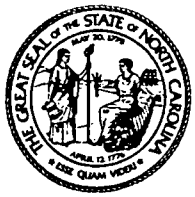
S8-ALB-2 Page 1 of __

Date_____,1999

Comm. Sub. [PCS]
Amends Title []

moves to amend the bill on page 1, line 15,
by adding the following between lines 15 and 16:
"Section 3.1. G.S. 163-11(a) reads as rewritten:
"(a) If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended by the political party executive committee provided by this section. The Governor shall make the appointment within seven days of receiving the recommendation of the appropriate committee. If the Governor fails to make the appointment within the required period, he shall be presumed to have made the appointment and the legislative body to which the appointee was recommended is directed to seat the appointee as a member in good standing for the duration of the unexpired term.
Notwithstanding the above, if the vacancy in the Senate occurs more than 60 days prior to the next statewide election which is not the election at which a successor is to be elected for a full-four year term, then at that election a person shall be elected within the district as it was constituted at the original election for the remainder of the unexpired term, and the person appointed by the Governor under the~~previous~~ paragraph shall serve only until the results of the election are certified."
Section 3.2. G.S. 163-115 reads as rewritten:"**§ 163-115. Special provisions for obtaining nominations when vacancies occur in certain offices.**

previous



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ALB-2

(a) If a vacancy occurs in the office of the clerk of superior court, otherwise than by expiration of the term, or if the people fail to elect, the vacancy shall be filled as provided in Sec. 9(3) of Article IV of the North Carolina Constitution. If the vacancy occurs after the time for filing notice of candidacy in the primary has expired in a year when a regular election is not being held to elect a clerk of the superior court by expiration of term, then the county executive committee of each political party shall nominate a candidate whose name shall appear on the general election ballot. The candidate elected in the general election shall serve the unexpired portion of the term of the person causing the vacancy.

(b) In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of G.S. 163-13 shall apply.

(c) If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in G.S. 163-114, and the names of the nominees shall be printed on the general election ballots.

(d) If a vacancy occurs on a county board of commissioners and G.S. 153A-27 or G.S. 153A-27.1 requires that a person shall be elected to the seat vacated for the remainder of the unexpired term, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the county executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.

(e) If a vacancy occurs in the office of United States Senator, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 8

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

S8-ALB-2 Page 3 of __

by the State executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.(f) If a vacancy occurs in the office of State Senator, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the appropriate county (if the district consists of all of one county) or district executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 9
Proposed Committee Substitute S9-PCS6516-LB

Short Title: Session Length Limits. (Public)

Sponsors:

Referred to:

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS AND TO PROVIDE FOUR-YEAR TERMS FOR MEMBERS OF THE SENATE.

The General Assembly of North Carolina enacts:

Section 1. Section 11(1) of Article II of the Constitution of North Carolina reads as rewritten:

"(1) **Regular sessions.** The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Beginning with the regular session in 2001, during an odd-numbered year the General Assembly shall remain in session for no more than 135 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days. The month of December following the beginning of the term is also included in the calculation. If the General Assembly upon convening of the regular session meets for not more than two consecutive calendar days and then adjourns for not less than 30 days, that period of adjournment shall be excluded from the 135 days. If the regular session meets in even-numbered years, the General Assembly shall remain in session for no more than 60 calendar days, except that this period may be extended by joint resolution once per regular session for not more than 10 days, but the month in December following the election is excluded from the calculation. Any reconvened session called under Section 5 of Article III of this Constitution shall be excluded from the calculations of this section. Neither house shall proceed upon public business unless a majority of all of its members are actually present. No valid action,

other than a resolution of adjournment, may be taken by the General Assembly after the time limits prescribed in this section have expired."

Section 2. Section 9 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 9. Term of office.**

The term of office of Senators and Representatives shall commence on the first ~~day of January~~ Monday in December next after their election."

Section 3. Section 2 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 2. Number of Senators.**

The Senate shall be composed of 50 Senators, ~~biennially~~ quadrennially chosen by ballot."

Section 4. Section 8 of Article II of the Constitution of North Carolina reads as rewritten:

"**Sec. 8. Elections.**

The election for members of the ~~General Assembly~~ House of Representatives shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law. The election for members of the Senate shall be held for the respective districts in 2002 and every four years thereafter, at the places and on the day prescribed by law."

Section 5. Section 14(1) of Article II of the Constitution of North Carolina reads as rewritten:

"(1) **President Pro Tempore - ~~succession to~~ acting presidency.** The Senate shall elect from its membership a President Pro Tempore, who shall become Acting President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve as Acting President of the Senate ~~until the expiration of his term of office as Senator.~~ until:

(a) That person ceases to be President Pro Tempore; or

(b) The qualification of a new Lieutenant Governor

whichever comes first."

Section 6(a). The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments limiting the length of the legislative session."

Section 6(b). The amendments set out in Sections 3 through 5 of this act shall be submitted to the qualified voters of the State at the general election in November 2000, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance

with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendments making the term of members of the Senate four years, beginning with members elected in 2002."

Section 7(a). If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. Section 2 applies beginning with members of the General Assembly elected in the 2000 general election.

Section 7(b). If a majority of votes cast on the question are in favor of the amendments set out in Sections 3 through 5 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The constitutional amendments shall apply to members of the Senate elected in the 2002 general election so that they shall serve four-year terms.

Section 7(c). The Secretary of State shall enroll the amendments so certified among the permanent records of that office.

Section 8. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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OPTIONS FOR SENATE BILLS 8 AND 9

SENATE BILL 9

Questions on Ballot
A. Together (ORIGINAL BILL)
B. Separate issues on ballot (AGREED TO THIS CHANGE AT PRIOR COMMITTEE MEETING)

Date of change becoming effective:
A 2000 election
B 2002 election (AS IN INTRODUCED BILL)
====

of referendum
A 2000 general election (AS IN INTRODUCED BILL)
B 2000 primary
C 1999 special election* *$2.5 million cost unles another election already scheduled
===

Staggered terms:
A No staggering (AS IN INTRODUCED BILL

B Staggered but person elected every 10 years beginning in 2010 get only a two-year term, and persons elected in 2012 and every ten years thereftare getting two or four-year terms to restagger. Initial terms in first year half 2 year and half 4-year to initially stagger

C Permanent staggering after initial election with no short terms after redistricting.

SENATE BILL 8

Filling of vacancies
A. Current law, appointee serves for remainder of unexpired term

B. If vacancy occurs in first two years of term, election held at time of mid-term congressional election when on elected to fill remainder of term (same as current law for filling county commisioner and council of

state vacancies). Person appointed serves until then, and person appointed in last two years of term serves until end of term.

Four-year terms with two-year accountability

Legislative elections rarely result in more than a handful of seats changing parties. This proposal gives members four-year terms, while retaining the voters' ability to pass judgement on the Legislature every two years and adjust the membership accordingly.

The election

The proposal uses 60-70 percent district seats and 30-40 percent at-large seats *(see maps).* The statewide vote for district candidates determines both the district winners--and how many at-large seats each party receives.

Democrats

If Democratic district candidates win 56 percent of the vote, Democrats would get 28 seats. If 22 Democrats won district seats, then six at-large Democrats would also get seats:

56% of the vote = 28 seats (22 district seats + 6 at-large seats)

The six highest-polling at-large Democrats would get the at-large seats.

Republicans

If Republican district candidates get 44 percent of the vote, Republicans would get 22 seats. Since 13 district Republican candidates won seats, nine at-large Republicans would also get seats:

44% of the vote = 22 seats (13 district seats + 9 at-large seats)

The nine highest polling at-large Republicans would get the at-large seats.

The referendum

Rather than all 50 members standing for re-election, after two years voters would judge the legislative performance in a statewide referendum by voting "Democrat" or "Republican." If the Democrats' approval drops from 56 percent to 52 percent, and the Republican approval increases from 44 percent to 48 percent, Republicans would gain two seats.

The two lowest polling at-large Democrats from the election would cede their seats to the two Republican at-large candidates who polled highest in the election but missed winning a seat.

At-large voting

Voters might be allowed to vote for a defined number of at-large candidates *(say six)*. If cumulative voting were used, voters could cast one vote for each of six candidates or distribute their six votes among fewer candidates. If three candidates were chosen, each candidate would get two votes. Or, if the voter chose one candidate, all six votes would go to that candidate.

No matter how the voting is conducted, the number of at-large candidates who get seats depends on the statewide vote for district candidates in each party. Votes for at-large candidates determine which at-large candidates get their party's share of seats.

Primaries

All nominees would be chosen in district primaries. The first-place finisher would be the party's district nominee. Second-place finishers would be eligible for a spot on the at-large ballot. Since there are fewer at-large candidates than district candidates, the highest-polling second-place finishers would get the available at-large spots on the ballot.

Benefits

In addition to preserving accountability to voters within four-year terms, this proposal would address other political and campaign problems:

Minority representation would be enhanced because minority candidates could continue to win in single-, two-, and three-member districts, while benefiting from cumulative voting on the at-large ballot.

Gerrymandering would be significantly decreased because no matter how districts are drawn, the voters--and not redistricting committees--determine how many seats each party gets.

Money's influence would diminish since the statewide result is decided by all the state's voters *(fewer "winner-take-all" contests where a small shift of votes can produce a 100-percent shift in an election outcome).*

Negative advertising would decrease as elections become more about each party's record in the Legislature and less about individual personalities.

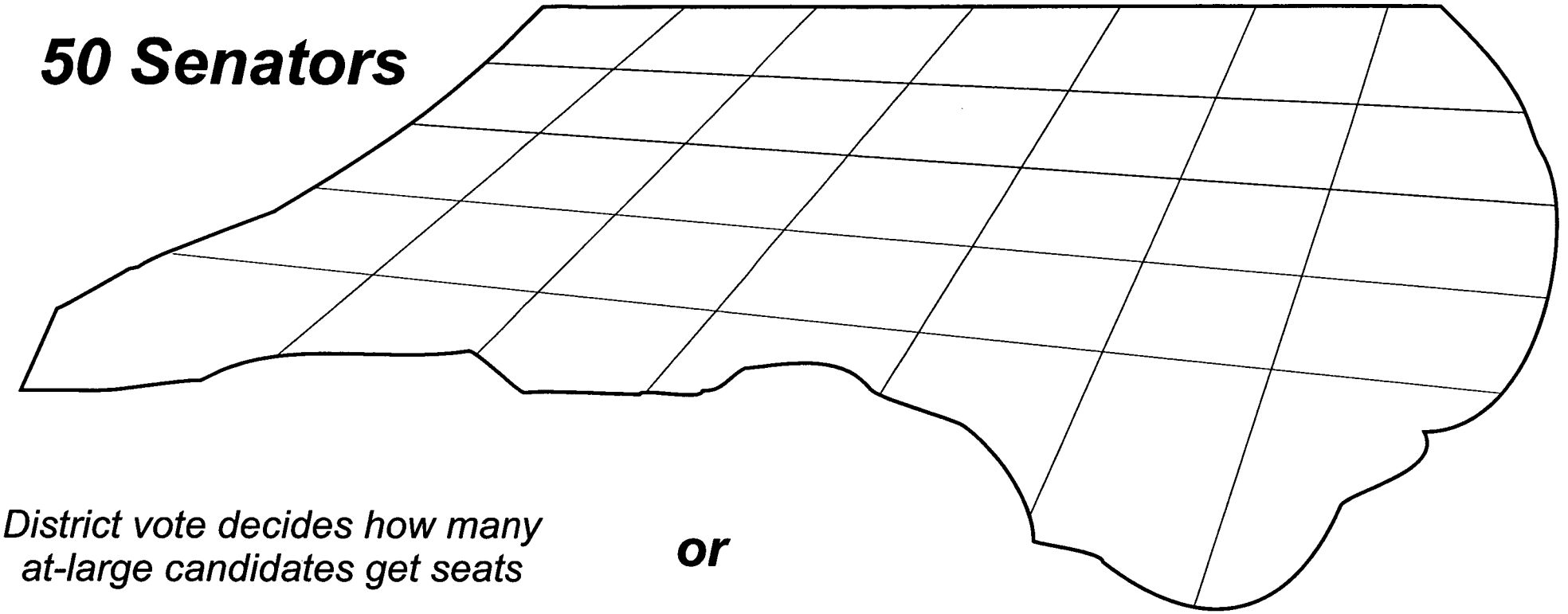
New candidates could enter a primary without directly challenging an incumbent.

Everyone helps elect someone—either in a district or at-large.

Lee Mortimer

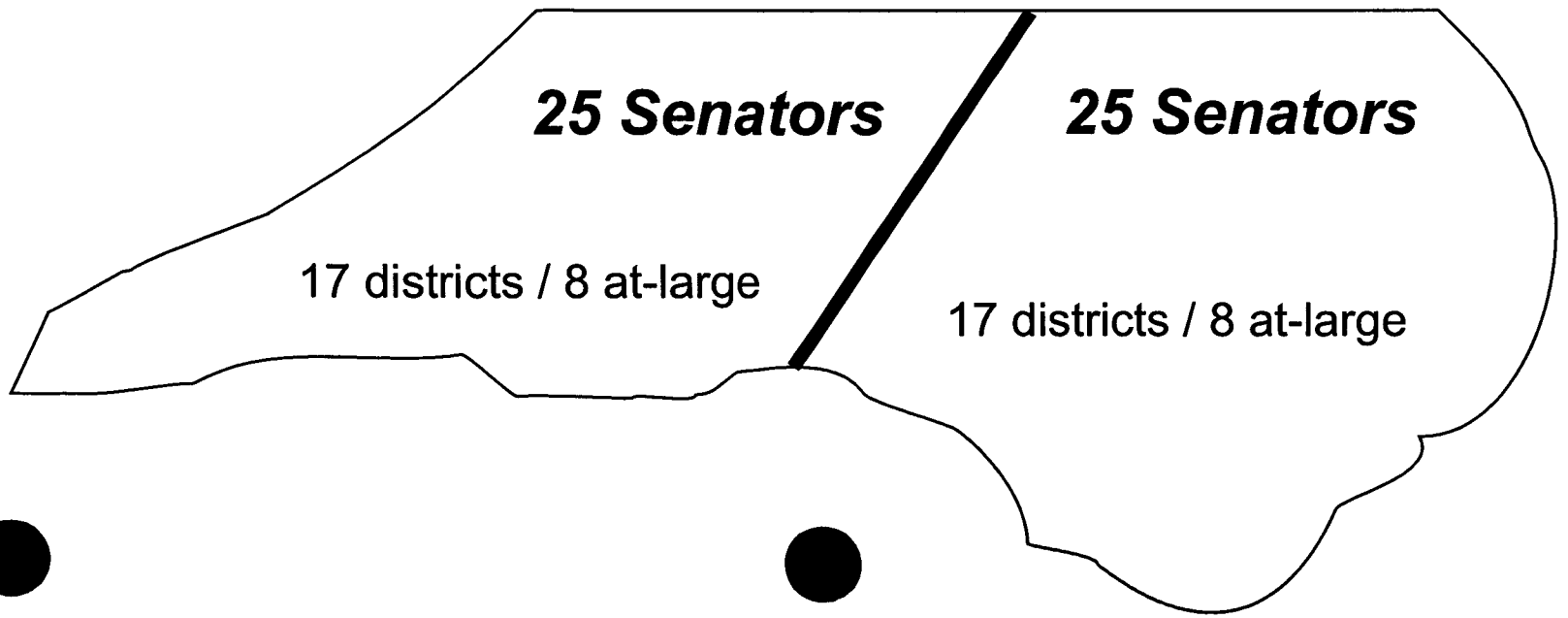
35 districts *(some could be multimember)* **15 at-large**

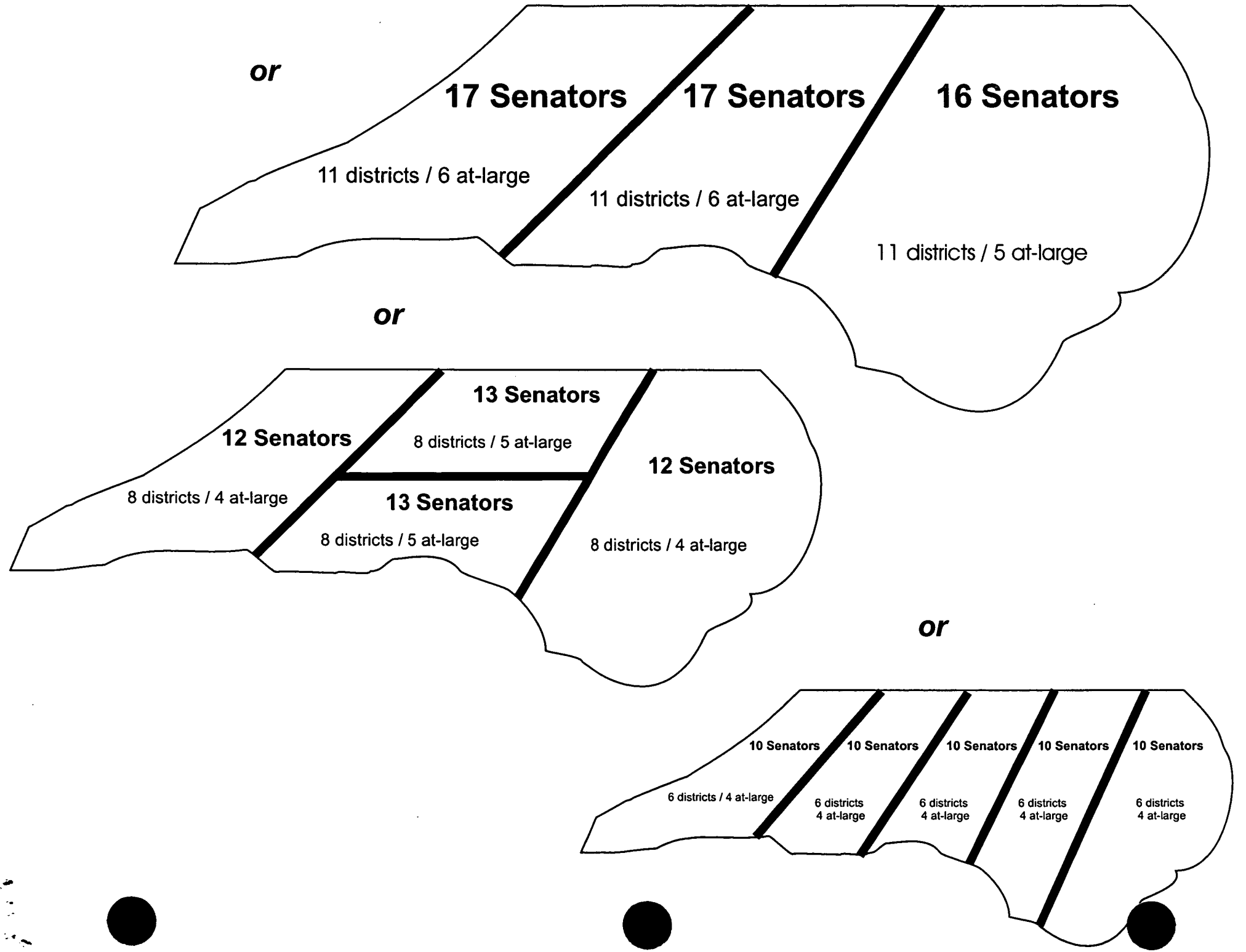
50 Senators



District vote decides how many at-large candidates get seats

or




or
17 Senators
17 Senators
16 Senators
11 districts / 6 at-large
11 districts / 6 at-large
11 districts / 5 at-large
or
13 Senators
12 Senators
8 districts / 5 at-large
12 Senators
8 districts / 4 at-large
13 Senators
8 districts / 5 at-large
8 districts / 4 at-large
or
10 Senators
10 Senators
10 Senators
10 Senators
10 Senators
6 districts / 4 at-large
6 districts
4 at-large
6 districts
4 at-large
6 districts
4 at-large
6 districts
4 at-large

National Conference of State Legislatures

1999 Legislative Session Calendar

(As of November 10, 1998)

About State Legislatures NCSL Home Page

State	Regular Session		Comments
	Convenes	Adjourns	
Alabama	Mar-02	Jun-14	Organizational session begins 1/12/99
Alaska	Jan-19	May-19	
Arizona	Jan-11	Apr-24	
Arkansas	Jan-11	Mar-11	
California	Jan-04	mid Sept	Organizational session begins 12/7/98
Colorado	Jan-6	May-5	Starting early to hold swearing in ceremony for governor
Connecticut	Jan-06	Jun-09	
Delaware	Jan-12	Jun-30	
Florida	Mar-02	Apr-30	Organizational session begins 11/17/98
Georgia	Jan-11	mid Mar	
Hawaii	Jan-20	early May	
Idaho	Jan-11	late Mar	Organizational session 12/3-4/98
Illinois	Jan-13	*	Anticipate recessing for summer 5/28/99
Indiana	Jan-11	Apr-30	
Iowa	Jan-11	late Apr	
Kansas	Jan-11	Apr 10	Possible veto session on 4/28/99
Kentucky	No Regular Session		Organizational session begins 1/5/99
Louisiana	Mar-29	Jun-21	
Maine	Dec-02-98	Jun-16	
Maryland	Jan-13	Apr-12	
Massachusetts	Jan-06	*	
Michigan	Jan-13	*	
Minnesota	Jan-05	May-17	
Mississippi	Jan-05	Apr-04	
Missouri	Jan-06	May-30	
Montana	Jan-04	mid Apr	
Nebraska	Jan-06	early Jun	
Nevada	Feb 1	May 31	Constitutional amendment changed convening date and session length
New Hampshire	Jan-6	late Jun	
New Jersey	Jan-12	*	
New Mexico	Jan-19	Mar-20	
New York	Jan-06	*	
North Carolina	Jan-27	late Jul	
North Dakota	Jan-05	Apr-28	Organizational session 12/8-10/98
Ohio	Jan-04	*	

Oklahoma	Feb-01	May-28	Organizational session 1/5/99
Oregon	Jan-11	early Jul	
Pennsylvania	Jan-05	*	
Rhode Island	Jan-05	late Jun	
South Carolina	Jan-12	Jun-03	
South Dakota	Jan-12	Mar-05	Veto consideration 3/23/99
Tennessee	Feb-02	late May	Organizational session begins 1/12/99
Texas	Jan-12	May-31	
Utah	Jan-18	Mar-03	
Vermont	Jan-06	early May	
Virginia	Jan-13	Feb-27	
Washington	Jan-11	Apr-25	
West Virginia	Jan-13	Mar-13	
Wisconsin	Jan-04	*	
Wyoming	Jan-12	early Mar	
Puerto Rico	Jan-11	Jun-30	Second portion of session runs Sept-Oct.
District of Columbia	Jan-02	*	

* Legislature meets throughout the year



National Conference of State Legislatures

Limits on Regular Session Length

Legislative Management About State Legislatures

All state legislatures except the seven that are highlighted meet annually. Six of the seven biennial legislatures hold their regular sessions in the odd year; the seventh--Kentucky--holds its regular session in the even year.

Currently, only 11 states do not place a limit on the length of regular session. The remaining 39 set limits through a variety of ways. Constitutional provisions establish the limits in 29 states. Indirect limits on legislator compensation, per diem or mileage reimbursement are in effect in 4 states. Statutory provisions set the restrictions in 3, and another 3 use chamber rules.

State	Session Limit	Limit set by	Cite
Alabama	30 L in 105 C	Constitution	Constitutional Amendment 339
Alaska	120 C	Constitution	Article II, Section 8
Arizona	Sat of week in which 100th C falls	Chamber rule	Senate Rule 27 and House Rule 2
Arkansas	60 C	Constitution	Article V, Section 17
California	Odd-Sept 12 Even-Aug 31	Chamber rule	Joint Rules 51 and 61
Colorado	120 C	Constitution	Article V, Section 7
Connecticut	Odd-Wed after 1st Mon in June Even- Wed after 1st Mon in May	Constitution	Article III, Section 2
Delaware	June 30	Constitution	Article II, Section 4
Florida	60 C	Constitution	Article III, Section 3 (d)
Georgia	40 L	Constitution	Article III, Section IV, Para. I (a)
Hawaii	60 L	Constitution	Article III, Section 10
Idaho	None	NA	
Illinois	None	NA	
Indiana	Odd-Apr 29	Statute	Statutes 2-2.1-1-2 and 2-2.1-1-3

	Even-Mar 14		
Iowa	Odd-110 C Even-100 C	Indirect	Statute 2.10- limits the number of days for which legislators may receive per diem
Kansas	Odd-None Even-90 C	Constitution	Article II, Section 8
Kentucky	60 L or Apr 15	Constitution	Section 42
Louisiana	Odd-60 L in 85 C Even-30 L in 45 C	Constitution	Article III, Section 2
Maine	Odd-3rd Wed in June Even-3rd Wed in Apr	Statute	Statute 3-2
Maryland	90 C	Constitution	Article III, Sections 15
Massachusetts	Formal sessions: Odd-3rd Wed in November Even-July 31 Informal sessions: None	Chamber rule	Joint Rules 12, 12 (a) and 12 (b)
State	**Session Limit**	**Limit set by**	**Cite**
Michigan	None	NA	
Minnesota	120 L or 1st Mon after 3rd Sat in May	Constitution	Article IV, Section 12
Mississippi	90 C except year after gub elect, then 125 C	Constitution	Article IV, Section 36
Missouri	May 30	Constitution	Article III, Sections 20 and 20(a)
Montana	90 L	Constitution	Article V, Section 6
Nebraska	Odd-90 L Even-60 L	Constitution	Article III, Section 10
Nevada	120 C	Constitution	Constitutional amendment adopted November 1998
New Hampshire	45 L or July 1	Indirect	Part 2, Article 15-- limits the number of days for which legislators may receive mileage
New Jersey	None	NA	
New Mexico	Odd-60 C Even-30 C	Constitution	Article IV, Section 5

New York	None	NA	
North Carolina	None	NA	
North Dakota	80 L	Constitution	Article IV, Section 7
Ohio	None	NA	
Oklahoma	Last Fri in May	Constitution	Article V, Section 26
Oregon	None	NA	
Pennsylvania	None	NA	
Rhode Island	60 L	Indirect	Article VI, Section 3-- limits the number of days for which legislators may receive compensation and mileage
South Carolina	1st Thurs in June	Statute	Statute 2-1-180
South Dakota	Odd-40 L Even-35 L	Constitution	Article III, Sections 6
Tennessee	90 L	Indirect	Article II, Section 23-- limits the number of days for which legislators may receive expenses and travel expenses
Texas	140 C	Constitution	Article 3, Section 24 (b)
Utah	45 C	Constitution	Article VI, Section 16
Vermont	None	NA	
Virginia	Odd-30 C Even-60 C	Constitution	Article IV, Section 6
Washington	Odd-105 C Even-60 C	Constitution	Article II, Section 12
West Virginia	60 C	Constitution	Article VI, Sections 22
Wisconsin	None	NA	
Wyoming	Odd-40 L Even-20 L	Constitution	Article III, Sections 6

Key:

C = calendar day
L = legislative day

As of November 4, 1998

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1965											
First Session	1187	616	1803	1209	93	1302	72.22%	2/03 - 6/17	116	116	136
Extra Session	3	1	4	2	2	4	100%	11/15 - 11/17	3	3	3
1966											
Extra Session	16	9	25	7	4	11	44.0%	1/10 - 1/14	5	5	5
1965 Biennium Totals Including Extra Sessions	**1206**	**626**	**1832**	**1218**	**99**	**1317**	**71.88%**		**124**	**124**	**144**
1967 (no other sessions during the biennium)											
First Session	1433	750	2183	1273	87	1360	62.30%	2/08 - 7/06	128	128	149
1969 (no other sessions during the biennium)											
First Session	1437	910	2347	1305	122	1427	60.80%	1/15 - 7/02	145	145	169
1971											
First Session	1591	998	2589	1238	125	1363	52.65%	1/13 - 7/21	160*	160*	190

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
* This figure includes Saturdays on which, according to the IOG session was opened, attended and closed by the Wake County delegates without any business being accomplished.											
1971 Second Session	19	13	32	10	14	24		10/26 - 10/30	5	5	5
1971 Biennium Totals	**1610**	**1011**	**2621**	**1248**	**139**	**1387**	**52.92%**		**165***	**165***	**195**
1973 First Session	1362	955	2317	826	117	943	40.70%	1/10 - 5/24	97	97	135
1974 Second Session	831	553	1384	656	69	725		1/16 - 4/13	64	64	88
1973 Biennium Totals	**2193**	**1508**	**3701**	**1482**	**186**	**1668**	**45.07%**		**161**	**161**	**223**
1975 First Session	1284	952	2236	975	121	1096	49.02%	1/15 - 6/26	117	117	163
1976 Second Session	57	18	75	7	7	14		5/03 - 5/14	10	10	12

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1975-76 Biennium Totals	**1341**	**970**	**2311**	**982**	**128**	**1110**	**48.03%**		**127**	**127**	**175**
1977 First Session	1534	917	2451	1131	99	1230	50.18%	1/12 - 7/01	123	123	170
1978 Second Session	162	113	275	167	36	203		5/31 - 6/16	13	13	17
1977-78 Biennium Totals	**1696**	**1030**	**2726**	**1298**	**135**	**1433**	**52.57%**		**136**	**136**	**187**
1979 First Session	1535	945	2480	1077	84	1161	46.81%	1/10 - 6/08	108	107	150
1980 Second Session	240	162	402	255	20	275		6/05 - 6/25	15	15	21
1979-80 Biennium Totals	**1775**	**1107**	**2882**	**1332**	**104**	**1436**	**49.83%**		**123**	**122**	**171**

* This figure includes Saturdays on which, according to the IOG, session was opened, attended and closed by the Wake County delegates without any business being accomplished.

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1981											
Regular Session	1384	772	2156	970	66	1048	48.61%	1/14 - 7/10	127	126	178
1981 Extra Session (to amend adjournment resolution)	--	2	2	--	2	2	100%	10/5 - 10/5	1	1	1
Second Regular Session	44	18	62	159	14	173		10/5 - 10/10	6	6	6
Third Regular Session (Redistricting)	2	1	3	1	1	2		10/29 - 10/30	2	2	2
1982											
First Extra Session 1982 (Redistricting)	7	2	9	7	1	8	88.88%	2/09 - 2/11	3	3	3
Second Extra Session 1982 (Redistricting)	7	1	8	3	3	6	75.0%	4/26 - 4/27	2	2	2
Regular Session	246	81	327	270	19	289		6/02 - 6/23	17	15	22
1981-82 Biennium Totals Including Extra Sessions	**1690**	**877**	**2567**	**1410**	**106**	**1528**	**59.53%**		**158**	**155**	**214**
1983											
Regular Session	1476	701	2177	929	55	984	45.20%	1/12 - 7/22	138	137	192

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
Extra Session	6	1	7	6	1	7	100%	8/26 - 8/26	1	1	1
1984											
Second Extra Session	6	2	8	7	1	8	100%	3/07 - 3/08	2	2	2
Regular Session	325	201	526	187	41	228		6/07 - 7/07	23	22	31
1983-84 Biennium Totals Including Extra Sessions	**1813**	**905**	**2718**	**1129**	**98**	**1227**	**45.14%**		**164**	**162**	**226**
1985											
First Session	1424	854	2278	793	34	827	36.30%	2/05 - 7/18	118	118	164
1986											
Extra Session	9	4	13	7	1	8	61.54%	2/18 - 2/18	1	1	1
Regular Session	718	454	1172	239	25	264		6/05 - 7/16	29	30	42
1985-86 Biennium Totals Including the Extra Session	**2151**	**1312**	**3463**	**1039**	**60**	**1099**	**31.74%**		**148**	**149**	**207**

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1987											
First Session	2166	1557	3723	879	37	916	24.60%	2/09 - 8/14	134	135	187
1988											
Regular Session	493	312	805	233	12	245		6/02 - 7/12	28	28	41
1987-88 Biennium Totals	**2659**	**1869**	**4528**	**1112**	**49**	**1161**	**25.64%**		**162**	**163**	**228**
1989											
First Session	2038	1337	3375	802	34	836	24.77%	1/11 - 8/12	137	128	214
Extra Session	1	5	6	1	--	1	16.67%	12/07 - 12/07	1	1	1
1990											
Extra Session	1	1	2	1	--	1	50.0%	3/06 - 3/06	1	1	1
Regular Session	375	295	670	270	42	312		5/21 - 7/28	46	42	69
1989-90 Biennium Totals Including Extra Sessions	**2415**	**1638**	**4053**	**1074**	**76**	**1150**	**28.37%**		**185**	**172**	**285**
1991											

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
First Session											
	1314	966	2280	761	30	791	34.69%	1/30 - 7/16	106	99	168
1991-92 Extra Session											
First Convening (redistricting - primaries)											
	13	6	19					12/30 - 12/30 91 91	1	1	1
Second Convening (redistricting - Dare County, High Point, & House & Senate)											
	3	1	4					1/13 - 1/14 92 92	2	2	2
Third Convening (redistricting - Congr., Employment Sec. Reserve Fund Threshold, & technical corrections)											
	--	1	1					1/22 - 1/24 92 92	3	3	3
Fourth Convening (alteration of 1992 electoral time table)											
	3	--	3					2/03 - 2/03 92 92	1	1	1
Extra Session Totals											
	19	**8**	**27**	**9**	**4**	**13**	**48.15%**		**7**	**7**	**7**
1992											
Regular Session											
	372	311	683	283	46	329		5/26 - 7/25	42	41	61
1991-92 Biennium Totals Including the Extra Session											
	1705	**1285**	**2990**	**1053**	**80**	**1133**	**37.89%**		**155**	**147**	**236**
1993											
First Session											
	1499	1299	2798	558	31	589**	21.05%	1/27 - 7/24	110	109	179

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS

** There were 5 bills passed and assigned chapter numbers which were not signed and therefor not ratified during the 1993 Regular Session All but one, HB 1319/Chapt. 560, were signed early in the 1995 Regular Session and retained the chapter numbers originally assigned in 1993. They are Chapters 556, 557, 559, & 562. Chapt. #560 was used at the beginning of the 1995 Regular Session for another ratified bill.

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1994											
Extra/First (Special Session on Crime)	232	179	411	28	2	30	7.30%	2/08 - 3/26	32	31	47
1994 Regular Session	635	427	1062	220	10	230		5/24 - 7/17	35	35	55
1993-94 Biennium Totals Including Extra Session	**2366**	**1905**	**4271**	**806**	**43**	**849**	**19.88%**		**177**	**175**	**281**
1995											
Regular Session	1070	1103	2173	546	15	561	25.82%	1/25 - 7/29	108	109	186
1996											
First Extra Session (Unemployment Tax)	3	2	5	1	1	2	40.0%	2/21 - 2/21	1	1	1
Regular Session	389	392	781	211	14	225		5/13 - 6/21	27	25	40
1996 Second Extra Session (Budget)	80	50	130	20	1	21	16.15%	7/8 - 8/3	19	20	27
1995-96 Biennium Totals Including Extra Sessions	**1542**	**1547**	**3089**	**778**	**31**	**809**	**26.19%**		**155**	**155**	**254**

[1] Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.

LEGISLATIVE STATISTICS 1965 thru 1998

YEAR	INTRODUCTIONS House	Senate	Total	RATIFICATIONS S.Laws	Jt.Res	Total	PERCENTAGE RATIFIED[1]	CONVENED/ ADJOURNED	LEGISLATIVE DAYS House	Senate	CALENDAR DAYS
1997											
Regular Session	1245	1089	2334	528	33	561	24.04%	1/29 - 8/28	123	123	212
1998											
Extra Session (Uninsured Children)	5	3	8	1	1	2	25%	3/24 - 4/30	23	22	38
Regular Session	520	516	1036	230	14	244	23.55%	5/11 - 10/29	100	101	172

[1] **Figure based on ratified chapters and joint resolutions only. Simple resolutions not included.**

VISITOR REGISTRATION SHEET

Judicial #2
Name of Committee

Feb 23, 99
Date

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bevacqua	NCCBI
Jan Crotts	NCASH
Bill Scoggin	NC Bar Assoc.
Eddie Caldwell	EEBC
[illegible]	Lowe's Companies
[illegible]	NCSG
[illegible]	Gov's Office
Andy Romant	N.C.A.M.
Jim Blackburn	N.C. Assoc. County Commr's
Paul Wilms	NCMBA
[illegible]	—
Katherine Davis	Electricities of NC
Mark Daise	NCAE
V L McBride	NCAA

SENATE JUDICIARY II COMMITTEE

FEBRUARY 25, 1999

ROOM 1124

SB 76	Traffic Enforcement Statistics.	Senator Ballance

Adjournment

SENATE JUDICIARY II COMMITTEE

FEBRUARY 25, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, February 25, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Fourteen members were present, including Senator Brad Miller, who presided.

Senator Ballance was recognized to explain SB 76, Traffic Enforcement Statistics. He cited statistics from several states where data has been compiled to show the high incidence of African Americans being stopped. The purpose of the bill, Senator Ballance explained, is to compile the data that is already being collected. Senator Ballance moved to amend the bill to remove certain stops from the bill, except for cases that result in a search. The motion carried unanimously.

Joe Stewart, Legislative Liaison with the Department of Crime Control, said that his department currently has most of the information compiled and already evaluates statistics collected from citations and written warnings. He said the additional paperwork required for verbal warnings would add an additional five minutes to every stop.

Charles Lindquist, with the North Carolina Troopers Association, stated that the Troopers Association generally supports the bill, but has reservations about recording information on verbal stops. He said that the new law would take too much of the troopers' time and could result in more tickets.

Senator Ballance discussed amending the bill to omit the collection of data on non-ticketed stops. Bill Alexander, NC Police Benevolent Association, spoke in support of both amendments. Senator Miller questioned whether excluding verbal warnings would negate the purpose of the bill. Senator Ballance agreed to carry over the proposed amendment till the next meeting.

The meeting adjourned at 11:00 a.m.

Brad SD
Senator Brad Miller, Chairman

Cornelia McMillan
Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 76

Short Title: Traffic Enforcement Statistics. (Public)

Sponsors: Senators Ballance, Cooper, Gulley; Ballantine, Dannelly, Jordan, Lee, Lucas, Martin of Guilford, Miller, Odom, Phillips, Reeves, Shaw of Cumberland, and Soles.

Referred to: Judiciary II.

February 15, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

m. Whether any injuries resulted from the stop; and

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

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

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

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 76

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

S76-ARV-001

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Senator Ballance

moves to amend the bill on page 3, lines 4-5,
by inserting between those lines the following:
" The information required by this subdivision need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in sub-subdivisions d. through n. of this subdivision."

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

North Carolina General Assembly
Legislative Services Office

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

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(919) 733-2578

February 25, 1999

MEMORANDUM

TO: Senator Brad Miller, Chair, Senate Judiciary II Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **Senate Bill 76 (Traffic Enforcement Statistics)**

Senate Bill 76, introduced by Senator Ballance, would require the Division of Criminal Statistics to collect and maintain specified information regarding traffic law enforcement by State law enforcement officers. The information would include the number of persons stopped, identifying characteristics of the driver including race, age and gender, the alleged traffic violation that was the basis for the stop and whether a search was instituted. In instances where a search is instituted, the information will include the legal basis for the search and a description of the nature of the search, the results of the search, and a description of any physical resistance by the driver or force by the officer.

Under existing law, the Division of Criminal Statistics has the responsibility to provide the Governor and the General Assembly with the information it collects biennially, or more often if required by the Governor. The responsibilities with regard to the collection of information regarding traffic enforcement would apply to law enforcement actions occurring on or after October 1, 1999.

Background: Under G.S. 20-183, State law-enforcement officers are authorized to stop any motor vehicle upon the highways of the State for the purpose of determining whether the vehicle is being operated in violation of any of the provisions of the Motor Vehicles Act, and they have the power to arrest on sight or upon warrant any person found violating the provisions of the Act. The term "State law-enforcement officers" as used in Senate Bill 76 would primarily affect the Highway Patrol, since they have specific statutory authority under G.S. 20-188 to "regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State." The Highway Patrol also has the authority throughout the State of any police officer in respect to making arrests for any crimes committed in their presence, along with authority to make arrests for any crime committed on any highway. They may also arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

THE NEWS & OBSERVER
FRIDAY, FEBRUARY 19, 1999



I advise and enjoin those who direct the paper in the tomorrows never to advocate any cause for personal profit or preferment. I would wish it always to be "the tocsin" and to devote itself to the policies of equality and justice to the underprivileged. If the paper should at any time be the voice of self-interest or become the spokesman of privilege or selfishness it would be untrue to its history.

— from the will of Josephus Daniels, Editor and Publisher 1894-1948

Who's being stopped?

The state Highway Patrol says it does not happen. Black drivers in North Carolina say it happens all the time, so often they have a cynical nickname name for it: "driving while black." They say they routinely are stopped under flimsy pretexts and their vehicles searched for drugs far more often than demographics would indicate is fair.

Sen. Frank Ballance, a Warrenton Democrat, has introduced a bill that, if enacted, would provide pertinent facts. And those facts are needed. The bill also would provide the patrol leadership with an excellent management tool to help judge how wisely its resources are being used.

Under Ballance's bill, troopers would be required to note the race, age and sex of every driver they stop, regardless of whether they were arrested, cited, warned or sent on their way. Such data is collected now only when the driver is ticketed or stopped by the patrol's special drug interdiction team. The attorney general's office would issue a report to the General Assembly every two years based on that information.

As recently as 1996, The N&O found that black male drivers on I-95 and I-85 were being charged by the patrol's so-called "I-Team" at nearly twice the rate they were charged by other troopers patrolling those same roads. In most cases, no drugs were found and drivers were cited for minor traffic violations.

Patrol statistics show that last year, blacks and other minorities were twice as likely as white drivers to have their cars searched by the drug squad. Officials with the Department of Crime Control and Public Safety say they are concerned that black drivers are searched more often than white ones, but deny that troopers single out blacks for stops.

The numbers, which the patrol says would be relatively easy but expensive to collect, should settle this issue of equitable treatment once and for all. It is an investment of time and money that is well worth making. If the patrol is, as many blacks believe, unfairly targeting them, it must be stopped immediately. If not, the patrol deserves to be exonerated. Ballance's bill would go a long way toward showing who is right.

VISITOR REGISTRATION SHEET

Judiciary II — 2-25-99
Name of Committee — Date

May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bill Alexander	NC PBA
Stephanie Gibbs	Charlotte Observer
Deborah Ross	ACLU
Charles Cromer	NCATL
Scott Hammack	NCATL
Matt Osborne	AOC
DAVID RICE	W-S JOURNAL
Craig Portogal	Bode & Associates
Alice Gregory	Poyner & Spruill
John Phelps	NCLM
Ken Howell	Gov's Office
David Ferrell	Hafer M'Nairy et al
Susan Rabon	DOT
Doug Rogers	NC DOT
Shannon Bullock	GHSP
Jill Wilcox	GHSP

VISITOR REGISTRATION SHEET

Name of Committee

Date

May 22, 1996

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
V C McBride	DOT

SENATE JUDICIARY II COMMITTEE

MARCH 2, 1999

ROOM 1124

SB 76 Traffic Enforcement Statistics. Senator Ballance

Adjournment

SENATE JUDICIARY II COMMITTEE

MARCH 2, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, March 2, 1999, at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members attended the meeting, including the Chair, Senator Brad Miller, who presided.

Senator Miller called the meeting to order and gave a brief synopsis of the discussion from the last meeting concerning SB 76, Traffic Enforcement Statistics. Senator Balance was recognized and spoke in favor of including oral warnings in the bill.

Joe Stewart, legislative liaison with the Department of Crime Control, discussed the time needed by troopers to verify a driver's race using the state's computerized driver's license information. Senator Odom moved to amend the bill on page 2, line 33, rewriting that line to read: whether any written citation or oral or written warning was issued. The motion carried unanimously. Dave Horne, NC Troopers Association, said the new requirements would result in their writing more tickets and giving fewer oral warnings. Senator Hagan sent forth an amendment to change the bill on page 2, lines 19 and 22, substituting the word "persons" with the word "drivers." The motion carried unanimously. Senator Kinnaird moved to roll the three amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Thursday, March 04, 1999

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

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

S.B. **76** Traffic Enforcement Statistics.

Draft Number:	PCS6543
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Sen. Miller to sign.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 76

Short Title: Traffic Enforcement Statistics. (Public)

Sponsors: Senators Ballance, Cooper, Gulley; Ballantine, Dannelly, Jordan, Lee, Lucas, Martin of Guilford, Miller, Odom, Phillips, Reeves, Shaw of Cumberland, and Soles.

Referred to: Judiciary II.

February 15, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

m. Whether any injuries resulted from the stop; and

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 76
Proposed Committee Substitute S76-PCS6543-RV

Short Title: Traffic Enforcement Statistics. (Public)

Sponsors:

Referred to:

February 15, 1999

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

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February 25, 1999

MEMORANDUM

TO: Senator Brad Miller, Chair, Senate Judiciary II Committee

FROM: Brenda J. Carter, Committee Co-Counsel

RE: **Senate Bill 76 (Traffic Enforcement Statistics)**

Senate Bill 76, introduced by Senator Ballance, would require the Division of Criminal Statistics to collect and maintain specified information regarding traffic law enforcement by State law enforcement officers. The information would include the number of persons stopped, identifying characteristics of the driver including race, age and gender, the alleged traffic violation that was the basis for the stop and whether a search was instituted. In instances where a search is instituted, the information will include the legal basis for the search and a description of the nature of the search, the results of the search, and a description of any physical resistance by the driver or force by the officer.

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AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 19 & 22

( ) WHICH CHANGES THE TITLE

by substituting the word "persons" with the word "drivers"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

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( ) WHICH CHANGES THE TITLE

by ~~rewriting~~ rewriting that line to read:

h. Whether any written citation OR oral or written warning was issued

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 76

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

S76-ARV-001

Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Senator Ballance

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by inserting between those lines the following:
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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



THE NEWS & OBSERVER
FRIDAY, FEBRUARY 19, 1999

I advise and enjoin those who direct the paper in the tomorrows never to advocate any cause for personal profit or preferment. I would wish it always to be "the tocsin" and to devote itself to the policies of equality and justice to the underprivileged. If the paper should at any time be the voice of self-interest or become the spokesman of privilege or selfishness it would be untrue to its history.

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THE NEWS & OBSERVER
SATURDAY, FEBRUARY 27, 1999

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The patrol's promises

The state Highway Patrol, steeped in politics and troubled by ethics concerns in leadership, has a new commander, and a mandate to end perceptions of racial bias in operations.

Governor Hunt and state Crime Control Secretary Richard Moore are breathlessly optimistic about a new Highway Patrol commander, and their recent efforts to study the patrol's pattern of stops — specifically, whether patrol personnel target minority motorists more often than others. In addition, a three-day ethics course for the patrol's senior officers will, it's hoped, clear off the possibility of more clouds over the patrol's leadership. (Three previous commanders retired after ethics concerns were raised, with the most recent commander having accepted free building materials for his home.)

Lt. Col. Richard Holden, 51, chosen by Hunt as the patrol's new commander, is a 30-year veteran and was one of the patrol's first minority cadets. Formerly the director of support operations, he assumes leadership at a difficult time. In addition to the ethics troubles of some of his predecessors and the patrol's reputation as an agency steeped in, and dependent upon, political connections, Holden takes over while the legislature is considering a bill to require state law enforcement officers to record the race and sex of every driver they stop, along with the result of the stop (ticket, warning, etc.). Holden supports that idea.

Holden seems a good choice; performance will tell. But as to whether the patrol should keep more detailed records about the people its officers stop — that's obviously desirable, and the overwrought objections cited by some, including the head of the state Troopers Association, are way off the mark. Charles Lindquist Jr., the association head, said it would take too long to record the information. But it's absurd to think that troopers can't take a few minutes to record basic, simple data about an important aspect of their work.

More disturbing is Lindquist's suggestion that troopers who had to take down more information about all stops might start giving more tickets, what with all that extra hassle. That edges out of absurdity and into outrage. Troopers should cite or not cite motorists based on their judgment and the facts, nothing more. Those who do otherwise would be demonstrating a temperament not appropriate in law enforcement, period.

Moore says he'll have his department conduct a study of patrol stops to answer what he concedes is a "perception in minority communities" that some officers target those they stop based on race. That's fine, but no matter what a study shows, troopers ought to have to record race and sex data about all those they stop simply as a matter of accountability.

Holden is a loyal patrol veteran, but he's going to have to quiet some qualms about the patrol's performance and its leadership. The new commander surely recognizes that the patrol's credibility rests in part in the confidence the public has in it. Holden's charge is to rebuild that confidence, and to see to it that the ethical clouds seeded by past problems are cleared away for good.

VISITOR REGISTRATION SHEET

Judicial #2
Name of Committee

March 2, 99
Date

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Danny Rogers	NCDOT
Lee Rubert	CJPC
Walt Soars	Attorney 415 W. Friendly Ave Gboro 2740
Beth Robertson	Johnson Mercer
~~Myth Osborne~~	AOC
Alisa Gregory	Poyner & Spruill
Melissa Lovell	DOJ
Christina Medlin	Covenant w/ NC's Children
Deborah Ross	ACLU
Rusty Sapkin	NCDOT
Joe Stewart	CCPS
Katherine Joyce	SCANC
	Smith Helms
Andy Romanet	N.C. CAP
	NC Bar

VISITOR REGISTRATION SHEET

Name of Committee

March 2, 1999
Date

~~May 22, 1996~~

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Steve Keene	NCMT
Scott Hannack	NCATL
John McMillan	NAFIS
Ken Haven	Gov's Office

SENATE JUDICIARY II COMMITTEE

MARCH 11, 1999

ROOM 1124

SB 290	Lobbying Law Amendments	Senator Miller
SB 310	Amend Time for Notice of Appeal	Senator Miller
SB 311	Modify Summons Under Rule 4	Senator Miller

Adjournment

SENATE JUDICIARY II COMMITTEE

MARCH 11, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, March 11, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Ten members were present, including Senator Brad Miller, who presided.

Action was taken on the following bills:

SB 290, Lobbying Law Amendments, was explained by Senator Miller. Secretary of State Elaine Marshall voiced her support for the bill and explained the difficulty her staff encounters trying to collect tardy reports and late fees from lobbyists. Senator Forrester moved to amend the bill to allow the Secretary of State to reduce or waive a late filing fee for "excusable neglect, unavoidable delay, or other good cause." Secretary Marshall responded that she would prefer not to handle waivers, but would accept the wishes of the committee. The motion failed. Senator Ballance moved a favorable report of the bill. The motion carried unanimously. **Favorable Report.** SB 290 was referred to the Finance Committee.

SB 310, Amend Time for Notice of Appeal, was explained by Senator Miller. Senator Kerr questioned the varying effective dates as stated in Section 6. Bill Scoggins, from the North Carolina Bar Association, explained that the reason for the variance was that the old 7A was stopped and that the new 7B was started. Senator Bill Martin moved a favorable report of the bill. The motion carried unanimously. **Favorable Report.**

SB 311, Modify Summons Under Rule 4, was explained by Senator Miller. Senator Ballance moved a favorable report of the bill. The motion carried unanimously. **Favorable Report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Monday, March 15, 1999

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

FAVORABLE

S.B. **290** Lobbying Law Amendments.
Sequential Referral: Finance Committee
Recommended Referral: None

S.B. **310** Amend Time for Notice of Appeal.
Sequential Referral: None
Recommended Referral: None

S.B. **311** Modify Summons Under Rule 4.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comment: Sen. Miller to sign.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 290

Short Title: Lobbying Law Amendments. (Public)

Sponsors: Senators Miller; Gulley, Harris, Kinnaird, Lucas, Metcalf, Reeves, Shaw of Cumberland, and Weinstein.

Referred to: Judiciary II.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ~~($10.00).~~ ($10.00) per day for the first 30 days the report is late and fifty dollars ($50.00) per day thereafter, not to exceed a total of one thousand dollars ($1,000).

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ~~($10.00).~~ ($10.00) per day for the first 30 days the report is late and fifty

dollars ($50.00) per day thereafter, not to exceed a total of one thousand dollars ($1,000).

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. G.S. 120-47.9 reads as rewritten:

"**§ 120-47.9. Punishment for violation.**

Whoever willfully violates any provision of this Article shall be guilty of a Class ~~1~~ A1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction."

Section 4. This act becomes effective January 1, 2000, and Section 3 applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 310

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

Sponsors: Senator Miller.

Referred to: Judiciary II.

March 10, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 7A-725. Appeals.**

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

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

"**§ 7B-3508. Appeals.**

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 311

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

Sponsors: Senator Miller.

Referred to: Judiciary II.

March 10, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

"(d) Summons -- ~~Extension; endorsement, alias and pluries.~~ Extension of time for serving. -- When any defendant in a civil action is not served with the original summons within the time allowed for ~~service,~~ service under Rule 4(c), the action may be continued in existence as to ~~such~~ that unserved defendant by ~~either of the following methods of extension:~~

~~(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or~~

~~(2) The plaintiff may sue~~ the plaintiff suing out an alias or pluries summons ~~returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time~~ within 90 days ~~after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.~~ after the issuance of the original summons. The alias or pluries summons shall be returned in the manner prescribed under Rule 4(c1). Subsequent alias or pluries summons, returnable in the same manner as the original summons, may be sued out at any time within 90 days after the date of issuance of the last preceding summons in the chain of summonses.

~~Provided, in~~ (d1) Summons -- Extension of time for serving in tax and assessment foreclosures. -- In tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-374, ~~the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an~~ an alias or pluries summons may be sued out at any time within two years after the issuance of the original ~~summons, and after~~ summons. After the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

~~Provided, for~~ (d2) Summons -- Extension of time for serving defendant not within the Unites States. -- For service upon a defendant in a place not within the United ~~States, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made at least once every two years; or~~ States at the time the action is commenced, an alias or pluries summons may be sued out at any time within two years after the issuance of the original ~~summons, and after~~ summons. After the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action if sued out within two years of the last preceding summons in the chain of ~~summonses or within two years of the last prior endorsement.~~

~~Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension.~~ summonses."

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

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

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

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

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 290

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

S290-ASD-001

Date 1/12 ~~1/14~~ ,1999

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 1, line 11, by inserting the following language after the period:

"The Secretary of State may reduce or waive a late filing fee under this section for excusable neglect, unavoidable delay, or other good cause."

And, on page 1, line 25, by inserting the following language after the period:

"The Secretary of State may reduce or waive a late filing fee under this section for excusable neglect, unavoidable delay, or other good cause."

TO: Senator Brad Miller, Chair, Senate Judiciary II Committee
FROM: Ed Rossi, Committee Co-Counsel
DATE: February 25, 1999
RE: Lobbying Law Amendments, SB 290 1st Ed.

Summary Senate Bill 290 1st Ed:

- Imposes late fees on expense reports filed by lobbyists and their principals.
- Imposes tougher penalties for willful violations of the lobbying law.

Background

North Carolina's lobbying law only applies to direct attempts to influence legislative action in the General Assembly. It does not cover attempts to influence the executive branch. Prospective lobbyists are required to register with the Secretary of State, and are also required to file expense reports with the Secretary. In addition, lobbyists' clients are also required to file expense reports

With the exception of the change in the penalty section (Section 3.), this bill is identical to legislation (Senate bill 649) that was introduced by Senator Miller in the 1997. That legislation, as amended, was approved by the Senate and by the House Finance Committee, but eventually died in the House pursuant to Rule 36A.

Penalties

Section 3 of the bill changes the penalty for willful violations of the lobbying law from a class 1 misdemeanor to a class A1 misdemeanor. The chart below shows the differences in these classifications. "'C' indicates that community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; and 'A' indicates that an active punishment is authorized." G.S. § 15A-1340.23

PRIOR CONVICTION LEVELS MISDEMEANOR OFFENSES

CLASS	LEVEL I No Prior Convictions	LEVEL II One to Four Prior Convictions	LEVEL III Five or More Prior Convictions
A1	1-60 days C/I/A	1-75 days C/I/A	1-150 days C/I/A
1	1-45 days C	1-45 days C/I/A	1-120 days C/I/A
2	1-30 days C	1-45 days C/I	1-60 days C/I/A
3	1-10 days C	1-15 days C/I	1-20 days C/I/A.

Referral

Pursuant to Senate Rule 42(b) this bill should be referred to the Committee on Finance

TO: Senator Brad Miller, Chair, Senate Judiciary II Committee
FROM: Ed Rossi, Committee Co-Counsel
DATE: February 25, 1999
RE: Modify Summons Under Rule 4, SB 311 1st Ed.

Summary

Senate bill 311 makes two changes to Rule 4 of the Rules of Civil Procedure:

- It extends the life of a summons from 30 days to 90 days.
- It takes away the ability to extend the life of a summons by way of endorsement.

Background

Under Rule 4(c) of the Rules of Civil Procedure, a summons must be served within 30 days of the date of issuance. If service cannot be had within that time, an unserved summons can be kept alive indefinitely by one of two methods:

1. *Endorsement* – the plaintiff secures and endorsement from the clerk of the court for an extension of time to complete service of process. This endorsement may be obtained within 90 days of the date of issuance of the summons or the date of last prior endorsement. Rule 4(d)(1).

2. *Alias or Pluries Summons* – the plaintiff sues out and alias or pluries summons within 90 days of the last summons in the chain of summonses or last endorsement. Rule 4(d)(2).

As a general rule, a plaintiff's failure to obtain an extension of time to complete service of process within 90 days of the issuance of a summons results in a discontinuance of the action.[1] However, in Lemons v. Boy Scouts of America, 322 N.C. 271 (1988) the Supreme Court created a narrow exception to Rule 4(c) that allows for service of a summons after it is "*legally defunct*" i.e., after 30 days have expired since its issuance. Under this exception, a court has discretion, under Rule 6(b), to expand the 30-day service period provided for in Rule 4(c). This principle has been extended by the Court of Appeals to provide for an "*excusable neglect*" exception to Rule 4(c) that allows for service of a "*legally defunct" or "dormant"* summons if the delay in service is due to "*excusable neglect.*" [2] This grant of discretion allows a court to validate service of a *legally defunct* summons, where that delayed service occurred: (I) within 90 days of the issuance of the summons; and (II) the delayed service was caused by "*excusable neglect.*"[3]

Procedure for Obtaining Endorsements or Alias or Pluries Summons

An *endorsement* is obtained by having the clerk of the court make a statement on the original summons that indicates that an extension of time was granted and the date on which that extension was granted.[4]

An *alias* summons is the first summons following the original summons.[5] Subsequent summonses in the chain of summonses are termed *pluries.*[6] These summonses are obtained by making an oral application to the clerk of the court.

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[1] Howell's Shufford North Carolina Civil Practice and Procedure 5th ed. §4-5
[2] Id.
[3] Id.
[4] Id.
[5] Id.
[6] Id.

VISITOR REGISTRATION SHEET

Judiciary II — 3/11/99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Scott Hannack	NCATL
Bill Scoggin	NC BAR ASSOC.
Bernard Allen	SOS
Mike Carpenter	NCCBA
Mike Lyle	SOS
Mary Kelley	SOS
Paul Weaver Best	AOC
Mark Gleason	Capitol Group
Kim Hibbard	NCLM
John McMillan	MFAS
John Bowdish	Jordan Price, P.A.
Mari Smith	Bode-Wallace
R. Paul Wilms	NCHBA
Barbara Cramer	NCATL
Bill Wilson	NCAE
John McAlister	Duke Energy
Brenda Simmons	NC Equity
John May	NCLWV council
Jim Case	NCRMA
John Policastro	AT&T
Soren Schmidt	NCJCDC

VISITOR REGISTRATION SHEET

Judiciary II — 3/11/99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
D R Bean	
John Moran	OAH

SENATE JUDICIARY II COMMITTEE

MARCH 18, 1999

ROOM 1124

SB 291	Child Care subsidy Fraud/AB.	Senator Phillips
SB 329	New Lapse Statute.	Senator Hagan
Adjournment		

SENATE JUDICIARY II COMMITTEE

MARCH 18, 1999

MINUTES

The Senate Judiciary II Committee met on March 18, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Twelve members were present, including Senator Brad Miller, who presided.

Action was taken on the following bills:

SB 291, Child Care Subsidy Fraud/AB, was explained by Senator Phillips. Stephanie Fanjul, Director of the Division of Child Development with the Department of Health and Human Services, was recognized to answer questions from the committee members. She explained that the Department supports the bill, particularly the incentive segment that allows local Departments of Social Services to investigate cases of fraud and to address the integrity of child care programs. Senator Forrester moved a favorable report of the bill. The motion carried unanimously. SB 291 was referred to the Appropriations Committee. **Favorable Report.**

SB 329, New Lapse Statute, was explained by Senator Hagan. She stated that an amendment was being prepared and would be voted on at the next meeting. Senator Miller adjourned the meeting at 11:00 a.m.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Monday, March 22, 1999

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

FAVORABLE

S.B. **291** Child Care Subsidy Fraud/AB.
Sequential Referral: None
Recommended Referral: Appropriations Committee

TOTAL REPORTED: 1

Committee Clerk Comment: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 291

Short Title: Child Care Subsidy Fraud/AB. (Public)

Sponsors: Senators Phillips; Albertson, Allran, Carter, Cochrane, Dalton, Hagan, Harris, Hartsell, Jordan, Lee, Lucas, Martin of Pitt, Martin of Guilford, Moore, Odom, Perdue, Purcell, Reeves, and Weinstein.

Referred to: Judiciary II.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIMINAL PENALTIES FOR FRAUDULENT MISREPRESENTATION INVOLVING CHILD CARE SUBSIDIES AND TO PROVIDE COUNTIES A FINANCIAL INCENTIVE TO INVESTIGATE AND PURSUE FRAUD IN CHILD CARE PAYMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-107. Fraudulent misrepresentation.**

(a) A person, whether a provider or recipient of child care subsidies or someone claiming to be a provider or recipient of child care subsidies, commits the offense of fraudulent misrepresentation when both of the following occur:

(1) With the intent to deceive, that person makes a false statement or representation or fails to disclose a material fact.

(2) As a result of the false statement or representation or the omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) If the child care subsidy is in the amount of four hundred dollars ($400.00) or less, the person is guilty of a Class 1 misdemeanor. If the child care subsidy is in the amount of more than four hundred dollars ($400.00), the person is guilty of a Class I felony.

(c) As used in this section:

(1) 'Child care subsidy' means the use of public funds to pay for day care services for children of needy families.

(2) 'Person' means an individual, association, consortium, corporation, body politic, partnership, or other group, entity or organization."

Section 2. Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-108. Financial incentives for counties to investigate and pursue alleged child care fraud.**

The Department of Health and Human Services shall allow each local purchasing agency to retain as an incentive bonus the actual amount of child care fraud and overpayment claims collected by the local purchasing agency. Incentive bonuses under this section shall be used by the agency for the purchase of subsidized child care or to enhance and improve program integrity. The agency shall use at least seventy-five percent (75%) of the incentive bonus funds under this section for the purchase of subsidized child care. The agency shall not use more than twenty-five percent (25%) of the incentive bonus funds under this section for program integrity. On or before October 1 each year, each agency shall report to the Department of Health and Human Services on the use of the incentive bonuses under this section during the previous fiscal year. This section does not apply to overpayments due to administrative errors of local purchasing agency staff."

Section 3. Section 1 of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 329

Short Title: New Lapse Statute. (Public)

Sponsors: Senators Hagan; Ballance, Carter, Garrou, Garwood, Kinnaird, Rand, and Robinson.

Referred to: Judiciary II.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE NORTH CAROLINA'S LAPSE STATUTE LESS RESTRICTIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-42 is repealed.

Section 2. Chapter 31 of the General Statutes is amended by adding a new section to read:

"**§ 31-42.1. Failures of devises and legacies by lapse or otherwise; renunciation.**

(a) Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death. The provisions of this section apply whether the devise is a gift to an individual, a gift to a class, or a residuary devise. In the case of the class gift, the issue shall take whatever share the deceased devisee would have taken had the devisee survived the testator.

(b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in proportion to their share of the residue. If the devise is a residuary devise, the gift shall augment the shares of the other residuary devisees, including the shares of any

substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

(c) Renunciation of a devise is as provided for in Chapter 31B of the General Statutes."

Section 3. This act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date.

SENATE BILL 291:
Child Care Subsidy Fraud/AB

BILL ANALYSIS

Committee: Senate Judiciary II
Date: March 18, 1999
Version: 1st Edition

Introduced by: Sen. Phillips
Summary by: Brenda J. Carter
Committee Co-Counsel

SUMMARY: Senate Bill 291 would provide specific criminal penalties for fraudulent misrepresentation involving child care subsidies. If the amount involved is $400 or less the offense is a Class 1 misdemeanor. If the amount is more than $400, the offense is a Class I felony.

CURRENT LAW: It is likely that an offender could now be prosecuted under G. S. 14-100, which governs the offense of "Obtaining Property by False Pretenses". A person is guilty of the offense if he or she makes a representation of a past or existing fact or a future event, and the representation: (i) is false, is calculated and intended to deceive, (ii) is intended and calculated to deceive, (iii) does in fact deceive another person, and (iv) the person thereby obtains or attempts to obtain money, property, services, or some other thing of value from that other person. The offense is a Class H felony.

BILL ANALYSIS: There are specific offenses in Chapter 108A which deal with Medicaid Card Fraud, Food Stamp Fraud, and Welfare Fraud. The language in Senate Bill 291 closely tracks the offense of welfare fraud, which applies with regard to public assistance programs such as AFDC, foster care, adoption assistance, low-income energy assistance, medical assistance, and others.

Section 1 of the bill provides that any provider or recipient of child care subsidies, or anyone claiming to be a provider or recipient, commits the offense of fraudulent misrepresentation if he or she makes a false statement or misrepresentation or fails to disclose a material fact with the intent to deceive, and as a result the person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or another person. If the amount involved is $400 or less, the offense is a Class 1 misdemeanor. Under structured sentencing, assuming the person has no prior record, a Class 1 misdemeanor is punishable by 1-45 days community punishment – judgment may consist of a fine only; the amount of the fine is in the discretion of the court. If the amount involved is more than $400, the offense is a Class I felony. Assuming again that the person has no prior record, the presumptive minimum sentence for a Class I felony is 4-6 months community punishment. Again, judgment may consist of a fine only, the amount of the fine being in the discretion of the court.

Section 2 of the bill is described in the title as providing counties a financial incentive to investigate and pursue fraud in child care payments. A new G.S. 110-108 would require DHHS to allow each local purchasing agency to retain as an incentive bonus the actual amount of child care fraud and overpayment claims collected by the local agency. At least 75% of the amount is to be used for the purchase of subsidized child care, up to 25% may be used to "enhance and improve program integrity". Each agency is required to report to DHHS on an annual basis the use of the bonus funds.

The criminal offense would become effective December 1, 1999 and apply to offenses committed on or after that date. The remainder of the bill would become effective July 1, 1999.

S329:
New Lapse Statute

BILL ANALYSIS

Committee: Senate Judiciary II
Date: March 17, 1999
Version: 1st

Introduced by: Senator Hagan
Summary by: Ed Rossi
Committee Co-Counsel

*SUMMARY: **Senate bill 329 rewrites the State's anti-lapse statute. The bill changes the criteria that determine whether the children of a person who dies, or is otherwise disqualified, before taking property under a will can be substituted for the person who was named in the will.***

CURRENT LAW: Under current law[1], a deceased or otherwise disqualified devisee's issue (children) can take property in place of the deceased or disqualified devisee if they would have otherwise received an inheritance from the testator had the testator died without a will

BILL ANALYSIS: Senate bill 329 changes this rule: instead of looking to see whether the deceased or disqualified devisee's issue could have taken under the intestacy statute, the new test is whether the issue are related to the testator through the testator's grandparents

BACKGROUND: The anti-lapse statute addresses the situation that occurs when someone named in a will dies before the testator (the person making the will). At common law, an attempted testamentary gift was ineffective if the intended donee died before the testator.[2] If the intended donee died after the will was executed, the gift was said to "lapse;" if they died before the will was executed it was "void."[3] With the introduction of anti-lapse statutes, these results changed. Under current law and under the proposed change envisioned by Senate bill 329, unless there is a contrary intent expressed in the will, such gifts would not "lapse," nor be "void." Instead, the contemplated gifts would either go to the intended donee's issue or they would be transferred under the will's residuary clause.

[1] G.S. § 31-42.
[2] Gratuitous Transfers 3rd Ed. P.360.
[3] Id.

MAIN POINTS OF CHILD CARE SUBSIDY FRAUD BILL

Summary

- Fraudulently receiving day care subsidy for $400 or less will become a Class 1 misdemeanor.
- Fraudulently receiving day care subsidy for more than $400 will become a Class I felony.
- Applies to persons receiving day care subsidy services fraudulently or to providers receiving day care subsidy funds fraudulently.
- Allows local purchasing agencies (usually the county department of social services) to keep all of fraudulent day care subsidy funds they recoup. This does not include overpayments made because of agency errors.
- The money that agencies recoup must be used to purchase subsidized day care services or to enhance and improve program integrity (ex: hire staff to recoup fraud).

Why This Bill is Needed

- Without any specific statutory direction, district attorneys have been reluctant to charge persons with day care subsidy fraud.
- Public assistance programs such as food stamps, Welfare, and Medicaid all have statutory references to fraud (in G.S. 108A).
- Allowing local purchasing agencies to keep the subsidized day care fraud money they recoup provides an incentive for them to pursue fraud and dollars to hire staff to do the investigations.

Examples of Recent Subsidized Day Care Fraud in SFY 1997-98

- A provider in Gaston County overbilled the State $25,000 for subsidized child care.
- A provider in Mecklenburg County overbilled the State $17,000 for subsidized child care.
- Although these providers are paying the money back, they were not charged with fraud because the current statutes do not specifically define it as a criminal offense.
- 55 local purchasing agencies recouped day care fraud money last year with amounts ranging from less than $100 to over $10,000.

devise of "the whole of my lands" to devisees, includes land acquired by the testator after the publication of his will when no intention to the contrary appears. A subsequent clause in the will, directing "my other property of every kind not before mentioned to be sold," refers to other personal property. Edwards v. Warren, 90 N.C. 604 (1884).

Date on Will Immaterial. — When a writing purporting to be a will has been duly probated and thereby determined to be the last will of the deceased, it is effective as of the moment of testator's death, and the date appearing on the instrument then becomes immaterial. In re Marks' Will, 259 N.C. 326, 130 S.E.2d 673 (1963).

Devise of Interest in Another's Estate. — Inasmuch as a will speaks as of the time of testator's death, a devise by O of her "undivided interest and property in the estate of the late G.C." passes no such part of the distributive share in such estate as has been collected and received by O, for, immediately upon its payment to O, it became her property and ceased to be a part of the estate of G.C. Aydlett v. Small, 115 N.C. 1, 20 S.E. 163 (1894).

Designation of Quantity of Land Does not Prevent Operation of Rule. — Where a testator devised his lands south of a certain line, "containing by estimation two hundred acres," and subsequently he purchased other lands south of the line, the reference to the number of acres did not prevent the latter lands being included in the devise. Brown v. Hamilton, 135 N.C. 10, 47 S.E. 128 (1904).

Land under Contract of Purchase after Execution of Will. — In re Champion, 45 N.C. 246 (1853), the devise was to testator's wife: Item 1: "All my real estate, consisting of several lots in Shelby," etc., and in Item 2: "All of my personal estate of whatever nature." After the date of the will he contracted to purchase another tract, but had not paid for it at his death. It was held that his rights in the unpaid for land passed to his wife, on the ground that looking at the whole instrument, the intention to give the whole estate to his wife was manifest. Hines v. Mercer, 125 N.C. 71, 34 S.E. 106 (1899).

Specific Bequest of Stock Did Not Include Accretion from Stock Split. — A specific bequest of common stock took effect as if the bequest were made immediately before the testator's death, and consequently the bequest did not include accretions resulting from a stock split occurring subsequent to the execution of the will and prior to testator's death. North Carolina Nat'l Bank v. Carpenter, 12 N.C. App. 19, 182 S.E.2d 3 (1971), aff'd, 280 N.C. 705, 187 S.E.2d 5 (1972).

Or Accretion from Recapitalization. — Where testator owned 900 shares of the stock of a corporation at the time he executed a will bequeathing 10 shares of the stock to his employee, and, as a result of a recapitalization, the 900 shares were retired and 250,000 shares of new stock were issued to testator in lieu thereof prior to testator's death, the employee was entitled to receive under the will only 10 shares of the stock as it existed at testator's death without accretions resulting from the recapitalization. North Carolina Nat'l Bank v. Carpenter, 280 N.C. 705, 187 S.E.2d 5 (1972).

Applied in Gatling v. Gatling, 239 N.C. 215, 79 S.E.2d 466 (1954); Wachovia Bank & Trust Co. v. Andrews, 264 N.C. 531, 142 S.E.2d 182 (1965).

Stated in Vandiford v. Vandiford, 241 N.C. 42, 84 S.E.2d 278 (1954).

Cited in Wright v. Wright, 198 N.C. 754, 153 S.E. 321 (1930).

§ 31-42. Failure of devises and legacies by lapse or otherwise; renunciation.

(a) Devolution of Devise or Legacy to Person Predeceasing Testator. — Unless a contrary intent is indicated by the will, where a devise or legacy of any interest in property is given to a devisee or legatee who would have taken individually had he survived the testator, and he dies survived by issue before the testator, whether he dies before or after the making of the will, such devise or legacy shall pass by substitution to such issue of the devisee or legatee as survive the testator in all cases where such issue of the deceased devisee or legatee would have been an heir of the testator under the provisions of the Intestate Succession Act had there been no will.

(b) Devolution of Devise or Legacy to Member of Class Predeceasing Testator. — Unless a contrary intent is indicated by the will, where a devise or legacy of any interest in property is given to a devisee or legatee who would have taken as a member of a class had he survived the testator, and he dies survived by issue before the testator, whether he dies before or after the making of the will, such devise or legacy shall pass by substitution to such issue of the devisee or legatee as survive the testator in all cases where such issue of the deceased devisee or legatee would have been an heir of the testator under the provisions of the Intestate Succession Act had there been no will: Provided, however, if such devisee or legatee is not survived by such issue, then the entire property interest therein shall devolve upon the remaining members of the class who survive the testator.

(c) Devolution of void, revoked, or lapsed devises or legacies. — If subsections (a) and (b) above are not applicable and if a contrary intent is not indicated by the will:

(1) Where a devise or legacy of any interest in property is void, is revoked, or lapses or which for any other reason fails to take effect, such a devise or legacy shall pass:
   a. Under the residuary clause of the will applicable to real property in case of such devise, or applicable to personal property in case of such legacy, or
   b. As if the testator had died intestate with respect thereto when there is no such applicable residuary clause; and

(2) Where a residuary devise or legacy is void, revoked, lapsed or for any other reason fails to take effect with respect to any devisee or legatee named in the residuary clause itself or a member of a class described therein, then such devise or legacy shall continue as a part of the residue and shall pass to the other residuary devisees or legatees if any; or, if none, shall pass as if the testator had died intestate with respect thereto.

(d) Renunciation of a devise or legacy shall be as provided for in Chapter 31B of the General Statutes. (1844, c. 88, s. 4; R.C., c. 119, s. 7; Code, s. 2142; Rev., s. 3142; 1919, c. 28; C.S., s. 4166; 1951, c. 762, s. 1; 1953, c. 1084; 1965, c. 938, s. 1; 1975, c. 371, s. 3; 1979, c. 525, s. 5.)

Cross References. — As to intestate succession, see § 29-1 et seq.

Editor's Note. — Session Laws 1979, c. 525, which deleted "Renounced" following "Revoked," in the catchline to subsection (c) and deleted "renounced" following "revoked," in the introductory paragraph in subdivision (1) and near the beginning of subdivision (2) of subsection (c), provides, in s. 12, that the amendment shall not affect pending litigation.

Legal Periodicals. — For article on lapse, abatement and ademption, see 39 N.C.L. Rev. 313 (1961). For survey of 1976 case law on wills, trusts and estates, see 55 N.C.L. Rev. 1109 (1977).

For brief comment on 1951 amendment, see 29 N.C.L. Rev. 425. For note concerning adopted children as issue, see 40 N.C.L. Rev. 650 (1962).

VISITOR REGISTRATION SHEET

JH 2 — Moved 1-98

Name of Committee — 3-18-99 — Date

J-II

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
John Madden	Sentencing Commission
C Medlin	Covenant w/ NC's Children
Alan Hirsch	NC Death Penalty Assistance Consortium
Pam Seamans	" " " " & Covenant
USA REYES	THE INSIDER
Samuel	DHHS - DCD
bJ Avent-Farmer	DHHS - DCD
Roslyn Smith	NC Child Care Coalition
Larry Bowles	Senator Phillips' legislative assistant
Lois Rumant	CYPC
Bill Scobie	NCBA

SENATE JUDICIARY II COMMITTEE

MARCH 23, 1999

ROOM 1124

SB 232	Bo Thomas—Bicycle Safety Act.	Senator B. Martin
SB 329	New Lapse Statute.	Senator Hagan
SB 393	Written Motions/Supporting Briefs.	Senator Miller

Adjournment

SENATE JUDICIARY II COMMITTEE

MARCH 23, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, March 23, 1999 in room 1124 of the Legislative Building. Fifteen members were present, including Senator Brad Miller, who presided.

Senator Hagan was introduced to explain SB 329, New Lapse Statute. She moved to amend the bill to clarify the wording on page 2, lines 26, 27, and 33. The motion carried unanimously. Senator Hagan moved to roll the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 232, Bo Thomas – Bicycle Safety Act, was explained by Senator Bill Martin. Speaking from the public in favor of the bill were Thomas Bennett, Executive Director of the Child Fatality Task Force, and Dr. Dale Oller, with the Wake Medical Center Trauma Center. Senator Miller announced that SB 232 would be displaced until the next meeting.

SB 393, Written Motions/Supporting Briefs, was explained by Senator Miller. Senator Miller moved to adopt a proposed committee substitute. The motion carried unanimously. Burton Craige, Legislative Vice President for the NC Academy of Trial Lawyers and Co-Chair of the Civil Procedures Study Commission that reported in 1998, spoke of the Commission's unanimous support of the bill as well as the support of the Academy. Senator Kinnaird moved to give the committee substitute a favorable report. The motion carried. **Unfavorable as to bill, but favorable as to committee substitute.**

Brad Miller

Senator Brad Miller, Chairman

Cornelia McMillan

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Wednesday, March 24, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

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

S.B. **329** New Lapse Statute.

Draft Number:	PCS3655
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **393** Written Motions/Supporting Briefs.

Draft Number:	PCS3652
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 232

Short Title: Bo Thomas--Bicycle Safety Act. (Public)

Sponsors: Senators Martin of Guilford, Purcell, Phillips, Cochrane, and Warren.

Referred to: Judiciary II.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE "BO THOMAS CHILD BICYCLE SAFETY ACT" TO REQUIRE THE USE OF CERTAIN SAFETY EQUIPMENT BY CHILDREN WHEN THEY ARE BICYCLE OPERATORS AND PASSENGERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Part 10B to Article 3 to read:

"Part 10B. Child Bicycle Safety Act.

"**§ 20-171.6. Short title.**

This Part shall be known and may be cited as the 'Bicycle Safety Act'.

"**§ 20-171.7. Definitions.**

As used in this Part, the following terms have the following meanings:

(1) 'Bicycle' means a human-powered vehicle with two wheels in tandem designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle designed to transport, by the action of pedaling, which has more than two wheels where the vehicle is used on a public roadway, public bicycle path, or other public right-of-way, but does not include a tricycle.

(2) 'Operator' means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(3) 'Other public right-of-way' means any right-of-way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or a local political subdivision thereof and is designed for use and used by vehicular and/or pedestrian traffic.

(4) 'Passenger' means a person who travels on a bicycle in any manner except as an operator.

(5) 'Protective bicycle helmet' means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation.

(6) 'Public bicycle path' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by bicycles and pedestrians.

(7) 'Public roadway' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by motor vehicles.

(8) 'Restraining seat' means a seat separate from the saddle seat of the operator of the bicycle that is fastened securely to the frame of the bicycle and is adequately equipped to restrain the passenger in such seat and protect such passenger from the moving parts of the bicycle.

(9) 'Tricycle' means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.

"**§ 20-171.8. Requirements for helmet and restraining seat use.**

With regard to any bicycle used on a public roadway, public bicycle path, or other public right-of-way:

(a) It shall be unlawful for any person under the age of 19 to operate or be a passenger on a bicycle unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit fastened securely upon the head with the straps of the helmet.

(b) It shall be unlawful for any person to be a passenger on a bicycle unless all of the following conditions are met:

(1) The person is able to maintain an erect, seated position on the bicycle;

(2) Except as provided in subdivision (3) of this subsection, the person is properly seated alone on a saddle seat (as on a tandem bicycle); and

(3) With respect to any person who weighs less than 40 pounds, or is less than 40 inches in height, the person can be and is properly seated in and adequately secured to a restraining seat.

(c) It shall be unlawful for any parent or legal guardian of a person below the age of 19 to knowingly permit such person to operate or be a passenger on a bicycle in violation of subsection (a) or (b) of this section.

(d) It shall be unlawful to rent or lease any bicycle to or for the use of any person under the age of 19 unless:

(1) The person is in possession of a protective bicycle helmet of good fit at the time of such rental or lease; or

(2) The rental or lease includes a protective bicycle helmet of good fit, and the person intends to wear the helmet, as required by subsection (a) of this section, at all times while operating or being a passenger on the bicycle.

(e) No negligence or liability shall be assessed on or imputed to any party on account of a violation of subsection (a), (b), or (c) of this section.

"**§ 20-171.9. Penalties.**

(a) Except as provided in subsection (b) of this section, any person violating any requirement set forth in G.S. 20-171.8 shall have committed an infraction as defined in G.S. 14-3.1 and may be ordered to pay a fine of up to ten dollars ($10.00). The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(b) In the case of a first conviction within a 12-month period of G.S. 20-171.8(a), (b), or (c), the court may waive the fine upon receipt of satisfactory proof that the person responsible for the infraction has purchased or otherwise obtained, as appropriate, a protective bicycle helmet or a restraining seat, and uses and intends to use it whenever required under G.S. 20-171.8.

"**§ 20-171.10. Effect on local standards.**

Nothing in this Part shall prohibit a unit of local government from adopting more stringent standards for bicycle safety by ordinance, including, but not limited to, making the provisions of this Part applicable to persons 19 years of age or older."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 329

Short Title: New Lapse Statute. (Public)

Sponsors: Senators Hagan; Ballance, Carter, Garrou, Garwood, Kinnaird, Rand, and Robinson.

Referred to: Judiciary II.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE NORTH CAROLINA'S LAPSE STATUTE LESS RESTRICTIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-42 is repealed.

Section 2. Chapter 31 of the General Statutes is amended by adding a new section to read:

"**§ 31-42.1. Failures of devises and legacies by lapse or otherwise; renunciation.**

(a) Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death. The provisions of this section apply whether the devise is a gift to an individual, a gift to a class, or a residuary devise. In the case of the class gift, the issue shall take whatever share the deceased devisee would have taken had the devisee survived the testator.

(b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in proportion to their share of the residue. If the devise is a residuary devise, the gift shall augment the shares of the other residuary devisees, including the shares of any

substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

(c) Renunciation of a devise is as provided for in Chapter 31B of the General Statutes."

Section 3. This act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 393

Short Title: Written Motions/Supporting Briefs. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OF DISPOSITIVE MOTIONS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers -- When required. -- Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support of certain written motions -- When required. -- In actions in superior court, every brief or memorandum in support of a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of the parties as to one or more of the claims or parties in the action shall be served by

~~(c) If subsection (a) is not applicable and if a contrary intent is not indicated by the will:~~

~~(1) Where a devise or legacy of any interest in property is void, is revoked, or lapses or which for any other reason fails to take effect, such a devise or legacy shall pass:~~

~~a. Under the residuary clause of the will applicable to real property in case of such devise, or applicable to personal property in case of such legacy, or~~

~~b. As if the testator had died intestate with respect thereto when there is no such applicable residuary clause; and~~

~~(2) Where a residuary devise or legacy is void, revoked, lapsed or for any other reason fails to take effect with respect to any devisee or legatee named in the residuary clause itself or a member of a class described therein, then such devise or legacy shall continue as a part of the residue and shall pass to the other residuary devisees or legatees if any; or, if none, shall pass as if the testator had died intestate with respect thereto.~~

~~(d) Renunciation of a devise or legacy shall be as provided for in Chapter 31B of the General Statutes.~~

(a) Unless the will indicates a contrary intent, if a devisee predeceases the testator, whether before or after the execution of the will, and if the devisee is a grandparent of or a descendant of a grandparent of the testator, then the issue of the predeceased devisee shall take in place of the deceased devisee. The devisee's issue shall take the deceased devisee's share in the same manner that the issue would take as heirs of the deceased devisee under the intestacy provisions in effect at the time of the testator's death. The provisions of this section apply whether the devise is to an individual, to a class, or is a residuary devise. In the case of the class devise, the issue shall take whatever share the deceased devisee would have taken had the devisee survived the testator.

(b) Unless the will indicates a contrary intent, if the provisions of subsection (a) of this section do not apply to a devise to a devisee who predeceases the testator, or if a devise otherwise fails, the property shall pass to the residuary devisee or devisees in proportion to their share of the residue. If the devise is a residuary devise, it shall augment the shares of the other residuary devisees, including the shares of any substitute takers under subsection (a) of this section. If there are no residuary devisees, then the property shall pass by intestacy.

(c) Renunciation of a devise is as provided for in Chapter 31B of the General Statutes.

(d) As used in this section, 'devisee' means any person entitled to take real or personal property under the provisions of a will."

Section 2. This act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

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

S. B. No. 329 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S329-PCS-6575-SD

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 26

( ) WHICH CHANGES THE TITLE

by deleting the phrase "a gift"; and

page 2
on line 27 by deleting the phrase "a gift"

page 2
on line 27 by inserting the phrase "is a" between the word "or" and the phrase "a residuary devise."; and

on page 2 line 27 by changing the word "gift" to "devise" ~~and~~ in the second sentence.; and

page 2 line 33 removing the phrase "the gift" and replacing it with the word "it."

SIGNED Kay R. Hagan

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 393
Proposed Committee Substitute S393-PCS3652-RV

Short Title: Written Motions/Supporting Briefs. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RULES OF CIVIL PROCEDURE TO REQUIRE BRIEFS AND MEMORANDA IN SUPPORT OF DISPOSITIVE MOTIONS TO BE SERVED UPON ALL PARTIES AND TO REQUIRE WRITTEN MOTIONS TO STATE THE GROUNDS FOR THE MOTION WITH PARTICULARITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5 reads as rewritten:

"**Rule 5. Service and filing of pleadings and other papers.**

(a) Service of orders, subsequent pleadings, discovery papers, written motions, written notices, and other similar papers -- When required. -- Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(a1) Service of briefs or memoranda in support of certain dispositive motions -- When required. -- In actions in superior court, every brief or memorandum in support of a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment, or any other motion seeking a final determination of the rights of

the parties as to one or more of the claims or parties in the action shall be served by the moving party upon each of the parties no later than five days prior to the hearing on the motion, and every brief in opposition to the motion shall be served by any party opposing the motion upon each of the parties no later than two days prior to the hearing on the motion. The parties may, by consent, alter these periods of time. A brief or memorandum that is not served as required by this rule shall not be considered, unless otherwise ordered by the court for good cause shown or by the consent of the parties.

(b) Service -- How made. -- A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on his attorney of record. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service with due return may be made in the manner provided for service and return of process in Rule 4 and may be made upon either the party or, unless service upon the party himself is ordered by the court, upon his attorney of record. With respect to such other pleadings and papers, service upon the attorney or upon a party may also be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by filing it with the clerk of court. Delivery of a copy within this rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a partner or employee. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(c) Service -- Numerous defendants. -- In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. -- All pleadings subsequent to the complaint shall be filed with the court. All other papers required to be served upon a party, including requests for admissions, shall be filed with the court either before service or within five days thereafter, except that depositions, interrogatories, requests for documents, and answers and responses to those requests may not be filed unless ordered by the court or until used in the proceeding. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. With respect to all pleadings and other papers as to which service and return has not been made in the manner provided in Rule 4, proof of service shall be made by filing with the court a certificate either by the attorney or the party that the paper was served in the manner prescribed by this rule, or a certificate of acceptance of service by the attorney or the party to be served. Such

certificate shall show the date and method of service or the date of acceptance of service.

(e) (1) Filing with the court defined. -- The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. -- If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

Section 2. G.S. 1A-1, Rule 7(b) reads as rewritten:

"(b) Motions and other papers. --

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or at a session at which a cause is on the calendar for that session, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) A motion to transfer under G.S. 7A-258 shall comply with the directives therein specified but the relief thereby obtainable may also be sought in a responsive pleading pursuant to Rule 12(b)."

Section 3. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 5(a1):

"For example, for the presiding judge to consider a brief or memorandum on a motion calendar for a Monday, the moving party must serve the brief or memorandum by the close of business on the preceding Monday. Any party opposing the motion must serve a brief or memorandum by the close of business on the preceding Thursday. The rule does not require any party to submit a brief or memorandum; it only applies in certain instances in which a party intends to submit a brief or memorandum to the court. The rule would not preclude a party from providing the judge with copies of cases or statutes at a hearing."

This addition to the Official Comment shall only be for annotation purposes and shall not be construed to be the law.

Section 4. The Revisor of Statutes shall cause to be printed along with this act the following statement to the Official Comment for G.S. 1A-1, Rule 7(b):

"The 1999 amendment conforms the North Carolina rule to federal Rule 7(b). The federal courts do not apply the particularity requirement as a procedural technicality to deny otherwise meritorious motions. Rather, the federal courts apply the rule to protect parties from prejudice, to assure that opposing parties can comprehend the basis for the motion and have a fair opportunity to respond."

Section 5. This act becomes effective October 1, 1999, and applies to motions subject to this act and to briefs and memoranda subject to this act filed on or after that date.

S232:
Bo Thomas -- Bicycle Safety Act

BILL ANALYSIS

Committee: Senate Judiciary II
Date: March 23, 1999
Version: 1st Ed.

Introduced by: Sen. Bill Martin
Summary by: Ed Rossi
Committee Co-Counsel

*SUMMARY: **Senate bill 232 creates the Child Bicycle Safety Act. The bill requires that all persons under 19 wear a helmet when riding a bicycle. Children who weigh less than 40lbs or are less than 3 & ½ feet tall must be strapped into a restraining seat when they are passengers on a bicycle. The bill imposes a fine of up to $10.00 for persons who violate the act.***

CURRENT LAW: Current law does not require bicycle riders to wear helmets. Bicycles are considered vehicles for purposes of the motor vehicle code.[1] They are subject to the applicable provisions of motor vehicle code,[2] but are exempt from the impaired driving provisions of that code.[3] Currently, lights and reflectors are the only safety devices required by law.[4]

BILL ANALYSIS: *Application* – The bill only applies to bicycles that are being operated on public roadways, public rights of way, or public bicycle paths. The bill does not address bicycles operated on private roads or trails and it does not address tricycles – other than to exclude them from regulation.

Fines – Parents who knowingly permit their children to ride on bicycles in violation of the bill, may be found guilty of an infraction that carries a fine of up to$10.00. That fine may be waived if a proper helmet or restraining seat is obtained, and is used or intended to be used, and there were no other violations of the act within a 12-month period .

Merchants – The bill also covers merchants who rent bicycles. They are prohibited from renting a bicycle to a person under 19 unless that person: (i) posses a proper helmet at the time of the rental; (ii) the rental includes a proper fitting helmet that the person ***intends*** to wear at all times while riding the bicycle.

In addition, merchants are prohibited from renting a bicycle that will be used by any person under 19 unless that person: (i) posses a proper helmet at the time of the rental; (ii) the rental includes a proper fitting helmet that the person ***intends*** to wear at all times while riding the bicycle.

Thus, at the time of rental, a merchant would presumably have to ask a person under 19 whether they intended to wear a helmet at all times while riding a bicycle. If a merchant was renting or leasing to persons over 19 she would presumably have to ask the renter whether the bicycle would used by someone under 19, and if the answer was yes , the merchant would then have to ask the renter whether the person under 19 intended to wear a helmet at all times while using the bicycle.

Liability – Senate bill 232 potentially imposes different standards of liability. Parents are excluded from a *negligence per se* standard. Merchants are not.

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[1] G.S. § 20-4.01(49)
[2] Id.
[3] G.S. § 20-138.1(e)
[4] G.S. § 20-129(e)

Facts on
The Bo Thomas Bicycle Safety Act

* requires that all bicycle riders aged 18 or younger wear an approved helmet when riding on a public road or public right-of-way

* requires a restraining seat for any bicycle passenger who weighs less than 40 lbs. or is less than 40 inches in height

* forbids rental or lease of a bicycle to anyone aged 18 or younger unless the person is in possession of a protective helmet or a helmet is provided to the rider

* sets an infraction penalty and a fine of $10 (but not court costs) for anyone who violates the act, but permits the court to waive the fine if the rider shows satisfactory proof of obtaining a protective helmet and intending to wear it

Background

* Fifteen states already have statewide bicycle helmet laws.

* An average of 13 children under the age of 19 die each year as the result of bicycle accidents in North Carolina. An additional 120 children are seriously injured.

* Many more children are injured in bicycle accidents that do not involve motor vehicles and are not reported by police. A 1990 study estimated that 800 North Carolina children are hospitalized annually for bicycle-related injuries (including an estimated 264 head injuries), and an additional 13,300 children receive emergency treatment (including an estimated 8,900 head injuries).

* Head injury poses the greatest risk to bicyclists. National studies show that one-third of emergency room visits, two-thirds of hospital admissions, and three-fourths of all bicycle accident deaths involve head injury.

* Numerous studies prove that bicycle helmets reduce the likelihood of head and brain injury by 70 to 88 percent. A non-helmeted bicyclist is two to three times more likely than a helmeted bicyclist to suffer a head injury.

* In North Carolina, 6 percent of bicyclists in accidents are wearing a helmet. For bicyclists under the age of 19, just 3 percent are wearing a helmet.

* Greenville, Carolina Beach and Chapel Hill already have bicycle helmet ordinances. Boone and Black Mountain require helmets for riders of *all ages*.

(over)

<u>Supporting Organizations</u> (partial list)

* College of Emergency Physicians
* N.C. Child Fatality Task Force
* Child Advocacy Institute
* N.C. Chapter, Am. Academy of Pediatrics
* Covenant With North Carolina's Children
* Brain Injury Association of N.C., Inc.
* N.C. Public Health Association
* N.C. Assoc. Of Local Health Directors
* N.C. Soc. Of Public Health Educators
* N.C. State Board of Education

[f-03-99]

INJURIES OF CHILDREN ON BIKES IN NORTH CAROLINA

Time frame of data: 1993-1997

For further information: Liz Newlin, RN ; Trauma Coordinator, WakeMed 919-350-8951
Sharon Kromhout-Schiro, Ph.D, Registry Director 919-966-6263

Ages: 0-18.9

Total Patients: 642 in the data base for that time frame

Cumulative Information:	Total	0-5.9 yrs	6-11.9 yrs	12-18.9 yrs
Total:	642	63	421	258
Deaths with helmet:	2	0	0	2
Deaths without helmets	10	0	7	3
Deaths helmet not documented	13	1	8	4

Types of Injury:	0-5.9	6-11.9	12-18.9
With Helmet on			
Head Injury	0	3	2
Head injury and other body injuries	0	6	8
Other	1	7	12
Without Helmet			
Head injury	3	19	10
Head injury and other body injury	3	44	35
Other	3	29	30
Helmet not documented			
Head Injury	9	28	23
Head Injury and other body injury	14	77	59
Other	30	107	77

***Hospital Charges**

	Mean cost	**maximum cost**
Helmet on		
0-5.9(1)	6,483.00	6,483.00
6-11.9(16)	10,593.94	35,345.00
12-18.9(20)	15,731.85	95,248.00
No Helmet on		
0-5.9(9)	8,490.11	28,846.00
6-11.9(90)	11,937.82	160,430.00
12-18.9(73)	11,361.01	100,820.00
Helmet use not documented in report to hospital		
0-5.9(48)	7,277.00	45,216.00
6-11.9(205)	10,120.00	132,838.00
12-18.9(151)	10,818.00	107,332.00

*This is only for the initial hopital stay, not physician charges, rehab charges, home health or any other continuum of care charges 29 patients had incomplete charge information.

S329:
New Lapse Statute

BILL ANALYSIS

Committee: Senate Judiciary II
Date: March 17, 1999
Version: 1st

Introduced by: Senator Hagan
Summary by: Ed Rossi
Committee Co-Counsel

SUMMARY: Senate bill 329 rewrites the State's anti-lapse statute. The bill changes the criteria that determine whether the children of a person who dies, or is otherwise disqualified, before taking property under a will can be substituted for the person who was named in the will.

CURRENT LAW: Under current law[1], a deceased or otherwise disqualified devisee's issue (children) can take property in place of the deceased or disqualified devisee if they would have otherwise received an inheritance from the testator had the testator died without a will

BILL ANALYSIS: Senate bill 329 changes this rule: instead of looking to see whether the deceased or disqualified devisee's issue could have taken under the intestacy statute, the new test is whether the issue are related to the testator through the testator's grandparents

BACKGROUND: The anti-lapse statute addresses the situation that occurs when someone named in a will dies before the testator (the person making the will). At common law, an attempted testamentary gift was ineffective if the intended donee died before the testator.[2] If the intended donee died after the will was executed, the gift was said to "lapse;" if they died before the will was executed it was "void."[3] With the introduction of anti-lapse statutes, these results changed. Under current law and under the proposed change envisioned by Senate bill 329, unless there is a contrary intent expressed in the will, such gifts would not "lapse," nor be "void." Instead, the contemplated gifts would either go to the intended donee's issue or they would be transferred under the will's residuary clause.

[1] G.S. § 31-42.
[2] Gratuitous Transfers 3rd Ed. P.360.
[3] Id.

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Senate Bill 329, New Lapse Statute

A lapse statute (sometimes called an antilapse statute) is a statute that substitutes someone for a devisee who predeceased the testator when the drafter neglected to do so. Statutes in most other states substitute the issue of the predeceased devisee if the predeceased devisee is related to the decedent at least through the grandparents.

North Carolina's lapse statute is too restrictive. Instead of focusing on the relationship between the testator and the predeceased devisee, it focuses on the relationship between the substituted taker and the testator. It requires that the substituted taker be someone who would have been the testator's heir had the testator died without a will. This has been interpreted to mean what it says -- i.e., "would have been", not "could have been". See Wachovia Bank v. Shelton, 229 N.C. 150, 48 S.E.2d 41 (1948).

For example, assume T devised property to his brother, B. Assume that B predeceased T, but B had a child, N, who survived T. In North Carolina B's child N, who is T's nephew, will not be substituted for B if T is survived by a spouse or lineal descendants because N would not have been an heir. Only if T is not survived by a spouse or lineal descendants or parents will N take.

A rationale that has been suggested for restricting the substituted takers is that T would want closer relatives to take instead of N. However, there is no guarantee that they will take if they are not residuary devisees. If T leaves the bulk of his estate to his brother, and the residue to the American Kennel Club, and T is survived by a lineal descendant, the American Kennel Club will get the entire estate if his brother predeceases him. This would more closely effectuate intent to substitute the brother's issue.

Obviously this is not a problem that will arise with a well-drafted will. It is a homemade will problem. The new lapse statute would substitute the issue of the predeceased devisee if the predeceased devisee is related to the testator through the grandparents.

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devise of "the whole of my lands" to devisees, includes land acquired by the testator after the publication of his will when no intention to the contrary appears. A subsequent clause in the will, directing "my other property of every kind not before mentioned to be sold," refers to other personal property. Edwards v. Warren, 90 N.C. 604 (1884).

Date on Will Immaterial. — When a writing purporting to be a will has been duly probated and thereby determined to be the last will of the deceased, it is effective as of the moment of testator's death, and the date appearing on the instrument then becomes immaterial. In re Marks' Will, 259 N.C. 326, 130 S.E.2d 673 (1963).

Devise of Interest in Another's Estate. — Inasmuch as a will speaks as of the time of testator's death, a devise by O of her "undivided interest and property in the estate of the late G.C." passes no such part of the distributive share in such estate as has been collected and received by O, for, immediately upon its payment to O, it became her property and ceased to be a part of the estate of G.C. Aydlett v. Small, 115 N.C. 1, 20 S.E. 163 (1894).

Designation of Quantity of Land Does not Prevent Operation of Rule. — Where a testator devised his lands south of a certain line, "containing by estimation two hundred acres," and subsequently he purchased other lands south of the line, the reference to the number of acres did not prevent the latter lands being included in the devise. Brown v. Hamilton, 135 N.C. 10, 47 S.E. 128 (1904).

Land under Contract of Purchase after Execution of Will. — In re Champion, 45 N.C. 246 (1853), the devise was to testator's wife: Item 1: "All my real estate, consisting of several lots in Shelby," etc., and in Item 2: "All of my personal estate of whatever nature." After the date of the will he contracted to purchase another tract, but had not paid for it at his death. It was held that his rights in the unpaid for land passed to his wife, on the ground that looking at the whole instrument, the intention to give the whole estate to his wife was manifest. Hines v. Mercer, 125 N.C. 71, 34 S.E. 106 (1899).

Specific Bequest of Stock Did Not Include Accretion from Stock Split. — A specific bequest of common stock took effect as if the bequest were made immediately before the testator's death, and consequently the bequest did not include accretions resulting from a stock split occurring subsequent to the execution of the will and prior to testator's death. North Carolina Nat'l Bank v. Carpenter, 12 N.C. App. 19, 182 S.E.2d 3 (1971), aff'd, 280 N.C. 705, 187 S.E.2d 5 (1972).

Or Accretion from Recapitalization. — Where testator owned 900 shares of the stock of a corporation at the time he executed a will bequeathing 10 shares of the stock to his employee, and, as a result of a recapitalization, the 900 shares were retired and 250,000 shares of new stock were issued to testator in lieu thereof prior to testator's death, the employee was entitled to receive under the will only 10 shares of the stock as it existed at testator's death without accretions resulting from the recapitalization. North Carolina Nat'l Bank v. Carpenter, 280 N.C. 705, 187 S.E.2d 5 (1972).

Applied in Gatling v. Gatling, 239 N.C. 215, 79 S.E.2d 466 (1954); Wachovia Bank & Trust Co. v. Andrews, 264 N.C. 531, 142 S.E.2d 182 (1965).

Stated in Vandiford v. Vandiford, 241 N.C. 42, 84 S.E.2d 278 (1954).

Cited in Wright v. Wright, 198 N.C. 754, 153 S.E. 321 (1930).

§ 31-42. Failure of devises and legacies by lapse or otherwise; renunciation.

(a) Devolution of Devise or Legacy to Person Predeceasing Testator. — Unless a contrary intent is indicated by the will, where a devise or legacy of any interest in property is given to a devisee or legatee who would have taken individually had he survived the testator, and he dies survived by issue before the testator, whether he dies before or after the making of the will, such devise or legacy shall pass by substitution to such issue of the devisee or legatee as survive the testator in all cases where such issue of the deceased devisee or legatee would have been an heir of the testator under the provisions of the Intestate Succession Act had there been no will.

(b) Devolution of Devise or Legacy to Member of Class Predeceasing Testator. — Unless a contrary intent is indicated by the will, where a devise or legacy of any interest in property is given to a devisee or legatee who would have taken as a member of a class had he survived the testator, and he dies survived by issue before the testator, whether he dies before or after the making of the will, such devise or legacy shall pass by substitution to such issue of the devisee or legatee as survive the testator in all cases where such issue of the deceased devisee or legatee would have been an heir of the testator under the provisions of the Intestate Succession Act had there been no will: Provided, however, if such devisee or legatee is not survived by such issue, then the entire property interest therein shall devolve upon the remaining members of the class who survive the testator.

(c) Devolution of void, revoked, or lapsed devises or legacies. — If subsections (a) and (b) above are not applicable and if a contrary intent is not indicated by the will:

(1) Where a devise or legacy of any interest in property is void, is revoked, or lapses or which for any other reason fails to take effect, such a devise or legacy shall pass:
   a. Under the residuary clause of the will applicable to real property in case of such devise, or applicable to personal property in case of such legacy, or
   b. As if the testator had died intestate with respect thereto when there is no such applicable residuary clause; and

(2) Where a residuary devise or legacy is void, revoked, lapsed or for any other reason fails to take effect with respect to any devisee or legatee named in the residuary clause itself or a member of a class described therein, then such devise or legacy shall continue as a part of the residue and shall pass to the other residuary devisees or legatees if any; or, if none, shall pass as if the testator had died intestate with respect thereto.

(d) Renunciation of a devise or legacy shall be as provided for in Chapter 31B of the General Statutes. (1844, c. 88, s. 4; R.C., c. 119, s. 7; Code, s. 2142; Rev., s. 3142; 1919, c. 28; C.S., s. 4166; 1951, c. 762, s. 1; 1953, c. 1084; 1965, c. 938, s. 1; 1975, c. 371, s. 3; 1979, c. 525, s. 5.)

Cross References. — As to intestate succession, see § 29-1 et seq.

Editor's Note. — Session Laws 1979, c. 525, which deleted "Renounced" following "Revoked," in the catchline to subsection (c) and deleted "renounced" following "revoked," in the introductory paragraph in subdivision (1) and near the beginning of subdivision (2) of subsection (c), provides, in s. 12, that the amendment shall not affect pending litigation.

Legal Periodicals. — For article on lapse, abatement and ademption, see 39 N.C.L. Rev. 313 (1961). For survey of 1976 case law on wills, trusts and estates, see 55 N.C.L. Rev. 1109 (1977).

For brief comment on 1951 amendment, see 29 N.C.L. Rev. 425. For note concerning adopted children as issue, see 40 N.C.L. Rev. 650 (1962).

SENATE BILL 393:
Written Motions/Supporting Briefs

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Miller
Date:	March 23, 1999	**Summary by:**	Brenda J. Carter Committee Co-Counsel
Version:	PCS for 1st Edition S393-CSRV-001		

SUMMARY: ***Senate Bill 393 would amend the Rules of Civil Procedure to require that any brief in support of a motion seeking a final determination as to the rights of parties in an action must be filed at least 5 days prior to a hearing on the motion. Any brief in opposition to the motion must be filed at least 2 days prior to hearing. The bill also would require that written motions state with particularity the grounds for the motion.***

CURRENT LAW: Rule 5 of the Rules of Civil Procedure sets out the requirements for keeping all parties apprised of any actions taken in a civil matter through the service and filing of pleadings and other papers. Courts generally have held that due process requires that every party be given due notice and a reasonable opportunity to be heard regarding all proceedings in an action. Rule 5 specifically lists those papers which must be served, but also specifies "similar paper". There is no specific provision in Rule 5 regarding the filing of briefs or memoranda.

Rule 7(b) of the Rules of Civil Procedure requires that all applications for an order must be by motion. Unless made during a hearing or trial or at a session at which the case has been placed on the calendar, the motion must be in writing. The motion must state the grounds upon which the motion is sought and specify the relief or order sought.

BILL ANALYSIS: Senate Bill 393 would amend Rule 5 by inserting a provision that specifically addresses the service of briefs or memoranda in support of certain motions that would result in a final determination of the rights of the parties as to one or more of the claims or parties in the action – including a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment. Any brief in support of such motion would have to be filed at least 5 days prior to a hearing on the motion. Any brief in opposition to the motion would have to be filed at least 2 days prior to hearing. According to the Official Comment that would be printed along with the provision, the rule would not require that a person submit a brief or memorandum nor would it preclude a party from providing the judge with copies of cases or statutes at a hearing.

The bill would also amend Rule 7(b), which deals with the form of motions in a civil proceeding, to require that written motions state *with particularity* the grounds for the motion. According to the Official Comment that would be printed along with the provision, the change is to conform the N.C. rule to the federal rule.

The act would become effective October 1, 1999 and on or after that date the act will apply to motions, briefs, and memoranda subject to the act.

S393-SMRV-001

Sen. J2

VISITOR REGISTRATION SHEET

~~Appropriations Subcommittee on Health and Human Services~~ , 1999

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCATL
Kenton Craig	NCATL
Charlene Moore	guest
[illegible]	NCNA
SHARON REISS	NC CHILD ADVOCACY INST
Lee Newlin	WakeMed Trauma Services
Linda Strandt	Wake Co. SAFE KIDS Coalition
Rob Foss	UNC Highway Safety Res. Ctr., WakeMed Trauma
Nelle Allen	
Christina Medlin	Covenant w/ NC's Children
Paula A. Wolf	Covenant w/ NC's Children
Russell Mitchell	MyTHNg
David Farrell	NCCEP
Eddie CALDWELL	NCCEP
Tom Bennett	NCCF TF
Shannon Bullock	GHSP
Laura Hartsell	NC Bar Association

SENATE JUDICIARY II COMMITTEE

MARCH 25, 1999

ROOM 1124

SB 232	Bo Thomas—Bicycle Safety Act	Senator B. Martin
SB 383	Child Support Attorney Change	Senator Jordan
SB 414	Close Loophole Min. Hous. Stand.	Senator Kinnaird

Adjournment

SENATE JUDICIARY II COMMITTEE

MARCH 25, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, March 25, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

Senator Martin was recognized to continue the discussion of SB 232, Bo Thomas – Bicycle Safety Act. The following people from the public were called on and spoke in favor of the bill: Paula Wolf, Covenant With North Carolina's Children, Jane Stutts, UNC Highway Safety Research Center, Liz Newland, Wake Medical Center, Sandy Carmany, NC PTA, Jonathan Sher, President, NC Child Advocacy Institute, and Tom Bennett, NC Child Fatality Task Force.

Senator Miller announced his intention to appoint a subcommittee to work out the various objections to the bill. The meeting adjourned at 11:00 a.m.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 232

Short Title: Bo Thomas--Bicycle Safety Act. (Public)

Sponsors: Senators Martin of Guilford, Purcell, Phillips, Cochrane, and Warren.

Referred to: Judiciary II.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE "BO THOMAS CHILD BICYCLE SAFETY ACT" TO REQUIRE THE USE OF CERTAIN SAFETY EQUIPMENT BY CHILDREN WHEN THEY ARE BICYCLE OPERATORS AND PASSENGERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Part 10B to Article 3 to read:

"Part 10B. Child Bicycle Safety Act.

"**§ 20-171.6. Short title.**

This Part shall be known and may be cited as the 'Bicycle Safety Act'.

"**§ 20-171.7. Definitions.**

As used in this Part, the following terms have the following meanings:

(1) 'Bicycle' means a human-powered vehicle with two wheels in tandem designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle designed to transport, by the action of pedaling, which has more than two wheels where the vehicle is used on a public roadway, public bicycle path, or other public right-of-way, but does not include a tricycle.

(2) 'Operator' means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(3) 'Other public right-of-way' means any right-of-way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or a local political subdivision thereof and is designed for use and used by vehicular and/or pedestrian traffic.

(4) 'Passenger' means a person who travels on a bicycle in any manner except as an operator.

(5) 'Protective bicycle helmet' means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation.

(6) 'Public bicycle path' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by bicycles and pedestrians.

(7) 'Public roadway' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by motor vehicles.

(8) 'Restraining seat' means a seat separate from the saddle seat of the operator of the bicycle that is fastened securely to the frame of the bicycle and is adequately equipped to restrain the passenger in such seat and protect such passenger from the moving parts of the bicycle.

(9) 'Tricycle' means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.

"**§ 20-171.8. Requirements for helmet and restraining seat use.**

With regard to any bicycle used on a public roadway, public bicycle path, or other public right-of-way:

(a) It shall be unlawful for any person under the age of 19 to operate or be a passenger on a bicycle unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit fastened securely upon the head with the straps of the helmet.

(b) It shall be unlawful for any person to be a passenger on a bicycle unless all of the following conditions are met:

(1) The person is able to maintain an erect, seated position on the bicycle;

(2) Except as provided in subdivision (3) of this subsection, the person is properly seated alone on a saddle seat (as on a tandem bicycle); and

(3) With respect to any person who weighs less than 40 pounds, or is less than 40 inches in height, the person can be and is properly seated in and adequately secured to a restraining seat.

(c) It shall be unlawful for any parent or legal guardian of a person below the age of 19 to knowingly permit such person to operate or be a passenger on a bicycle in violation of subsection (a) or (b) of this section.

(d) It shall be unlawful to rent or lease any bicycle to or for the use of any person under the age of 19 unless:

(1) The person is in possession of a protective bicycle helmet of good fit at the time of such rental or lease; or

(2) The rental or lease includes a protective bicycle helmet of good fit, and the person intends to wear the helmet, as required by subsection (a) of this section, at all times while operating or being a passenger on the bicycle.

(e) No negligence or liability shall be assessed on or imputed to any party on account of a violation of subsection (a), (b), or (c) of this section.

"**§ 20-171.9. Penalties.**

(a) Except as provided in subsection (b) of this section, any person violating any requirement set forth in G.S. 20-171.8 shall have committed an infraction as defined in G.S. 14-3.1 and may be ordered to pay a fine of up to ten dollars ($10.00). The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(b) In the case of a first conviction within a 12-month period of G.S. 20-171.8(a), (b), or (c), the court may waive the fine upon receipt of satisfactory proof that the person responsible for the infraction has purchased or otherwise obtained, as appropriate, a protective bicycle helmet or a restraining seat, and uses and intends to use it whenever required under G.S. 20-171.8.

"**§ 20-171.10. Effect on local standards.**

Nothing in this Part shall prohibit a unit of local government from adopting more stringent standards for bicycle safety by ordinance, including, but not limited to, making the provisions of this Part applicable to persons 19 years of age or older."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 383

Short Title: Child Support Attorney Change. (Public)

Sponsors: Senator Jordan.

Referred to: Judiciary II.

March 16, 1999

A BILL TO BE ENTITLED

AN ACT TO REALLOCATE THE RESPONSIBILITY FOR ENFORCING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 52C-3-308 reads as rewritten:

"**§ 52C-3-308. Representation of obligee.**

It shall be the duty of ~~the district attorney~~ any attorney who represents the child support enforcement agency in the appropriate county of this State to represent the obligee in proceedings authorized by this Chapter unless alternative arrangements are made by the obligee. An obligee may employ private counsel to represent the obligee in proceedings authorized by this Chapter."

Section 2. This act becomes effective December 1, 1999, and applies to all proceedings begun or pending on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 414

Short Title: Close Loophole Min. Hous. Stand. (Public)

Sponsors: Senators Kinnaird; and Lee.

Referred to: Judiciary II.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CLOSE A LOOPHOLE IN THE MINIMUM HOUSING STANDARDS ACT AS IT APPLIES TO MUNICIPALITIES LOCATED IN COUNTIES WITH POPULATIONS IN EXCESS OF FIFTY-EIGHT THOUSAND PEOPLE BY THE LAST CENSUS WHERE THE OWNER CAN AVOID ORDERS TO REPAIR, REMOVE, OR DEMOLISH A RENTAL UNIT BY SIMPLY CLOSING IT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision

(3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling wihin 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census."

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

S232:
Bo Thomas -- Bicycle Safety Act

BILL ANALYSIS

Committee: Senate Judiciary II
Date: March 23, 1999
Version: 1st Ed.

Introduced by: Sen. Bill Martin
Summary by: Ed Rossi
Committee Co-Counsel

*SUMMARY: **Senate bill 232 creates the Child Bicycle Safety Act. The bill requires that all persons under 19 wear a helmet when riding a bicycle. Children who weigh less than 40lbs or are less than 3 & ½ feet tall must be strapped into a restraining seat when they are passengers on a bicycle. The bill imposes a fine of up to $10.00 for persons who violate the act.***

CURRENT LAW: Current law does not require bicycle riders to wear helmets. Bicycles are considered vehicles for purposes of the motor vehicle code.[1] They are subject to the applicable provisions of motor vehicle code,[2] but are exempt from the impaired driving provisions of that code.[3] Currently, lights and reflectors are the only safety devices required by law.[4]

BILL ANALYSIS: *Application* – The bill only applies to bicycles that are being operated on public roadways, public rights of way, or public bicycle paths. The bill does not address bicycles operated on private roads or trails and it does not address tricycles – other than to exclude them from regulation.

Fines – Parents who knowingly permit their children to ride on bicycles in violation of the bill, may be found guilty of an infraction that carries a fine of up to$10.00. That fine may be waived if a proper helmet or restraining seat is obtained, and is used or intended to be used, and there were no other violations of the act within a 12-month period .

Merchants – The bill also covers merchants who rent bicycles. They are prohibited from renting a bicycle to a person under 19 unless that person: (i) posses a proper helmet at the time of the rental; (ii) the rental includes a proper fitting helmet that the person ***intends*** to wear at all times while riding the bicycle.

In addition, merchants are prohibited from renting a bicycle that will be used by any person under 19 unless that person: (i) posses a proper helmet at the time of the rental; (ii) the rental includes a proper fitting helmet that the person ***intends*** to wear at all times while riding the bicycle.

Thus, at the time of rental, a merchant would presumably have to ask a person under 19 whether they intended to wear a helmet at all times while riding a bicycle. If a merchant was renting or leasing to persons over 19 she would presumably have to ask the renter whether the bicycle would used by someone under 19, and if the answer was yes , the merchant would then have to ask the renter whether the person under 19 intended to wear a helmet at all times while using the bicycle.

Liability – Senate bill 232 potentially imposes different standards of liability. Parents are excluded from a *negligence per se* standard. Merchants are not.

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[1] G.S. § 20-4.01(49)
[2] Id.
[3] G.S. § 20-138.1(e)
[4] G.S. § 20-129(e)

Covenant *with*
North Carolina's **Children**

Pam Seamans *Chairperson*
Paula A. Wolf *Chief Lobbyist*

STATEMENT AT THE SENATE COMMITTEE ON JUDICIARY II
March 25, 1999
by Paula A. Wolf, Chief Lobbyist

I appreciate the opportunity to speak to you today to comment on SB 232-Bo Thomas--Bicycle Safety Act. My name is Paula Wolf and I represent the Covenant with North Carolina's Children. The Covenant is a coalition advancing public policy to benefit North Carolina's children. Over 90 organizations, from Murphy to Manteo, belong to the Covenant. We came together in 1995 to give voice to issues of importance to children in the areas of law, policy, and rules. The Covenant has seven substantive areas of concern that mirror the issues for which we advocate - *Child Welfare and Protection, Early Childhood, Economic Security and Welfare Reform, Education, Health, Safety, and Juvenile Justice.*

The Covenant supports this legislation, indeed, it is on our 1999 legislative agenda. We are helping to lead this effort to save lives and prevent injuries in children. And, what is so clear is that these are deaths and injuries are PREVENTABLE. And, so, as the adults in this equation, we have a responsibility to do just that - prevent them.

On June 12, 1996 Dr. George A. Zitnay, President and CEO of the Brain Injury Association, gave testimony to the U.S. Department of Transportation ISTEA Forum on Safety. In his testimony, Dr. Zitnay urged the passage " . . . of a national law requiring all children to wear helmets when engaging in bicycling, skate-boarding, in-line skating and like activities." He shared the following:

- Currently, 500,000 children and adults are admitted to hospital emergency rooms each year due to bicycle crashes.
- In 1993, 792 children died as a result of injuries sustained in a bicycle wreck.
- An astonishing 15,000 children each year are permanently disabled due to bicycle accidents.
- The annual medical expenses alone for bicyclists who have been injured in the US are approximately $500,000,000.
- This figure does not take into account the costs of home care, government assistance programs such as Social Security Disability Income and Medicaid, education expenses incurred through the Individuals with Disabilities Education Act, lost wages - and taxes, and other factors that are inherent for persons with disabilities.

The last time we tried to pass this legislation, a Senator tried to amend the bill on the Senate Floor. He wanted to change the word "required" to the word "encouraged." And, Senator Rucho said something similar here on Tuesday. Why can't we just tell parents the right thing to do and leave it at that? Let me tell you why not. In 1990, when the State of Maryland was engaged in a serious public information and education campaign, encouraging parents to have their children wear bicycle helmets, the usage rate was 4 percent. In 1991, after the law was in place for only one year, usage in one county shot up to 47 percent. The fact is, that having the law in place is an essential factor is compliance. And, as has been said before, the law helps parents be better parents.

If I may, I would like to remind you why we have named this bill in memory of Former State Senator Royce "Bo" Thomas of Hendersonville. He died in January 1997 of head injuries that he sustained in a bicycling accident. He was 64 years old. Sen. Thomas was riding in a street in Naples, Florida when his bicycle struck a vehicle pulling out of a driveway. He was not wearing a helmet. He was thrown from his bicycle, and landed headfirst on the road. A Florida State Trooper at the scene told a reporter that Sen. Thomas " . . . likely would not have suffered series injuries had he been wearing a helmet."

Again, thank you for giving child advocates from across the state the opportunity to share with you our views on the proposed legislation on requiring children and youth to wear bicycle helmets. We ask that you remember the children -- in all the work you do here -- and be vigilant about protecting their health and well being.

Kathy and Tom Taft
611 Queen Anne Road
Greenville, NC 27858

Dear Friends,

We have struggled with the most appropriate way to say thank you to all of the people who have called, sent cards, fixed meals, prayed and simply cared about the well being of our son, Thomas. One cannot imagine how humbled we feel by all that has been given to us. Our faith has been renewed, our family is closer and we have a wonderful feeling of community and purpose in our hearts.

Thomas is going to be fine. He will be unable to do some of the things he loves the most such as bike riding, snow skiing, and surfing for some months but he is alive and well and we are thankful for this.

We have heard from people all over this state. We have heard from people we don't know and we have heard from families who have been touched by tragedies with their own children.

Pitt Memorial Hospital is truly a special place. The care our son received in the emergency room by the trauma team and in the intensive care unit was superb. The physicians, nurses and support staff involved with Thomas' care were wonderful, caring human beings who took time to explain everything to us and to hold our hands or give us hugs when they felt this was needed. We are fortunate to be so near the best hospital in the state.

We thank each person who cared about Thomas and our family from the bottom of our hearts. It has been said that the phone call we received telling us that our son had been in an accident is a parent's worst nightmare. It was a nightmare for us but all of you lifted us up, stood beside us and we will make it. For this, we are grateful.

Although a helmet cannot save every life nor prevent every injury, your child is safer while wearing one. Please learn from our frightening and painful experience and demand that your son or daughter wear a helmet when riding his or her bike.

We are forever indebted to all of you.

Warmly,

Kathy & Tom Taft

Facts on
The Bo Thomas Bicycle Safety Act

* requires that all bicycle riders aged 18 or younger wear an approved helmet when riding on a public road or public right-of-way

* requires a restraining seat for any bicycle passenger who weighs less than 40 lbs. or is less than 40 inches in height

* forbids rental or lease of a bicycle to anyone aged 18 or younger unless the person is in possession of a protective helmet or a helmet is provided to the rider

* sets an infraction penalty and a fine of $10 (but not court costs) for anyone who violates the act, but permits the court to waive the fine if the rider shows satisfactory proof of obtaining a protective helmet and intending to wear it

Background

* Fifteen states already have statewide bicycle helmet laws.

* An average of 13 children under the age of 19 die each year as the result of bicycle accidents in North Carolina. An additional 120 children are seriously injured.

* Many more children are injured in bicycle accidents that do not involve motor vehicles and are not reported by police. A 1990 study estimated that 800 North Carolina children are hospitalized annually for bicycle-related injuries (including an estimated 264 head injuries), and an additional 13,300 children receive emergency treatment (including an estimated 8,900 head injuries).

* Head injury poses the greatest risk to bicyclists. National studies show that one-third of emergency room visits, two-thirds of hospital admissions, and three-fourths of all bicycle accident deaths involve head injury.

* Numerous studies prove that bicycle helmets reduce the likelihood of head and brain injury by 70 to 88 percent. A non-helmeted bicyclist is two to three times more likely than a helmeted bicyclist to suffer a head injury.

* In North Carolina, 6 percent of bicyclists in accidents are wearing a helmet. For bicyclists under the age of 19, just 3 percent are wearing a helmet.

* Greenville, Carolina Beach and Chapel Hill already have bicycle helmet ordinances. Boone and Black Mountain require helmets for riders of *all ages.*

(over)

<u>Supporting Organizations</u> (partial list)

* College of Emergency Physicians
* N.C. Child Fatality Task Force
* Child Advocacy Institute
* N.C. Chapter, Am. Academy of Pediatrics
* Covenant With North Carolina's Children
* Brain Injury Association of N.C., Inc.
* N.C. Public Health Association
* N.C. Assoc. Of Local Health Directors
* N.C. Soc. Of Public Health Educators
* N.C. State Board of Education

[f-03-99]

INJURIES OF CHILDREN ON BIKES IN NORTH CAROLINA

Time frame of data: 1993-1997

For further information: Liz Newlin, RN ; Trauma Coordinator, WakeMed 919-350-8951
Sharon Kromhout-Schiro, Ph.D, Registry Director 919-966-6263

Ages: 0-18.9

Total Patients: 642 in the data base for that time frame

Cumulative Information:	Total	0-5.9 yrs	6-11.9 yrs	12-18.9 yrs
Total:	642	63	421	258
Deaths with helmet:	2	0	0	2
Deaths without helmets	10	0	7	3
Deaths helmet not documented	13	1	8	4

Types of Injury:	0-5.9	6-11.9	12-18.9
With Helmet on			
Head Injury	0	3	2
Head injury and other body injuries	0	6	8
Other	1	7	12
Without Helmet			
Head injury	3	19	10
Head injury and other body injury	3	44	35
Other	3	29	30
Helmet not documented			
Head Injury	9	28	23
Head Injury and other body injury	14	77	59
Other	30	107	77

***Hospital Charges**

	Mean cost	**maximum cost**
Helmet on		
0-5.9(1)	6,483.00	6,483.00
6-11.9(16)	10,593.94	35,345.00
12-18.9(20)	15,731.85	95,248.00
No Helmet on		
0-5.9(9)	8,490.11	28,846.00
6-11.9(90)	11,937.82	160,430.00
12-18.9(73)	11,361.01	100,820.00
Helmet use not documented in report to hospital		
0-5.9(48)	7,277.00	45,216.00
6-11.9(205)	10,120.00	132,838.00
12-18.9(151)	10,818.00	107,332.00

*This is only for the initial hopital stay, not physician charges, rehab charges, home health or any other continuum of care charges 29 patients had incomplete charge information.

SENATE BILL 383:
Child Support Attorney Change

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Jordan
Date:	March 25, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: Senate Bill 383 would make attorneys representing a child support enforcement agency responsible for representing persons entitled to support under interstate support arrangements, thus shifting the responsibility from the district attorneys.

BILL ANALYSIS: Under the Uniform Interstate Family Support Act (UIFSA), a court of this state may exercise jurisdiction over a nonresident individual under certain circumstances. A court of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state. The "obligee" in a UIFSA case is an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered. The term also includes a state or political subdivision to which rights have been assigned, or an individual seeking a judgment determining parentage of the individual's child.

Under current law the district attorney is responsible for representing the obligee in a UIFSA case. Senate Bill 383 would shift that responsibility to the attorney who represents the child support enforcement agency in the appropriate county. As provided under current law, the obligee has the option of retaining private counsel.

The bill would become effective December 1, 1999 and apply to all proceedings begun or pending on or after that date.

S414:
Close Loophole Min. Hous. Stand.

BILL ANALYSIS

Committee: Senate Judiciary II
Date: March 24, 1999
Version: 1st. Ed.

Introduced by: Senator Kinnaird
Summary by: Ed Rossi
Committee Co-Counsel

SUMMARY: Senate bill 414 amends G.S. 160A-443(5a). It adds 27 counties to the list of counties in which municipalities can order the demolition of a dwelling one year after it was found to be unfit for human habitation. Before a municipality can exercise this authority the following must occur:

- *The owner of the property was provided notice and a hearing.*
- *A hearing officer determined that the dwelling was unfit for human habitation, made written findings of fact, and issued an order that was served on the owner that ordered her to either repair or close the dwelling.*
- *The dwelling has been closed for one year.*
- *The municipal governing body has determined that the owner has abandoned the intent to repair the dwelling.*
- *The municipal governing body has found that the closed status would be inimical to the health, safety, and morals of the community because the property would continue to deteriorate, become a fire hazard, and threat to children and vagrants, and would attract persons intent on criminal activity.*

Under current law, only municipalities in counties with more than 163,000 residents can use the option provided by G.S. 160A § 443(5a) i.e., demolition of a dwelling that has been vacant for one year after the owner was order to repair or demolish it.

CURRENT LAW: G.S. § 160A-441 gives cities and counties the authority to deal with dwellings that are unfit for human habitation. G.S. § 160A-443, the section being amended by this bill, sets out the procedures that cities must follow when ordering the repair or demolition of substandard housing. In general, all cities regardless of size must follow the following procedures before they can order the repair or demolition of a dwelling:

1. Pass an ordinance that: (i) finds that substandard housing conditions exist; (ii) designates a public officer to deal with the situation.
2. Investigate an allegation that a dwelling is unfit for human habitation .
3. Issue a complaint, serve the complaint, schedule a hearing between 10 to 30 days of the issuance of the complaint.
4. Conduct a hearing before the public officer or her designee.
5. Have the hearing officer render a decision and order, including findings of fact.
6. If the dwelling can be repaired at reasonable cost, order the repair or demolition of the dwelling within a "time specified." If it cannot, order the demolition of a dwelling within a "time specified."

After following the procedures outlined above, a difference develops in how municipalities can proceed to demolish a dwelling. Municipalities in counties with populations of more than 163,000 have two options. One, if the owner fails to comply with the order to repair the municipality can pass an ordinance that orders the public officer to repair or demolish the dwelling. Two, if a year has gone by since the owner was ordered to fix or demolish the dwelling and the dwelling has been closed for that year and the municipality finds that the dwelling is in effect a public nuisance and that the owner has abandoned the intent to repair the dwelling, it can pass an ordinance ordering the demolition of the dwelling.

Municipalities in counties with less than 163,000 residents can only use the first option.

BILL ANALYSIS: The main difference in the options available to cities would appear to be that cities in larger counties have a specified time of one year after which they can effectively deal with a public nuisance. This bill would give municipalities in some smaller counties the same ability to deal with a public nuisance that cities in larger counties currently have.

BACKGROUND:

VISITOR REGISTRATION SHEET

~~STATE & LOCAL GOVERNMENT~~ ~~MARCH 17, 1999~~

Name of Committee

Date

S # 2

March 25. 99

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
AL DITCH	VAIO/DOA
Paula Wolf	Covenant w/ NC's Children
Jane Stucks	UNC Highway Safety Research Center
Thomas V. Bennett	N.C. Child Fatality Task Force
charles Carpandean	NCSHA
J.L Parker	GHSP
Scott Hammack	NCATL
Liz Newlin	Nakamed
joann Schoen	NCNA
SHARON REUSS	NC CHILD ADVOCACY INST
C Mullen	Covenant w/ NCs Children

VISITOR REGISTRATION SHEET

25

~~STATE & LOCAL GOVERNMENT~~ MARCH ~~17~~, 1999

Name of Committee **Date**

DH2

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Glenn Wells	DHHS/Public Health
Derrick W. Boyd	NC PTA
Sandy Causey	NC PTA
David Ferrell	HMCCC+C, P.A.
D. Roy	NC DOT
Sue Keene	NCMS
John McGuire	MFAR

SENATE JUDICIARY II COMMITTEE

MARCH 30, 1999

ROOM 1124

SB 414	Close Loophole Min. Hous. Stand.	Senator Kinnaird
SB 522	"Quick Take" Notice of Appeal	Senator Rucho
SB 525	Personal Rep. Qualifications	Senator Hagan
SB 526	Mod. & Term. of Irrevocable Trusts	Senator Hagan

Adjournment

SENATE JUDICIARY II COMMITTEE

MARCH 30, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, March 30, 1999 in room 1124 of the Legislative Building. Eleven members were present, including Senator Brad Miller, who presided.

Senator Miller announced the appointment of a Sub-Committee to further discuss SB 232, Bo Thomas – Bicycle Safety Act. Senators Hagan, Bill Martin, Horton, Kerr, and Forrester were named as members.

Senator Hagan was recognized to explain SB 525, Personal Rep. Qualifications. Bill Scoggins, Director of Governmental Affairs for the NC Bar Association, spoke in favor of the bill and answered questions from committee members. Senator Miller announced that SB 525 would be displaced and taken up at another meeting.

SB 414, Close Loophole Min. Hous. Stand., was explained by Senator Kinnaird. Senator Horton moved a favorable report of the bill. The motion carried unanimously. **Favorable Report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Tuesday, March 30, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **414** Close Loophole Min. Hous. Stand.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

SENATE BILL 414

Short Title: Close Loophole Min. Hous. Stand. (Public)

Sponsors: Senators Kinnaird; and Lee.

Referred to: Judiciary II.

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CLOSE A LOOPHOLE IN THE MINIMUM HOUSING STANDARDS ACT AS IT APPLIES TO MUNICIPALITIES LOCATED IN COUNTIES WITH POPULATIONS IN EXCESS OF FIFTY-EIGHT THOUSAND PEOPLE BY THE LAST CENSUS WHERE THE OWNER CAN AVOID ORDERS TO REPAIR, REMOVE, OR DEMOLISH A RENTAL UNIT BY SIMPLY CLOSING IT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision

(3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling wihin 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of ~~163,000~~ 58,000 by the last federal census."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 522*

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors: Senators Rucho; Clodfelter, Dannelly, and Odom.

Referred to: Judiciary II.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF APPEAL RIGHTS IN THE COMPLAINTS COMMENCING THE ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-41 reads as rewritten:

"**§ 40A-41. Institution of action and deposit.**

A public condemnor listed in G.S. 40A-3(b) or (c) shall institute a civil action to condemn property by filing in the superior court of any county in which the land is located a complaint containing a declaration of taking declaring that property therein is thereby taken for the use of the condemnor.

The complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which the property is taken;

(2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification thereof;

(3) A statement of the property taken and a description of the area taken sufficient for the identification thereof;

(4) The names and addresses of those persons who the condemnor is informed and believes may be or, claim to be, owners of the property so far as the same can by reasonable diligence be ascertained, and if any such persons are infants, incompetents, inebriates or under any other disability, or their whereabouts or names unknown, it must be so stated;

(5) A statement of the sum of money estimated by the condemnor to be just compensation for the taking; and

(6) A statement as to whether the owner will be permitted to remove all or a specified portion of any timber, buildings, structures, permanent improvements, or fixtures situated on or affixed to the property.

(7) A statement as to such liens or other encumbrances as the condemnor is informed and believes are encumbrances upon the property and can by reasonable diligence be ascertained.

(8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(9) In the case of an action commenced to acquire property pursuant to G.S. 40A-42(a), allowing immediate vesting of property rights in the condemnor upon the making of a deposit in accordance with this section, a notice of the owner's rights including the right to answer and to commence an action for injunctive relief.

The filing of the complaint shall be accompanied by the deposit to the use of the owner of the sum of money estimated by the condemnor to be just compensation for the taking. Upon the filing of the complaint and the deposit of said sum, summons shall be issued to each owner of the property. The summons, together with a copy of the complaint and notice of the deposit shall be served upon the person named therein in the manner provided for the service of process under the provisions of G.S. 1A-1, Rule 4. The condemnor may amend the complaint and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in G.S. 40A-44 of this Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 525

Short Title: Personal Rep. Qualifications. (Public)

Sponsors: Senator Hagan.

Referred to: Judiciary II.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW NON-UNITED STATES CITIZENS WHO ARE RESIDENTS OF NORTH CAROLINA TO SERVE AS PERSONAL REPRESENTATIVES IN THE ADMINISTRATION OF ESTATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-4-2 reads as rewritten:

"**§ 28A-4-2. Persons disqualified to serve as personal representative.**

No person is qualified to serve as a personal representative who:

(1) Is under 18 years of age;

(2) Has been adjudged incompetent in a formal proceeding and remains under such disability;

(3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;

(4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;

(5) Is a corporation not authorized to act as a personal representative in this State;

~~(6) Is an alien disqualified by law;~~

(7) Has lost his rights as provided by Chapter 31A;

(8) Is illiterate;

(9) Is a person whom the clerk of superior court finds otherwise unsuitable; or

(10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5-1 and 28A-5-2."

Section 2. This act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 526

Short Title: Mod. & Term. of Irrevocable Trusts. (Public)

Sponsors: Senators Hagan; Ballance, Carter, Garrou, Garwood, Rand, and Robinson.

Referred to: Judiciary II.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 36A of the General Statutes is repealed.

Section 2. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11A.

"Modification and Termination of Trusts.

"**§ 36A-125.1. Definitions.**

As used in this section:

(1) 'Beneficiary' means a person who has a present or future interest, vested or contingent, in a trust, including any such person who is not in esse or cannot be determined until the occurrence of a future event.

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

(3) 'Irrevocable trust' means an express noncharitable irrevocable trust. A trust is noncharitable if it is neither a wholly charitable trust nor a charitable split-interest trust subject to the provisions of Article 4 or 4A of Chapter 36A of the General Statutes.

(4) 'Sole beneficiary' means a beneficiary of a trust for which the settlor does not manifest an intention to give a beneficial interest to anyone else.

(5) 'Sui juris' means a person who is in esse and not a minor or otherwise legally incapacitated. With regard to a beneficiary, 'sui juris' also means that such beneficiary is ascertained and that the trustee knows the identity of the beneficiary.

(6) 'Trustee' means the trustee or trustees acting under an irrevocable trust.

"§ 36A-125.2. Modification and termination where settlor is sole beneficiary.

If a settlor is sui juris and the sole beneficiary of an irrevocable trust, the settlor may compel the modification and termination of the trust without the approval of the court even though the purposes for which the trust was created have not been accomplished.

"§ 36A-125.3. Modification or termination by consent of settlor and beneficiaries.

(a) If the settlor and all beneficiaries of an irrevocable trust are sui juris and consent, they may compel the modification or termination of the trust without the approval of the court even though the purposes for which the trust was created have not been accomplished.

(b) If any beneficiary does not consent to the modification or termination of the trust or is not sui juris, the other beneficiaries may institute a proceeding before the superior court to compel a modification or partial termination of the trust. The court may, with the consent of the settlor, allow such a modification or partial termination upon a finding that such action would not substantially impair the interests of the beneficiaries who do not consent or who are not sui juris.

"§ 36A-125.4. Modification or termination by consent of beneficiaries.

(a) Except as provided in subsection (b) of this section, if all beneficiaries of an irrevocable trust consent, they may compel modification and termination of the trust in a proceeding before the superior court.

(b) Where the beneficiaries of an irrevocable trust seek to compel a termination of the trust or modify it in a manner that affects its continuance according to its terms, and if the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court in its discretion determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

"§ 36A-125.5. Provisions relating to consent of beneficiaries.

For purposes of this Article:

(1) The consent of a beneficiary who is not sui juris may be given in proceedings before the court by a guardian ad litem appointed for that beneficiary if the guardian ad litem finds that it would be appropriate to do so. The guardian ad litem may base a decision to consent to modification or termination of a trust upon a finding

that living members of the beneficiary's family would generally benefit from such action.

(2) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust, the presumption of fertility is rebuttable.

(3) If the trust provides for the disposition of property to a class of persons described only as 'heirs' or 'next of kin' of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

"**§ 36A-125.6. Modification and termination of a small trust.**

(a) In a proceeding before the superior court, the court in its discretion may modify or terminate an irrevocable trust if the court determines that the fair market value of the assets held in trust is so low that the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) Notwithstanding the provisions of subsection (a) of this section, if at any time the trustee of an irrevocable trust determines in good faith that the fair market value of the assets held in trust is fifty thousand dollars ($50,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may in its discretion terminate the trust and distribute the trust property, including principal and undistributed income, to any one or more of the beneficiaries to whom the income could be paid, or if there is no beneficiary to whom the income could be paid, to any one or more of the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust instrument. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust.

The trustee shall not be liable for such termination and distribution, notwithstanding the existence or potential existence of other beneficiaries who are not sui juris. Any beneficiary receiving a distribution from a trust terminated under this section shall incur no liability and shall not be required to account to anyone for such distribution.

The provisions of this subsection shall not apply where the instrument creating the trust, by specific reference to this section, or to former G.S. 36A-125, provides that it shall not apply.

"**§ 36A-125.7. Modification or termination because of changed circumstances.**

(a) In a proceeding before the superior court, the court in its discretion may modify an irrevocable trust:

(1) If the purpose of the trust has been fulfilled or has become illegal or impossible of fulfillment; or

(2) If, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) In exercising its discretion under subsection (a) of this section, the court may order the trustee to do acts that are not authorized or are prohibited by the trust instrument if necessary to carry out the purposes of the trust.

"§ 36A-125.8. Inalienability of the beneficiary's interest.

The court, in exercising its discretion to modify or terminate an irrevocable trust pursuant to the provisions of G.S. 36A-125.4, 36A-125.6(a), and 36A-125.7, and the trustee, in exercising its discretion to terminate a trust pursuant to G.S. 36A-125.6(b), shall consider provisions making the interest of a beneficiary inalienable, including those described in G.S. 36A-115(b), but the court or trustee is not precluded from the exercise of that discretion solely because of such provisions.

"§ 36A-125.9. Distribution to minors or incompetents.

If any trust property becomes distributable to a minor or incompetent under this Article it may be distributed:

(1) To the guardian of the estate or general guardian of such beneficiary;

(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or

(3) In accordance with the North Carolina Custodial Trust Act, Chapter 33B of the General Statutes.

"§ 36A-125.10. Procedure.

A proceeding under this Article may be brought under the Uniform Declaratory Judgment Act, Article 26 of Chapter 1 of the General Statutes, the provisions of which shall apply to that proceeding to the extent not inconsistent with this Article.

"§ 36A-125.11. Exclusiveness of remedy.

This Article does not include or abridge any other rights or proceedings existing under any other statute or otherwise provided by law to modify, terminate, reform, or rescind an irrevocable trust."

Section 3. This act becomes effective January 1, 2000, and applies to all trusts created before or after that date, except that G.S. 36A-125.6(b) shall not apply to trusts created before October 1, 1991, if the trust instrument contains spendthrift or similar protective provisions, including provisions described in G.S. 36A-115(b)(3).

S414:

Close Loophole Min. Hous. Stand.

BILL ANALYSIS

Committee: Senate Judiciary II
Date: March 24, 1999
Version: 1st. Ed.

Introduced by: Senator Kinnaird
Summary by: Ed Rossi
Committee Co-Counsel

SUMMARY: Senate bill 414 amends G.S. 160A-443(5a). It adds 27 counties to the list of counties in which municipalities can order the demolition of a dwelling one year after it was found to be unfit for human habitation. Before a municipality can exercise this authority the following must occur:

- *The owner of the property was provided notice and a hearing.*
- *A hearing officer determined that the dwelling was unfit for human habitation, made written findings of fact, and issued an order that was served on the owner that ordered her to either repair or close the dwelling.*
- *The dwelling has been closed for one year.*
- *The municipal governing body has determined that the owner has abandoned the intent to repair the dwelling.*
- *The municipal governing body has found that the closed status would be inimical to the health, safety, and morals of the community because the property would continue to deteriorate, become a fire hazard, and threat to children and vagrants, and would attract persons intent on criminal activity.*

Under current law, only municipalities in counties with more than 163,000 residents can use the option provided by G.S. 160A § 443(5a) i.e., demolition of a dwelling that has been vacant for one year after the owner was order to repair or demolish it.

CURRENT LAW: G.S. § 160A-441 gives cities and counties the authority to deal with dwellings that are unfit for human habitation. G.S. § 160A-443, the section being amended by this bill, sets out the procedures that cities must follow when ordering the repair or demolition of substandard housing. In general, all cities regardless of size must follow the following procedures before they can order the repair or demolition of a dwelling:

1. Pass an ordinance that: (i) finds that substandard housing conditions exist; (ii) designates a public officer to deal with the situation.
2. Investigate an allegation that a dwelling is unfit for human habitation .
3. Issue a complaint, serve the complaint, schedule a hearing between 10 to 30 days of the issuance of the complaint.
4. Conduct a hearing before the public officer or her designee.
5. Have the hearing officer render a decision and order, including findings of fact.
6. If the dwelling can be repaired at reasonable cost, order the repair or demolition of the dwelling within a "time specified." If it cannot, order the demolition of a dwelling within a "time specified."

After following the procedures outlined above, a difference develops in how municipalities can proceed to demolish a dwelling. Municipalities in counties with populations of more than 163,000 have two options. One, if the owner fails to comply with the order to repair the municipality can pass an ordinance that orders the public officer to repair or demolish the dwelling. Two, if a year has gone by since the owner was ordered to fix or demolish the dwelling and the dwelling has been closed for that year and the municipality finds that the dwelling is in effect a public nuisance and that the owner has abandoned the intent to repair the dwelling, it can pass an ordinance ordering the demolition of the dwelling.

Municipalities in counties with less than 163,000 residents can only use the first option.

BILL ANALYSIS: The main difference in the options available to cities would appear to be that cities in larger counties have a specified time of one year after which they can effectively deal with a public nuisance. This bill would give municipalities in some smaller counties the same ability to deal with a public nuisance that cities in larger counties currently have.

BACKGROUND:

S525:
Personal Rep. Qualifications

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Hagan
Date:	March 29, 1999	**Summary by:**	Ed Rossi
Version:	1st. Ed.		Committee Co-Counsel

SUMMARY: Senate bill 525 removes the proscription that prohibits aliens who are "disqualified by law" from serving as personal representatives in the administration of estates.

CURRENT LAW: Under North Carolina Law, resident aliens enjoy most of the same rights and privileges as citizens. They can buy, sell, and devise property;[1] they can inherit property by intestacy;[2] and they can become professionally licensed.[3] What they cannot do is vote[4], and if they are here illegally, they cannot collect unemployment insurance benefits.[5]

No reported North Carolina case explains under what circumstances an "alien" would be "disqualified by law" from serving as a personal administrator, as provided for in G.S. §28A-4-2 (the statute being modified by this bill). According to Black's Law Dictionary the term "disqualify" means to divest or deprive of qualifications.[6] This definition is consistent with the way the term is used under North Carolina law. For example, a judge must "disqualify" herself or deprive herself of her qualifications to hear a criminal proceeding when she is related by blood to the defendant.[7] Some of the older cases use the phrase "disqualified by law" to describe a disability, as when a minor is "disqualified by law" to handle, manage, and administer her property. [8]

G.S. §28A-9-1 sets out the grounds whereby a person who has qualified as a personal representative may, in effect, be disqualified after having qualified. Those grounds include misrepresentation, breach of fiduciary duty, misconduct, adverse interest, and being an alien who is disqualified by law.

BILL ANALYSIS: Senate bill 525 appears to equate the word "alien" with the phrase "disqualified by law." This equation of terms is not supported by the reported cases that interpret G.S. § 28A-4-2.

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[1] See In Re Johnston, 16 N.C. App. 38 (1972)
[2] G.S. § 64-3
[3] E.g. G.S. § 93-2 (CPA licenses)
[4] G.S. § 163-55 (Every person born in the United States, or naturalized who resides in North Carolina is eligible to vote)
[5] G.S. § 96-13
[6] *Black's Law Dictionary 5th Ed.*
[7] G.S. § 15A-1223.
[8] Snyder v. U.S. 134 F. Supp, 319 (1955)

NORTH CAROLINA
1899 – 1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
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Qualifying Non-U.S. Citizens to Serve as Personal Representatives (S 525)

The North Carolina Bar Association and its Estate Planning and Fiduciary Law Section recommend a change to N.C.G.S. §28A-4-2 to address a difficulty encountered in the administration of certain estates. The current statute says an "alien disqualified by law" cannot serve as personal representative.

This creates problems, in that:

- Many residents in North Carolina are not U.S. Citizens, but are subject to United States and North Carolina law;
- The current statute forces them to employ a non-family member as executor and pay that individual executor's commissions;
- An awkward situation arises where the widow/widower is unable to service as executor for his/her deceased spouse; and
- Clerks of Court do not evenly apply or understand the current statute, and confusion is created for practitioners.

The Solution is to permit non-U.S. citizens to serve IF they otherwise qualify. All non-North Carolina residents must appoint a resident agent anyway. Additionally, the court still has power to disallow service by anyone it finds "unsuitable."

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

VISITOR REGISTRATION SHEET

Jud. II — 3-30-99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Bill Scogin	NC DAR ~~ASSOC.~~
Pamela Warner Jent	AOC
Stephanie Manson	NC Assoc. of Realtors
Linda Strandt	Wake Co Safe Kids Coalition
R. Paul Wilms	NCHBA
Garrett Pepper	ZDA, PA

SENATE JUDICIARY II COMMITTEE

APRIL 1, 1999

ROOM 1124

SB 398	Greensboro Red Light Cameras	Senator Shaw
SB 522	"Quick Take" Notice of Appeal	Senator Rucho
SB 525	Personal Rep. Qualifications	Senator Hagan
SB 582	Winston-Salem Pawnbrokers	Senator Garrou

Adjournment

SENATE JUDICIARY II COMMITTEE

APRIL 1, 1999

MINUTES

The Senate Judiciary II Committee met on April 1, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Eleven members were present. Senator Miller presided.

Senator Hagan was recognized to continue the discussion of SB 525, Personal Rep. Qualifications. She in turn introduced John Kennedy, Wake County Clerk of Court, who spoke to the bill. Senator Forrester moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Hagan was recognized to explain SB 398, Greensboro Red Light Cameras. Senator Odom moved to amend the bill by adding the city of Raleigh and the towns of Chapel Hill and Cornelius. The motion carried unanimously. Senator Odom moved to engross the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 522, "Quick Take" Notice of Appeal, was explained by Senator Rucho. Senator Odom moved that the bill be sent to a subcommittee for further study. The motion carried unanimously.

Senator Horton was recognized to explain SB 582, Winston-Salem Pawnbrokers. Carl Knapp, with the Winston-Salem City Manager's office, explained the need to require pawnbrokers to file records electronically. Howard Kramer, Pawnbrokers Association, stated his dislike for mandating electronic filing and for the costs to the individual pawnbrokers incurred by such a mandate. Senator Horton moved to send the bill to a subcommittee. The motion carried unanimously.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Thursday, April 01, 1999

SENATOR MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **525** Personal Rep. Qualifications.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 398

Short Title: Greensboro Red Light Cameras. (Local)

Sponsors: Senators Shaw of Guilford, Hagan; and Carrington.

Referred to: Judiciary II.

March 17, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-216 reads as rewritten:

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 522*

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors: Senators Rucho; Clodfelter, Dannelly, and Odom.

Referred to: Judiciary II.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF APPEAL RIGHTS IN THE COMPLAINTS COMMENCING THE ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-41 reads as rewritten:

"**§ 40A-41. Institution of action and deposit.**

A public condemnor listed in G.S. 40A-3(b) or (c) shall institute a civil action to condemn property by filing in the superior court of any county in which the land is located a complaint containing a declaration of taking declaring that property therein is thereby taken for the use of the condemnor.

The complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which the property is taken;

(2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification thereof;

(3) A statement of the property taken and a description of the area taken sufficient for the identification thereof;

(4) The names and addresses of those persons who the condemnor is informed and believes may be or, claim to be, owners of the property so far as the same can by reasonable diligence be ascertained, and if any such persons are infants, incompetents, inebriates or under any other disability, or their whereabouts or names unknown, it must be so stated;

(5) A statement of the sum of money estimated by the condemnor to be just compensation for the taking; and

(6) A statement as to whether the owner will be permitted to remove all or a specified portion of any timber, buildings, structures, permanent improvements, or fixtures situated on or affixed to the property.

(7) A statement as to such liens or other encumbrances as the condemnor is informed and believes are encumbrances upon the property and can by reasonable diligence be ascertained.

(8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(9) In the case of an action commenced to acquire property pursuant to G.S. 40A-42(a), allowing immediate vesting of property rights in the condemnor upon the making of a deposit in accordance with this section, a notice of the owner's rights including the right to answer and to commence an action for injunctive relief.

The filing of the complaint shall be accompanied by the deposit to the use of the owner of the sum of money estimated by the condemnor to be just compensation for the taking. Upon the filing of the complaint and the deposit of said sum, summons shall be issued to each owner of the property. The summons, together with a copy of the complaint and notice of the deposit shall be served upon the person named therein in the manner provided for the service of process under the provisions of G.S. 1A-1, Rule 4. The condemnor may amend the complaint and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in G.S. 40A-44 of this Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 525

Short Title: Personal Rep. Qualifications. (Public)

Sponsors: Senator Hagan.

Referred to: Judiciary II.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW NON-UNITED STATES CITIZENS WHO ARE RESIDENTS OF NORTH CAROLINA TO SERVE AS PERSONAL REPRESENTATIVES IN THE ADMINISTRATION OF ESTATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-4-2 reads as rewritten:

"**§ 28A-4-2. Persons disqualified to serve as personal representative.**

No person is qualified to serve as a personal representative who:

(1) Is under 18 years of age;

(2) Has been adjudged incompetent in a formal proceeding and remains under such disability;

(3) Is a convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;

(4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court; or who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;

(5) Is a corporation not authorized to act as a personal representative in this State;

~~(6) Is an alien disqualified by law;~~

(7) Has lost his rights as provided by Chapter 31A;

(8) Is illiterate;
(9) Is a person whom the clerk of superior court finds otherwise unsuitable; or
(10) Is a person who has renounced either expressly or by implication as provided in G.S. 28A-5-1 and 28A-5-2."

Section 2. This act becomes effective January 1, 2000, and applies to estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 582

Short Title: Winston-Salem Pawnbrokers. (Local)

Sponsors: Senators Horton; and Garrou.

Referred to: Judiciary II.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE LAW ENFORCEMENT EFFORTS TO RECOVER STOLEN PROPERTY BY AUTHORIZING THE CHIEF OF POLICE OF WINSTON-SALEM TO REQUIRE PAWNBROKERS TO MAKE PAWN TICKET RECORDS AVAILABLE IN ELECTRONIC FORMAT.

The General Assembly of North Carolina enacts:

Section 1. In addition to the record-inspection requirements of G.S. 91A-7(d), the chief of police of the municipality in which the pawnshop is located may require the correct copy of pawnshop records to be made available in an electronic database format specified by and acceptable to the chief of police.

Section 2. This act is enacted pursuant to the general police power.

Section 3. This act applies only to the City of Winston-Salem.

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

SENATE BILL 398:
Greensboro Red Light Cameras

BILL ANALYSIS

Committee: Senate Judiciary II
Date: April 1, 1999
Version: 1st Edition

Introduced by: Senator Bob Shaw
Summary by: Brenda J. Carter
Committee Co-Counsel

SUMMARY: Senate Bill 398 would permit the City of Greensboro to use photographic images as prima facie evidence of traffic violations involving vehicle control signs and signals.

CURRENT LAW: G.S. 20-158 makes it unlawful for a driver to fail to stop in obedience to a stop sign or a red light. Running a stop sign or red light is an infraction, which under G.S. 20-176 is punishable by a penalty of not more than $100; the amount is in the discretion of the court. In addition to any fine that might be imposed, the driver will be assessed court costs, currently $86. In addition, 3 drivers license points are assessed for a conviction of running through a stop sign or red light.

BILL ANALYSIS: Under a session law passed in 1997, the City of Charlotte was authorized to adopt an ordinance regarding the use of photographic images to enforce traffic signal violations. The law defines a traffic control photographic system and sets out requirements for the municipal ordinance. When the driver of a car commits a traffic signal violation at a location equipped with the photo system, the registered owner of the vehicle is held responsible for the violation unless the owner furnishes evidence that at the relevant time the vehicle was in the control of another person or provides an affidavit stating that the vehicle had been stolen or was otherwise being used without the owner's permission. A violation detected by a traffic control photographic system is a noncriminal violation which is subject to a $50 civil penalty, and for which no drivers license points are assessed. When a violation is detected, a citation is issued to the registered owner of the vehicle by personal service or by certified mail. If the owner fails to pay the civil penalty or to otherwise respond within the specified time period, the owner will be subject to a $100 civil penalty. The city is required to institute an administrative hearing to review contested cases. The city is authorized to establish procedures for collection of the penalties and may enforce the penalties by civil action.

Senate Bill 398 would make these existing provisions applicable to the City of Greensboro. The bill would become effective when it becomes law.

The Senate has already passed Senate Bill 272, which would expand the scope of authority to include Greenville, Huntersville, Matthews, and Wilmington. Senate Judiciary I has on its calendar today a bill that would add Fayetteville. One bill pending in the House would add High Point, and another would give the provision state-wide application.

Note: Under Article IX, Section 7 of the North Carolina Constitution, the clear proceeds of *all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State*, are to be "faithfully appropriated and used exclusively for maintaining free public schools." There is apparently some ongoing discussion in Charlotte about whether the civil penalty provided for in the local ordinance adopted under authority of this bill is to be channeled to the school system.

SL97-216

CHAPTER 216
SENATE BILL 741

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

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

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

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

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

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

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:
   a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or
   b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

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

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

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

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

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

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

Became law on the date it was ratified.

SENATE BILL 582:
Winston-Salem Pawnbrokers

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Horton
Date:	April 1, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Counsel

SUMMARY: Senate Bill 582 would authorize the Chief of Police of Winston-Salem to require pawnbrokers to make their records available in electronic format.

CURRENT LAW: Chapter 91A of the General Statutes sets out the law governing pawnbrokers. A pawnbroker is basically one who lends money upon personal property pledged as security. Pawnbrokers must be licensed by the city or county in which they are to conduct business. G.S. 91A-7 requires that every pawnbroker keep consecutively numbered records of each and every pawn transaction. The records must correspond to the detachable pawn ticket attached to the record. The information must include:

- A description of the property
- Information on the person pledging the property - Name, address, phone number and date of birth; type of ID and the ID number; description including approx. height, weight, sex, and race
- Date of the pawn transaction
- Amount of money advanced, the date due and the amount due
- All monthly pawn charges, including interest
- Agreed upon value of the property, in the event of loss or destruction

The current law requires that records be available for inspection and pickup each regular workday by the sheriff of the county or the chief of police of the municipality in which the pawnshop is located. The records must be a correct copy of the entries made of the pawn or purchase transaction, must be carefully preserved without alteration, and must be available during regular business hours.

BILL ANALYSIS: Senate Bill 582 is a local bill which would permit the police chief to require that the records kept by pawnbrokers in compliance with the law be made available in an electronic database format "specified by and acceptable to the chief of police". The act would be applicable only to the City of Winston-Salem.

Under G.S. 91A-12, counties and cities may adopt the provisions of Chapter 91A (Pawnbrokers Modernization Act), *and may adopt such additional rules and regulations as the governing body may deem appropriate.* The state specifically provides that no county or city may regulate interest or fees, hours of operation (unless such regulation applies to businesses generally), the nature of the business or type of pawn transaction, or license fees in excess of those set by the State.

The Committee should consider the following:

- ***Whether the act would violate Article II, Section 24 of the North Carolina Constitution***
- ***Whether, if enacted, the additional requirement would be unduly burdensome***

Section 2 of the bill proclaims that the act is enacted "pursuant to the general police power". The purpose of the Pawnbrokers Modernization Act as specifically set forth in the statutes declares that the making of pawn loans and the acquisition and disposition of property through pawn shops affects the general economy of the state and the public interest and welfare of the state's citizens. The statement of purpose includes an intent to ensure a sound system and prevent unlawful property transactions through licensing and regulating pawnbrokers, and to assist local governments in the exercise of their police authority.

Article II, Section 24 of the North Carolina Constitution prohibits the General Assembly from enacting any local, private, or special act or resolution regulating trade. Since courts have held that a "trade" within the meaning of the section includes any employment or business embarked in for gain or profit, there should be little doubt that pawnbroking is a trade. It is also likely that few people would question whether the state has a legitimate interest in the regulation of pawnbroking. However, since Senate Bill 582 is a local bill, the City of Winston-Salem is the only entity to which the act would apply. Cities and counties currently have the authority to adopt "such further rules and regulations as the governing bodies of the counties deem appropriate", but even that authority excludes local regulation of certain items which affect the general operation of pawnbroking as a business.

In looking at the legal and policy issues, the committee might also consider whether the act is "reasonably calculated to accomplish a purpose falling within the legitimate scope of the police power, without burdening unduly the person or corporation affected." Winston-Salem v. R.R., 248 N.C. 637 (1965)

§ 91A-7. Record keeping requirements.

(a) Every pawnbroker shall keep consecutively numbered records of each and every pawn transaction, which shall correspond in all essential particulars to a detachable pawn ticket or copy thereof attached to the record.

(b) The pawnbroker shall, at the time of making the pawn or purchase transaction, enter upon the pawn ticket a record of the following information which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property, including model and serial number if indicated on the property;

(2) The name, residence address, phone number, and date of birth of pledgor;

(3) Date of the pawn transaction;

(4) Type of identification and the identification number accepted from pledgor;

(5) Description of the pledgor including approximate height, weight, sex, and race;

(6) Amount of money advanced;

(7) The date due and the amount due;

(8) All monthly pawn charges, including interest, annual percentage rate on interest, and total recovery fee; and

(9) Agreed upon "stated value" between pledgor and pawnbroker in case of loss or destruction of pledged item; unless otherwise noted, "stated value" is the same as the loan value.

(c) The following shall be printed on all pawn tickets:

(1) The statement that "ANY PERSONAL PROPERTY PLEDGED TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF 60 DAYS PAST MATURITY DATE OF THE ORIGINAL CONTRACT. NO FURTHER NOTICE IS NECESSARY.";

(2) The statement that "THE PLEDGOR OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR

ENCUMBRANCES, AND IS THE PLEDGOR'S TO SELL OR PAWN.";

(3) The statement that "THE ITEM PAWNED IS REDEEMABLE ONLY BY THE BEARER OF THIS TICKET OR BY IDENTIFICATION OF THE PERSON MAKING THE PAWN."; and

(4) A blank line for the pledgor's signature and the pawnbroker's signature or initials.

(d) The pledgor shall sign the pawn ticket and shall receive an exact copy of the pawn ticket which shall be signed or initialed by the pawnbroker or any employee of the pawnbroker. These records shall be available for inspection and pickup each regular workday by the sheriff of the county or the chief of police of the municipality in which the pawnshop is located. These records shall be a correct copy of the entries made of the pawn or purchase transaction and shall be carefully preserved without alteration, and shall be available during regular business hours.

(e) Except as otherwise provided in this Chapter, any person presenting a pawn ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the ticket. (1989, c. 638, s. 2.)

SENATE BILL 582:
Winston-Salem Pawnbrokers

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Horton
Date:	April 1, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Counsel

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The current law requires that records be available for inspection and pickup each regular workday by the sheriff of the county or the chief of police of the municipality in which the pawnshop is located. The records must be a correct copy of the entries made of the pawn or purchase transaction, must be carefully preserved without alteration, and must be available during regular business hours.

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(e) Except as otherwise provided in this Chapter, any person presenting a pawn ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the ticket. (1989, c. 638, s. 2.)

VISITOR REGISTRATION SHEET

Education # 2 — April 7, 99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Powell	AOC
Susan Valauri	Nationwide
Karl Knapp	Winston-Salem
Laura Hartsell	NC Bar Association
Alida Gregory	Poyner & Spruill
Robert Pasch	Young, Moore & Henderson
Lucius Pullen	Attorney
Bill S Coggin	NC R&T
Alan Miles	Bailey & Dixon LLP
Mai Lewis	NCSEPS
Peyton Maynard	GPM Inc.
Ann Case	NCRMA
[illegible]	Capitol Group
Evelyn Hawthorne	UNC-CH
Charles Cramer	ncatl
Wm Jo Bain	NCMS
Stephen W. Keene	NCMS
Steve Woodson	NC Farm Bureau
C. Porter	Bone & Associates
Carl Wilcox	NCHBA
Micki Caparotta	NCHBA
Michelle Cook	Weyerhaeuser

SENATE JUDICIARY II COMMITTEE

APRIL 6, 1999

ROOM 1124

SB 690	District Court Elections	Senator Dalton
SB 742	Teacher/Student/No Sex Acts	Senator Dalton
SB 750	Honor Town of Lattimore	Senator Dalton

Adjournment

SENATE JUDICIARY II COMMITTEE

APRIL 6, 1999

MINUTES

The Senate Judiciary II Committee met on April 6, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Nine members were present, including Senator Miller, who presided.

SB 750, Honor Town of Lattimore, was explained by Senator Dalton. Senator Dalton moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Dalton moved to amend the bill on page 1, lines 13 and 14. The motion carried unanimously. Senator Horton moved to amend the bill on line 6 to change the name of the railroad. The motion carried unanimously. Senator Dalton moved to engross the two amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Dalton was recognized to explain SB 690, District Court Elections. Senator Kinnaird moved a favorable report of the bill. The motion carried. **Favorable report.**

SB 742, Teacher/Student/No Sex Acts, was explained by Senators Dalton and Garrou. Senator Miller adjourned the meeting with the understanding that discussion of SB 742 would continue at the next meeting.

Brad Miller
Senator Brad Miller, Chairman

Cornelia McMillan
Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Tuesday, April 06, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **690** District Court Elections Nonpartisan
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO SENATE RESOLUTION, BUT FAVORABLE AS TO C.S. SENATE RESOLUTION

S.R. **750** Honor Town Of Lattimore
Draft Number: PCS6607
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 690

Short Title: District Court Elections Nonpartisan. (Public)

Sponsors: Senators Dalton; Gulley, Miller, and Odom.

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

Section 1. Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"ARTICLE 25.

"Nomination and Election of Superior and District Court Judges.

"**§ 163-321. Applicability.**

The nomination and election of superior and district court judges of the General Court of Justice shall be as provided by this Article.

"**§ 163-322. Nonpartisan primary election method.**

(a) General. -- Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. -- In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. -- In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. -- Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

"Date_____:

I hereby file notice that I am a candidate for election to the office of_____ in the regular election to be held _____, _____.

Signed_____:

(Name of Candidate)

Witness:_____".

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. -- Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. -- Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. -- Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. -- No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks election. Votes cast for a candidate shall be effective only for his election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"**§ 163-324. Filing fees required of candidates; refunds.**

(a) Fee Schedule. -- At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. -- If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"**§ 163-325. Petition in lieu of payment of filing fee.**

(a) General. -- Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. -- If the candidate is seeking the office of superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"**§ 163-326. Certification of notices of candidacy.**

(a) Names of Candidates Sent to Secretary of State. -- Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board

shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. -- No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for superior and district court.

(c) Receipt of Notification by County Board. -- Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"**§ 163-327. Death of candidates or elected officers.**

(a) Death or Disqualification of Candidate Before Primary. -- If a candidate for nomination in a primary dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. -- If a person elected to the office of superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"**§ 163-328. Failure of candidates to file; death of a candidate before election.**

(a) Insufficient Number of Candidates. -- If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death of Candidate; Reopening Filing. -- If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing

period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Death of Nominated Candidate; Ballots Not Reprinted. -- If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the deceased candidate shall remain on the ballots. If a deceased candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.

(a) General. -- If a vacancy is created in the office of judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. -- Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those

candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"§ 163-330. Voting in primary.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"§ 163-331. Date of primary.

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"§ 163-332. Ballots.

(a) General. -- In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-140(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to be Furnished by County Board of Elections. -- It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"§ 163-333. Canvass.

The county board of elections shall, in addition to the requirements contained in G.S. 163-175, canvass the results in judicial primaries and elections, the number of legal votes cast in each precinct for each candidate, the name of each person voted

for, and the total number of votes cast in the county for each person for each different office.

"**§ 163-334. Counting of ballots.**

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

Section 2. (a) G.S. 7A-142 reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. <u>If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence.</u> Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations.

(b) Effective on the first Monday in December of 2002, G.S. 7A-142 as amended by subsection (a) of this section reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. ~~If the district court judge was elected as the nominee of a political party, then the district bar shall submit to~~

~~the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence.~~ If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

Section 3. G.S. 163-106 reads as rewritten:

"**§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

(a) Notice and Pledge. -- No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date .....

I hereby file notice as a candidate for nomination as ..... in the ..... party primary election to be held on ....., ~~19~~..... I affiliate with the ..... party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the ..... party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed.....

Name of candidate

Witness:

.....

.....

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known. A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. -- No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
~~Judges of the district courts~~
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North ~~Carolina or two or more vacancies for the office of district court judge to be filled by nominations,~~ Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

~~A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.~~

(e) Withdrawal of Notice of Candidacy. -- Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

~~(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.~~"

Section 4. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. -- At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior and district court judge	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual

	salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

Section 5. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify

such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of Justice, other than superior and district court judge,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

Section 6. G.S. 163-140(a)(8) reads as rewritten:

"(8) Judicial ballot for superior and district court."

Section 7. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. -- If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and ~~judge of the District Court or~~ members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

Section 8. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition

in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by
Any elective State office United States Senator	appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives ~~Judge of district court~~ District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies

the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

Section 9. G.S. 163-135(f) reads as rewritten:

"(f) Judicial Elections. -- Except as provided by Article 25 of this Chapter, this Article shall apply to and control all elections for judges of the ~~superior court.~~ superior and district courts."

Section 10. G.S. 163-140(b)(9) reads as rewritten:

"(9) Judicial ballot for superior and district court. The form of the judicial ballot for judges of the superior court and district court shall be prepared by the county board of elections. On the face of the ballot, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible county board of elections. This ballot may not be combined with any other ballot except another judicial ballot."

Section 11. G.S. 163-191 reads as rewritten:

"**§ 163-191. Contested primaries and elections; how tie broken.**

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie except if there is a tie for superior or district court judge the tie shall be broken in accordance with Article 25 of this Chapter."

Section 12. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 742

Short Title: Teacher/Student/No Sex Acts. (Public)

Sponsors: Senators Dalton, Garrou; Allran, Carpenter, Carrington, Carter, Cochrane, Cooper, Forrester, Foxx, Garwood, Horton, Hoyle, Lucas, Martin of Guilford, Metcalf, Moore, Odom, Phillips, Rucho, Warren, Weinstein, and Wellons.

Referred to: Judiciary II.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL FOR A SCHOOL TEACHER OR ADMINISTRATOR TO ENGAGE IN SEXUAL ACTS WITH A STUDENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-27.7 reads as rewritten:

"**§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.**

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

(b) If a defendant is employed as a teacher or administrator in the school of a victim who is 16, 17, or 18 years old and engages in vaginal intercourse or a sexual act with a victim who is 16, 17, or 18 years old attending classes at the school to which the teacher or administrator is assigned, the defendant is guilty of a Class G felony, unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE RESOLUTION 750*

Sponsors: Senators Dalton; Hoyle and Perdue.

Referred to: Judiciary II.

April 5, 1999

A SENATE RESOLUTION HONORING THE TOWN OF LATTIMORE UPON ITS ONE HUNDREDTH ANNIVERSARY AND HONORING ITS FOUNDER, THE HONORABLE AUDLEY M. LATTIMORE.

Whereas, the General Assembly incorporated the Town of Lattimore in Cleveland County on February 13, 1899; and

Whereas, the Town of Lattimore is named for Audley M. Lattimore, a veteran of the War Between the States and the Town's first postmaster; and

Whereas, the citizens of the Town of Lattimore have prepared a year-long celebration commemorating the Town's 100th anniversary; and

Whereas, special anniversary events include a reenactment of the Town's first town council meeting, a daylong reunion of Lattimore School alumni, displays of memorabilia, and other historical programs; and

Whereas, Lattimore's 100th anniversary and Audley M. Lattimore's contributions to the development of the Town are worthy of celebration and should be enjoyed and supported by all of North Carolina's citizens; Now, therefore,

Be it resolved by the Senate:

Section 1. The Senate honors Audley M. Lattimore and joins Lattimore's citizens in celebrating the Town's 100th anniversary.

Section 2. The Principal Clerk shall transmit a certified copy of this resolution to the Mayor and Town Manager of the Town of Lattimore.

Section 3. This resolution is effective upon adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

FILED - SENATE

S

D

SENATE DRS6585-LB030(2.3) S 6 9 0 MAR 3 1 1999

PRINCIPAL CLERK

Short Title: District Court Elections Nonpartisan. (Public)

Sponsors: Senator Dalton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT COURT JUDGES.

The General Assembly of North Carolina enacts:

Section 1. Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF SUPERIOR AND DISTRICT COURT JUDGES.

"ARTICLE 25.

"Nomination and Election of Superior and District Court Judges.

"**§ 163-321. Applicability.**

The nomination and election of superior and district court judges of the General Court of Justice shall be as provided by this Article.

"**§ 163-322. Nonpartisan primary election method.**

(a) General. -- Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. -- In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of

offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. -- In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. -- Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

"Date_____:

I hereby file notice that I am a candidate for election to the office of_____ in the regular election to be held _____, _____.

Signed_____:

(Name of Candidate)

Witness:_____".

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. -- Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections

no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. -- Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. -- Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. -- No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks election. Votes cast for a candidate shall be effective only for his election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district

as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"§ 163-324. Filing fees required of candidates; refunds.

(a) Fee Schedule. -- At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. -- If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"§ 163-325. Petition in lieu of payment of filing fee.

(a) General. -- Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. -- If the candidate is seeking the office of superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"§ 163-326. Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. -- Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. -- No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for superior and district court.

(c) Receipt of Notification by County Board. -- Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"**§ 163-327. Death of candidates or elected officers.**

(a) Death or Disqualification of Candidate Before Primary. -- If a candidate for nomination in a primary dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. -- If a person elected to the office of superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"**§ 163-328. Failure of candidates to file; death of a candidate before election.**

(a) Insufficient Number of Candidates. -- If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death of Candidate; Reopening Filing. -- If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow

other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Death of Nominated Candidate; Ballots Not Reprinted. -- If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the deceased candidate shall remain on the ballots. If a deceased candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.

(a) General. -- If a vacancy is created in the office of judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. -- Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"**§ 163-330. Voting in primary.**

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"**§ 163-331. Date of primary.**

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"**§ 163-332. Ballots.**

(a) General. -- In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-140(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to be Furnished by County Board of Elections. -- It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"**§ 163-333. Canvass.**

The county board of elections shall, in addition to the requirements contained in G.S. 163-175, canvass the results in judicial primaries and elections, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the county for each person for each different office.

"**§ 163-334. Counting of ballots.**

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

Section 2. (a) G.S. 7A-142 reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations.

(b) Effective on the first Monday in December of 2002, G.S. 7A-142 as amended by subsection (a) of this section reads as rewritten:

"**§ 7A-142. Vacancies in office.**

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84-19. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the selection of the nominees. ~~If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members~~

~~of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence.~~ If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations."

Section 3. G.S. 163-106 reads as rewritten:

"**§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

(a) Notice and Pledge. -- No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date .....

I hereby file notice as a candidate for nomination as ..... in the ..... party primary election to be held on ....., ~~19~~..... I affiliate with the ..... party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the ..... party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed.....

Name of candidate

Witness:

.....

.....

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known. A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any)

sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. -- No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
~~Judges of the district courts~~
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. -- In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two

vacancies for United States Senator from North ~~Carolina or two or more vacancies for the office of district court judge to be filled by nominations,~~ Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

~~A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.~~

(e) Withdrawal of Notice of Candidacy. -- Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the

election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

~~(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.~~"

Section 4. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. -- At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior <u>and district</u> court judge	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not	One percent (1%) of the annual

compensated by fees	salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

Section 5. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,

Justices, Judges, or District Attorneys of the
General Court of Justice, other than
superior and district court judge,
United States Senators,
Members of the United States House of
Representatives,
State Senators in multi-county senatorial
districts, and
Members of the State House of Representatives
in multi-county representative districts."

Section 6. G.S. 163-140(a)(8) reads as rewritten:

"(8) Judicial ballot for superior and district court."

Section 7. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. -- If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and ~~judge of the District Court or~~ members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

Section 8. G.S. 163-114 reads as rewritten:

"**§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.**

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	Vacancy is to be filled by

Any elective State office United States Senator	appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives ~~Judge of district court~~ District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee

members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

Section 9. G.S. 163-135(f) reads as rewritten:

"(f) Judicial Elections. -- Except as provided by Article 25 of this Chapter, this Article shall apply to and control all elections for judges of the ~~superior court.~~ superior and district courts."

Section 10. G.S. 163-140(b)(9) reads as rewritten:

"(9) Judicial ballot for superior and district court. The form of the judicial ballot for judges of the superior court and district court shall be prepared by the county board of elections. On the face of the ballot, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible county board of elections. This ballot may not be combined with any other ballot except another judicial ballot."

Section 11. G.S. 163-191 reads as rewritten:

"**§ 163-191. Contested primaries and elections; how tie broken.**

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie except if there is a tie for superior or district court judge the tie shall be broken in accordance with Article 25 of this Chapter."

Section 12. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

FILED - SENATE

S

S 742 APR 1 1999 D

SENATE DRS7596-LH002D(3.16)

PRINCIPAL CLERK

Short Title: Teacher/Student/No Sex Acts. (Public)

Sponsors: Senators Dalton and Garrou.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL FOR A SCHOOL TEACHER OR ADMINISTRATOR TO ENGAGE IN SEXUAL ACTS WITH A STUDENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-27.7 reads as rewritten:

"**§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.**

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

(b) If a defendant is employed as a teacher or administrator in the school of a victim who is 16, 17, or 18 years old and engages in vaginal intercourse or a sexual act with a victim who is 16, 17, or 18 years old attending classes at the school to which the teacher or administrator is assigned, the defendant is guilty of a Class G felony, unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE RESOLUTION 750*
Proposed Committee Substitute S750-PCS7611-LG

Sponsors:

Referred to:

April 5, 1999

A SENATE RESOLUTION HONORING THE TOWN OF LATTIMORE UPON ITS ONE HUNDREDTH ANNIVERSARY AND HONORING ITS FOUNDER, THE HONORABLE AUDLEY M. LATTIMORE.

Whereas, the Town of Lattimore in Cleveland County began as a village around 1886 and consisted of four houses located near the site of the crossing of two railroads, the CCC (Charleston, Cincinnati, and Chicago) which is now the Southern Railway and the Carolina Central which is now part of the CSX system; and

Whereas, Representative Clyde R. Hoey, who later became Governor of North Carolina and served as a member of the United States Senate, introduced a bill to incorporate the Town of Lattimore; and

Whereas, the General Assembly incorporated the Town of Lattimore on February 13, 1899; and

Whereas, the Town of Lattimore is named for Audley M. Lattimore, a veteran of the War Between the States and the Town's first postmaster; and

Whereas, the citizens of the Town of Lattimore have prepared a year-long celebration commemorating the Town's 100th anniversary; and

Whereas, special anniversary events include a reenactment of the Town's first town council meeting, a daylong reunion of Lattimore School alumni, displays of memorabilia, and other historical programs; and

Whereas, Lattimore's 100th anniversary and Audley M. Lattimore's contributions to the development of the Town are worthy of celebration and should be enjoyed and supported by all of North Carolina's citizens; Now, therefore,

Be it resolved by the Senate:

Section 1. The Senate honors Audley M. Lattimore and joins Lattimore's citizens in celebrating the Town's 100th anniversary.

Section 2. The Principal Clerk shall transmit a certified copy of this resolution to the Mayor and Town Manager of the Town of Lattimore.

Section 3. This resolution is effective upon adoption.

SENATE BILL 742:
Teacher/Student/No Sex Acts

BILL ANALYSIS

Committee: Senate Judiciary II
Date: April 6, 1999
Version: 1st Edition

Introduced by: Senators Dalton & Garrou
Summary by: Brenda J. Carter
Committee Co-Counsel

SUMMARY: Senate Bill 742 makes it a Class G felony for a teacher or administrator at a school to engage in a sexual act with any student at the school who is age 16 through age 18.

CURRENT LAW: Under current law, age 16 is deemed to be the age at which a person can engage in consensual sexual activity. North Carolina's statutory rape provisions take into consideration the age of the victim as well as the age of the offender. For example, when the victim is over the age of 13, the offense is a Class B1 felony when the offender is at least 6 years older than the victim; when the defendant is less than 6 but more than 4 years older than the victim, the offense is a Class C felony. *Assuming the average teacher is at least 22 years old, a teacher who engages in a sexual act with a child under the age of 16 is now guilty of a Class B1 felony.* The presumptive minimum sentence for an offender with no prior convictions is 192-240 months active punishment. *There is currently no criminal penalty for consensual sex if the child is 16 years of age or older, except perhaps the offense of fornication which is a Class 2 misdemeanor. However, with regard to elementary and secondary schools there are a number of statutory, administrative and State Board of Education policies that could result in disciplinary action or dismissal of the teacher.* A teacher may currently be dismissed for (among other things) "immorality" or "conviction of a felony or crime involving moral turpitude" G.S. 115C-325(e)(1)(b) and (g). According to State Board Rules, the Code of Professional Practice and Conduct for North Carolina Educators prohibits conduct with students that includes any sexual act, any solicitation of a sexual act, and any intentional, encouragement, or consummation of a romantic or physical relationship with a student, or any sexual contact with a student. The term "romantic relationship" includes dating any student. Possible consequences for willful violation of the code include license suspension or revocation. 16 NCAC 6C .0600 and .0601.

BILL ANALYSIS: Senate Bill 742 makes it a Class G felony for a defendant who is employed as a teacher or administrator to engage in vaginal intercourse or a sexual act with a student who is 16, 17, or 18 years old and attending classes at the school to which the teacher or administrator is assigned. The term "sexual act" is specifically defined by G.S. 14-27.1. The presumptive minimum sentence for a Class G felony, assuming the defendant has no prior record, is 10-13 months intermediate or active punishment. The bill would become effective December 1, 1999 and apply to offenses occurring on or after that date.

S742-SMRV-001

SENATE BILL 690:
District Court Elections Nonpartisan

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Dalton
Date:	April 6, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: Senate Bill 690 would provide for the nonpartisan election of district court judges.

CURRENT LAW: The District Court Division of the General Court of Justice consists of various district courts organized in 30 territorial districts, with at least one district judge in each district. The number of judges for each district is determined by the General Assembly. Each judge must be a resident of the district to which he or she is elected, and each district judge is elected by the voters of the district court district in which the judge is to serve. District court judges are elected at the regular election for members of the General Assembly immediately preceding termination of each regular term, and serve 4-year terms. A vacancy in the office of district judge is filled for the unexpired term by appointment of the Governor from nominations submitted by the district bar. Nominees must be residents of the district court district who are licensed to practice law in the district and who are members of the same political party as the vacating judge.

BILL ANALYSIS: Article 25 of Chapter 163 sets out the law with respect to the nomination and election of superior court judges. Senate Bill 690 basically moves existing provisions regarding the nomination and election of district court judges from the partisan election method set out in the general election law to the nonpartisan election method set out in Article 25.

Current law requires that in any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, *each candidate for district court judge must file a written statement designating the vacancy to which the candidate seeks election.* Similarly, a person seeking election for a specialized district judgeship must file a written statement designating the specialized judgeship to which the person seeks nomination. These provisions are deleted from G.S 163-106 [page 11 of the bill], and are now set out G.S. 163-323 (f) , [page 3 of the bill], with *no substantive change.*

The bill makes additional conforming and clarifying changes.

Senate Bill 690 would be effective when it becomes law.

S690-SMRV-001

District	Judges	County
1	4	Camden
		Chowan
		Currituck
		Dare
		Gates
		Pasquotank
		Perquimans
2	3	Martin
		Beaufort
		Tyrrell
		Hyde
		Washington
3A	5	Pitt
3B	5	Craven
		Pamlico
		Carteret
4	7	Sampson
		Duplin
		Jones
		Onslow
5	6	New Hanover
		Pender
6A	2	Halifax
6B	3	Northampton
		Bertie
		Hertford
7	7	Nash
		Edgecombe
		Wilson
8	6	Wayne
		Greene
		Lenoir
9	4	Granville
		(part of Vance see subsection (b))
		Franklin
9A	2	Person
		Caswell
9B	1	Warren
		(part of Vance see subsection (b))
10	13	Wake
11	7	Harnett
		Johnston
		Lee
12	9	Cumberland
13	5	Bladen
		Brunswick
		Columbus

District	Judges	County
14	6	Durham
15A	3	Alamance
15B	4	Orange
		Chatham
16A	3	Scotland
		Hoke
16B	5	Robeson
17A	2	Rockingham
17B	3	Stokes
		Surry
18	11	Guilford
19A	3	Cabarrus
19B	6	Montgomery
		Moore
		Randolph
19C	4	Rowan
20	7	Stanly
		Union
		Anson
		Richmond
21	8	Forsyth
22	8	Alexander
		Davidson
		Davie
		Iredell
23	4	Alleghany
		Ashe
		Wilkes
		Yadkin
24	4	Avery
		Madison
		Mitchell
		Watauga
		Yancey
25	8	Burke
		Caldwell
		Catawba
26	15	Mecklenburg
27A	5	Gaston
27B	4	Cleveland
		Lincoln
28	5	Buncombe
29	6	Henderson
		McDowell
		Polk
		Rutherford
		Transylvania
30	4	Cherokee
		Clay

§ 7A-140. Number; election; term; qualification; oath.

There shall be at least one district judge for each district. Each district judge shall be elected by the qualified voters of the district court district in which he is to serve at the time of the election for members of the General Assembly. The number of judges for each district shall be determined by the General Assembly. Each judge shall be a resident of the district for which elected, and shall serve a term of four years, beginning on the first Monday in December following his election.

Each district judge shall devote his full time to the duties of his office. He shall not practice law during his term, nor shall he during such term be the partner or associate of any person engaged in the practice of law.

Before entering upon his duties, each district judge, in addition to other oaths prescribed by law, shall take the oath of office prescribed for a judge of the General Court of Justice.

(1965, c. 310, s. 1; 1969, c. 1190, s. 11.)

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Susan Williams	Senate Page 1346 5th St. Cir NW, Hickory, NC
Laura Bass	Senate Page Southern Shores
Leanne Kinnel	NCSBA
Jan Crotts	VCASA
Jack Betts	Charlotte Observer
Stephanie Gibbs	" "
Wade Rawlins	The News & Observer
Bill Wilson	NCAE
[illegible]	NCAE
A.A. Adams	Victim Advocate

SENATE JUDICIARY II COMMITTEE

APRIL 8, 1999

ROOM 1124

SB 568	One-Stop Voting Sites	Senator Kinnaird
SB 742	Teacher/Student/No Sex Acts	Senator Dalton
SB 767	Lobbyist Waiting Period	Senator Miller

Adjournment

SENATE JUDICIARY II COMMITTEE

APRIL 8, 1999

MINUTES

The Senate Judiciary II Committee met on April 8, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Twelve members were present, including Senator Brad Miller, who presided.

Senator Miller announced the members of the subcommittee to consider SB 522, "Quick Take" Notice of Appeal, and SB 582, Winston-Salem Pawnbrokers: Senator Horton, Chair, and Senators Hagan and Robinson.

Senator Dalton was recognized to continue the discussion of SB 742, Teacher/Student/No Sex Acts. Senator Horton moved to amend the bill to exclude 18 year olds, to have the bill apply simply to 16 and 17 year olds, and to delete the class G felony provision and to substitute class H. The motion carried unanimously. Senator Martin moved to engross the amendment into a committee substitute, to give the committee a favorable report and to re-refer the bill to the Appropriations Committee. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 568, One-Stop Voting Sites, was explained by Senator Kinnaird. Senator Moore moved to amend the bill by adding a requirement for a photo ID. Senator Shaw questioned the mechanics of setting up the voting sites as well as the costs involved. Johnnie McLean, Deputy Director of the State Board of Elections, explained that County Boards of Elections would be required to develop a plan for implementing the voting locations and to submit the plans to the State Board of Elections for approval. The costs involved would be similar to the costs of operating a precinct on election day. Senator Kinnaird spoke in opposition to the amendment. The amendment failed.

Senator Ballance moved a favorable report of the bill. The motion carried. **Favorable report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Thursday, April 08, 1999

SENATOR MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **568** One-Stop Voting Sites.
Sequential Referral: None
Recommended Referral: None

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

S.B. **398** Greensboro Red Light Cameras.
Draft Number: PCS2667
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 568

Short Title: One-Stop Voting Sites. (Public)

Sponsors: Senators Kinnaird; Gulley, Lee, and Miller.

Referred to: Judiciary II.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PERMIT COUNTY BOARDS OF ELECTIONS TO DESIGNATE ADDITIONAL SITES FOR ONE-STOP ABSENTEE VOTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-227.2 is amended by adding a new subsection to read:

"(f1) Notwithstanding any other provision of this section, a county board of elections may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 742

Short Title: Teacher/Student/No Sex Acts. (Public)

Sponsors: Senators Dalton, Garrou; Allran, Carpenter, Carrington, Carter, Cochrane, Cooper, Forrester, Foxx, Garwood, Horton, Hoyle, Lucas, Martin of Guilford, Metcalf, Moore, Odom, Phillips, Rucho, Warren, Weinstein, and Wellons.

Referred to: Judiciary II.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL FOR A SCHOOL TEACHER OR ADMINISTRATOR TO ENGAGE IN SEXUAL ACTS WITH A STUDENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-27.7 reads as rewritten:

"**§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.**

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

(b) If a defendant is employed as a teacher or administrator in the school of a victim who is 16, 17, or 18 years old and engages in vaginal intercourse or a sexual act with a victim who is 16, 17, or 18 years old attending classes at the school to which the teacher or administrator is assigned, the defendant is guilty of a Class G felony, unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 767

Short Title: Lobbyist Waiting Period. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

April 6, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-47.5A. Waiting period before former State legislators may lobby.**

Notwithstanding the provisions of G.S. 120-47.8, no individual who has served as a member of the General Assembly may act as a lobbyist as defined in this Article within one year after the expiration of the term for which the individual was elected or appointed to serve in the General Assembly."

Section 2. G.S. 120-47.2(b) reads as rewritten:

"(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; an indication of whether the registrant has served as a member of the General Assembly and the period served; and a general description of the matters on which the registrant expects to act as a lobbyist."

Section 3. This act is effective when it becomes law and applies to individuals who serve terms beginning on or after January 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 568 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 13

( ) WHICH CHANGES THE TITLE

by adding after the period the following:

"The plan shall include the display requirement that the voter ~~present~~ an identification ~~that~~ document that contains a photograph of the voter."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 742 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Horton
)
Sen.)

moves to amend the bill on page 1, line 15

( ) WHICH CHANGES THE TITLE and again on page 1, line 16

by deleting "16, 17, or 18" and substituting ~~"16, 17, or 18"~~ "16 or 17"

and on page 1, line 17

by deleting "Class G" and substituting "Class H".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 568:
One-Stop Voting Sites.

BILL ANALYSIS

Committee: Senate Judiciary II
Date: April 8, 1999
Version: First Edition

Introduced by: Senator Kinnaird
Summary by: William R. Gilkeson
Staff Attorney

SUMMARY: ***Senate Bill 568 would allow county boards of elections to allow registered voters to go to sites in addition to the county board office to vote "One-Stop" ballots. One-Stop voting is a kind of absentee voting in which voters who have one of several excuses for not going to the polls on election day may vote in person for three weeks before the election. Currently they do this at the board of elections office only. The bill would allow the county board to designate additional One-Stop sites, according to a plan approved by the State Board of Elections.***

CURRENT LAW: A registered voter may vote by absentee ballot if the voter has one of the following excuses for not voting at the polls on an election day:

1. The voter expects to be out of the county all day on election day.
2. The voter will not be able to go to the polls to vote on election day because of disability or sickness.
3. The voter is incarcerated and is eligible to vote because is a misdemeanant.
4. The voter will not be voting on election day because of observing a holiday of that religion.
5. The voter will not be at the polling place because of working for the board of elections somewhere else in the county.

Absentee voting can be done one of two ways, by mail or in person. The mail-in process begins 50 days before an election and ends the Tuesday before the election, unless the voter gets sick in the last week.

The in-person process, called One-Stop voting in North Carolina, begins on the first business day after the 25th day before the election, and ends on the Friday before the election. That amounts to the business days in the three full weeks before the election. In most counties, One-Stop is conducted in one place only, the county board of elections office. (Guilford and Orange counties are exceptions.)

BILL ANALYSIS: The bill deals only with One-Stop absentee voting. It would allow any county board of elections to designate one or more One-Stop voting sites in addition to the county board office. Designating the additional sites would have to be approved by the county board as part of a plan. The county's plan would have to be approved by the State Board of Elections. The county's plan would have to include adequate security for ballots and provisions against voter fraud.

The bill would become effective July 1, 1999.

BACKGROUND: This same provision is contained in two other bills, Senate Bill 186 sponsored by Senator Rucho, and House Bill 175 introduced by Reps. Nesbitt and Alexander. Both of those bills include other major elements, including changes to the excuse requirements. Senate Bill 568, however, leaves the excuse requirement in place. A bill that does something similar to SB 568 passed the Senate in 1997.

§ 163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office.

(a) A person expecting to be absent from the county in which he is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under G.S. 163-226(a)(2), 163-226(a)(3a), or 163-226(a)(4) may request an application for absentee ballots, complete the application, receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered under the provisions of this section.

(b) Not earlier than the first business day after the twenty-fifth day before an election, in which absentee ballots are authorized, in which he seeks to vote and not later than 5:00 P.M. on the Friday prior to that election, the voter shall appear in person only at the office of the county board of elections and request that the chairman, a member, or the director of elections of the board, or an employee of the board of elections, authorized by the board, furnish him with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the chairman, member, director of elections or authorized employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the chairman, member, director of elections of the board, or employee of the board of elections, authorized by the board, shall enter the voter's name in the register of absentee ballot applications and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); shall furnish the voter with the ballots to which the application for absentee ballots applies; and shall furnish the voter with a container-return envelope. The voter thereupon shall comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return envelope to the chairman, member, director of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the certificate printed on the container-return envelope as provided in G.S. 163-229(b). All actions required by this subsection shall be performed in the office of the board of elections. For the purposes of this section only, the chairman, member, director of elections of the board, or full-time employee, authorized by the board shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member or director of elections of the board shall keep the voter's application for absentee ballots and the sealed container-return envelope in a safe place, separate and apart from other applications and container-return envelopes. At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-230(1) and G.S. 163-230(2)b. and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be handled in the same manner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at his residence address or at the address shown in the application for absentee ballots; and the board chairman shall retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots.

(e) The voter shall vote his absentee ballot in a voting booth and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote his absentee ballot in that room. The voting booth shall be in the office of the county board of elections. If the voter needs assistance in getting to and from the voting booth and in preparing and marking his ballots or if he is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c) (4), or the voter's legal guardian shall be entitled to assist the voter.

(e1) If a county uses a voting system with retrievable ballots, that county's board of elections may by resolution elect to conduct one-stop absentee voting according to the provisions of this subsection. In a county in which the board has opted to do so, a one-stop voter shall cast the ballot and then shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with a plan approved by the State Board of Elections, which shall include that no additional ballots have been placed in the box or system. Any county board desiring to conduct one-stop voting according to this subsection shall submit a plan for doing so to the State Board of Elections. The State Board shall adopt standards for conducting one-stop voting under this subsection and shall approve any county plan that adheres to its standards. The county board shall adhere to its State Board-approved plan. The plan shall provide that each one-stop ballot shall have a ballot number on it in accordance with G.S. 163-230(3)a., or shall have an equivalent identifier to allow for retrievability. The standards shall address retrievability in one-stop voting on direct record electronic equipment where no paper ballot is used.

(f) Notwithstanding the exception specified in G.S. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Friday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during such time.
(1973, c. 536, s. 1; 1975, c. 844, s. 12; 1977, c. 469, s. 1; c. 626, s. 1; 1979, c. 107, s. 14; c. 799, ss. 1-3; 1981, c. 305, s. 2; 1985, c. 600, s. 4; 1987, c. 583, s. 4; 1989, c. 520; 1989 (Reg. Sess., 1990), c. 991, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 53; 1995, c. 243, s. 1; c. 509, ss. 117, 118; 1995 (Reg. Sess., 1996), c. 561, s. 4; 1997-510, s. 2.)

Annotations

Local Modification. - Durham: 1995 (Reg. Sess., 1996), c. 717, s. 1; Gaston: 1995, c. 197, s. 1; Guilford: 1995, c. 197, s. 1; Mecklenburg: 1995, c. 197, s. 1; Union County: 1995, c. 197, s. 1; Orange: 1983, c. 192; 1983 (Reg. Sess., 1984), c. 978; Pasquotank: 1995 (Reg. Sess., 1996), c. 568, s. 1; Randolph: 1995 (Reg. Sess., 1996), c. 717, s. 1; Wake: 1995 (Reg. Sess., 1996), c. 717, s. 1; Watauga: 1995 (Reg. Sess., 1996), c. 717, s. 1; Wilson: 1995 (Reg. Sess. 1996), c. 599, s. 1; Anson County Bd. of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 9 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

Editor's Note. - Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1989, c. 520, made amendments to this section effective with respect to primaries and elections held on or after January 1, 1990.

Session Laws 1989 (Reg. Sess., 1990), c. 991, s. 2, made amendments to this section effective with respect to primaries and elections held on or after January 1, 1991.

SENATE BILL 742:
Teacher/Student/No Sex Acts

BILL ANALYSIS

Committee: Senate Judiciary II
Date: April 6, 1999
Version: 1st Edition

Introduced by: Senators Dalton & Garrou
Summary by: Brenda J. Carter
Committee Co-Counsel

SUMMARY: Senate Bill 742 makes it a Class G felony for a teacher or administrator at a school to engage in a sexual act with any student at the school who is age 16 through age 18.

CURRENT LAW: Under current law, age 16 is deemed to be the age at which a person can engage in consensual sexual activity. North Carolina's statutory rape provisions take into consideration the age of the victim as well as the age of the offender. For example, when the victim is over the age of 13, the offense is a Class B1 felony when the offender is at least 6 years older than the victim; when the defendant is less than 6 but more than 4 years older than the victim, the offense is a Class C felony. *Assuming the average teacher is at least 22 years old, a teacher who engages in a sexual act with a child under the age of 16 is now guilty of a Class B1 felony.* The presumptive minimum sentence for an offender with no prior convictions is 192-240 months active punishment. *There is currently no criminal penalty for consensual sex if the child is 16 years of age or older, except perhaps the offense of fornication which is a Class 2 misdemeanor. However, with regard to elementary and secondary schools there are a number of statutory, administrative and State Board of Education policies that could result in disciplinary action or dismissal of the teacher.* A teacher may currently be dismissed for (among other things) "immorality" or "conviction of a felony or crime involving moral turpitude". G.S. 115C-325(e)(1)(b) and (g). According to State Board Rules, the Code of Professional Practice and Conduct for North Carolina Educators prohibits conduct with students that includes any sexual act, any solicitation of a sexual act, and any intentional, encouragement, or consummation of a romantic or physical relationship with a student, or any sexual contact with a student. The term "romantic relationship" includes dating any student. Possible consequences for willful violation of the code include license suspension or revocation. 16 NCAC 6C .0600 and .0601.

BILL ANALYSIS: Senate Bill 742 makes it a Class G felony for a defendant who is employed as a teacher or administrator to engage in vaginal intercourse or a sexual act with a student who is 16, 17, or 18 years old and attending classes at the school to which the teacher or administrator is assigned. The term "sexual act" is specifically defined by G.S. 14-27.1. The presumptive minimum sentence for a Class G felony, assuming the defendant has no prior record, is 10-13 months intermediate or active punishment. The bill would become effective December 1, 1999 and apply to offenses occurring on or after that date.

S767:
Lobbyist Waiting Period

BILL ANALYSIS

Committee: Senate Judiciary II
Date: April 7, 1999
Version: 1st. Ed.

Introduced by: Sen. Miller
Summary by: Ed Rossi
Committee Co-Counsel

*SUMMARY: **Senate bill 767 would institute a one year waiting period before former members of the General Assembly may become lobbyists.***

CURRENT LAW: North Carolina laws do not specifically address lobbying efforts by former members of the General Assembly. G.S. § 120-47.8 exempts Members of the General Assembly from the State's lobbying laws. However, it is unclear whether that exemption applies to former members of the General Assembly, and a court has yet to rule on the issue.

BACKGROUND: Senate bill 767 is identical to a bill that was approved by the Senate Judiciary Committee in 1997. That bill (Senate bill 3) which was sponsored by former Senator Jenkins was later amended on the Senate floor to include individuals who served on the Council of State. The House later amended the bill by turning it into a study bill. Thereafter, the LRC's Lobbying and Conflict of Interest Issues Committee, which was co-chaired by Senator Miller, studied this bill but made no report.

Other States – At least 17 other states have codified similar provisions.[1] The waiting period in these states ranges from 1 to 2 years. A summary of the waiting periods imposed by these states can be found on the back of this memo.[2]

Federal Law – At the federal level, former members and staff of the legislative and executive branches are subject to waiting periods before they are allowed to lobby. 18 U.S.C. § 207 prohibits Members of Congress and their personal staff from lobbying for a period of 1 year after leaving office.

[1] National Council of Sate Legislatures: *Revolving Door*, April, 1998.
[2] Id.

Alabama – 2 years

Alaska – 1 year – Alaska Stat. § 24.45.121(c)

Arizona – 1 year – Ariz. Rev. Stat. § 38.504

California – 1 year – Cal. Gov. Code § 87406

Connecticut – 1 year – Conn. Gen. Stat. § 1-84b

Florida – 2 years – Article II, Section 8 Florida Constitution

Hawaii – 1 year

Iowa – 2 years – Iowa Code § 68B.5A(4)

Kentucky – 2 years – Ky. Rev. Stat. § 6.811(8)

Massachusetts – 1 year; applies to lobbying the legislature, but not other governmental bodies

Maryland – until conclusion of the next regular session that begins after the member leaves office

New York – 2 years – N.Y. Public Officers Law § 73(8)

Ohio – 1 year, except for representing a state agency or political subdivision of the state

Pennsylvania – 1 year, before the body in which the legislator served – Pa. Cons. Stat. tit. 65, § 403

South Dakota – 1 year – S.D. Codified Laws Ann. § 2-12-8.2

Virginia – 1 year; former legislators cannot represent clients before the legislature – Va. Code § 2.1 639.33

Washington – 1 year – Wash. Rev. Code § 42-52-080

c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 539, s. 1129.)

Section Set Out Twice. — The section above is effective January 1, 1995. For the section as in effect until January 1, 1995, see the preceding section, also numbered § 14-20.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." Section 1359 of Chapter 539 provides that the act becomes effective January 1, 1995.

Effect of Amendments. — The 1993 amendment, effective January 1, 1995, and applicable to offenses occurring on or after that date, substituted "B" for "C" in the first paragraph.

§§ 14-21 through 14-23: Repealed by Session Laws 1979, c. 682, s. 7, effective January 1, 1980.

Cross References. — As to rape and other sex offenses, see now § 14-27.1 et seq.

ARTICLE 7.

Rape and Kindred Offenses.

§§ 14-24, 14-25: Repealed by Session Laws, 1975, c. 402.

Cross References. — As to rape and other sex offenses, see now § 14-27.1 et seq.

§§ 14-26, 14-27: Repealed by Session Laws 1979, c. 682, s. 7, effective January 1, 1980.

ARTICLE 7A.

Rape and Other Sex Offenses.

§ 14-27.1. Definitions.

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

(1) "Mentally defective" means (i) a victim who suffers from mental retardation, or (ii) a victim who suffers from a mental disorder, either of which temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act.

(2) "Mentally incapacitated" means a victim who due to any act committed upon the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.

§ 14-20 is set out twice. See section headings for effective dates.

(3) "Physically helpless" means (i) a victim who is unconscious; or (ii) a victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.

(4) "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes. (1979, c. 682, s. 1.)

Legal Periodicals. — For article on a model act to prevent the sexual exploitation of children, see 17 Wake Forest L. Rev. 535 (1981).

For note discussing "serious personal injury" in rapes and sexual offenses in light of State v. Boone, 307 N.C. 198, 297 S.E.2d 585 (1982), see 19 Wake Forest L. Rev. 881 (1983).

For note, "The 'Outer Limits' of the Right of Privacy: Bowers v. Hardwick," see 22 Wake Forest L. Rev. 629 (1987).

For note that addresses the effect of a recent United States Supreme Court decision on sodomy laws and the manner in which society may shape its characterization of Acquired Immune Deficiency Syndrome (AIDS) and homosexuality, see 66 N.C.L. Rev. 226 (1987).

For note, "The General Fear Theory and Intrafamilial Sexual Assault," see 66 N.C.L. Rev. 1177 (1988).

VISITOR REGISTRATION SHEET

J 2 — 4-8-99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Mark Beason	Capitol Group
Ann-Belam	SBE
Paula A. Hoef-	Covenant w/ NC's Children
Leanne Kistler	NCSBA
Bill Wilson	NCAE
[illegible]	NCAE
Carl Cahoon	NCAE
Jan Curtis	NCASA
George Reed	NC Council of Churches
Alida Gregory	Poyner & Spruill
Scott Hancock	NCATL
Karen [illegible]	Gov's Office
R. Paul Wilms	NCHBA

SENATE JUDICIARY II COMMITTEE

APRIL 13, 1999

ROOM 1124

SB 526	Mod. & Term. of Irrevocable Trusts	Senator Hagan
SB 756	Increase Auto Insurance Coverage	Senator Horton
SB 767	Lobbyist Waiting Period	Senator Miller

Adjournment

SENATE JUDICIARY II COMMITTEE

APRIL 13, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, April 13, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Fourteen members were present, including Senator Brad Miller, who presided.

Senator Hagan was recognized to explain SB 526, Mod. & Term. of Irrevocable Trusts. Graham Holding, an attorney with the Estate Planning & Fiduciary Law Section of the NC Bar Association, was called on by Senator Miller to further clarify the bill.

Senator Hagan moved to amend the bill by deleting the word "and" and substituting the word "or" on page 2, lines 10, 12 & 28, and on page 3, line 13, so that in each case the phrase reads modification or termination. The amendment also included the provision to insert "or terminate" after the word "modify" on page 3, line 43. The motion carried unanimously.

Senator Dalton moved to roll the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Miller explained SB 767, Lobbyist Waiting Period. The meeting adjourned at 11:00 a.m. with the understanding that SB 767 would be carried over to the next meeting.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 526

Short Title: Mod. & Term. of Irrevocable Trusts. (Public)

Sponsors: Senators Hagan; Ballance, Carter, Garrou, Garwood, Rand, and Robinson.

Referred to: Judiciary II.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 36A of the General Statutes is repealed.

Section 2. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11A.

"Modification and Termination of Trusts.

"**§ 36A-125.1. Definitions.**

As used in this section:

(1) 'Beneficiary' means a person who has a present or future interest, vested or contingent, in a trust, including any such person who is not in esse or cannot be determined until the occurrence of a future event.

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

(3) 'Irrevocable trust' means an express noncharitable irrevocable trust. A trust is noncharitable if it is neither a wholly charitable trust nor a charitable split-interest trust subject to the provisions of Article 4 or 4A of Chapter 36A of the General Statutes.

(4) 'Sole beneficiary' means a beneficiary of a trust for which the settlor does not manifest an intention to give a beneficial interest to anyone else.

(5) 'Sui juris' means a person who is in esse and not a minor or otherwise legally incapacitated. With regard to a beneficiary, 'sui juris' also means that such beneficiary is ascertained and that the trustee knows the identity of the beneficiary.

(6) 'Trustee' means the trustee or trustees acting under an irrevocable trust.

"§ 36A-125.2. Modification and termination where settlor is sole beneficiary.

If a settlor is sui juris and the sole beneficiary of an irrevocable trust, the settlor may compel the modification and termination of the trust without the approval of the court even though the purposes for which the trust was created have not been accomplished.

"§ 36A-125.3. Modification or termination by consent of settlor and beneficiaries.

(a) If the settlor and all beneficiaries of an irrevocable trust are sui juris and consent, they may compel the modification or termination of the trust without the approval of the court even though the purposes for which the trust was created have not been accomplished.

(b) If any beneficiary does not consent to the modification or termination of the trust or is not sui juris, the other beneficiaries may institute a proceeding before the superior court to compel a modification or partial termination of the trust. The court may, with the consent of the settlor, allow such a modification or partial termination upon a finding that such action would not substantially impair the interests of the beneficiaries who do not consent or who are not sui juris.

"§ 36A-125.4. Modification or termination by consent of beneficiaries.

(a) Except as provided in subsection (b) of this section, if all beneficiaries of an irrevocable trust consent, they may compel modification and termination of the trust in a proceeding before the superior court.

(b) Where the beneficiaries of an irrevocable trust seek to compel a termination of the trust or modify it in a manner that affects its continuance according to its terms, and if the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court in its discretion determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

"§ 36A-125.5. Provisions relating to consent of beneficiaries.

For purposes of this Article:

(1) The consent of a beneficiary who is not sui juris may be given in proceedings before the court by a guardian ad litem appointed for that beneficiary if the guardian ad litem finds that it would be appropriate to do so. The guardian ad litem may base a decision to consent to modification or termination of a trust upon a finding

that living members of the beneficiary's family would generally benefit from such action.

(2) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust, the presumption of fertility is rebuttable.

(3) If the trust provides for the disposition of property to a class of persons described only as 'heirs' or 'next of kin' of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

"§ 36A-125.6. Modification and termination of a small trust.

(a) In a proceeding before the superior court, the court in its discretion may modify or terminate an irrevocable trust if the court determines that the fair market value of the assets held in trust is so low that the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) Notwithstanding the provisions of subsection (a) of this section, if at any time the trustee of an irrevocable trust determines in good faith that the fair market value of the assets held in trust is fifty thousand dollars ($50,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may in its discretion terminate the trust and distribute the trust property, including principal and undistributed income, to any one or more of the beneficiaries to whom the income could be paid, or if there is no beneficiary to whom the income could be paid, to any one or more of the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust instrument. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust.

The trustee shall not be liable for such termination and distribution, notwithstanding the existence or potential existence of other beneficiaries who are not sui juris. Any beneficiary receiving a distribution from a trust terminated under this section shall incur no liability and shall not be required to account to anyone for such distribution.

The provisions of this subsection shall not apply where the instrument creating the trust, by specific reference to this section, or to former G.S. 36A-125, provides that it shall not apply.

"§ 36A-125.7. Modification or termination because of changed circumstances.

(a) In a proceeding before the superior court, the court in its discretion may modify an irrevocable trust:

(1) If the purpose of the trust has been fulfilled or has become illegal or impossible of fulfillment; or

(2) If, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) In exercising its discretion under subsection (a) of this section, the court may order the trustee to do acts that are not authorized or are prohibited by the trust instrument if necessary to carry out the purposes of the trust.

"**§ 36A-125.8. Inalienability of the beneficiary's interest.**

The court, in exercising its discretion to modify or terminate an irrevocable trust pursuant to the provisions of G.S. 36A-125.4, 36A-125.6(a), and 36A-125.7, and the trustee, in exercising its discretion to terminate a trust pursuant to G.S. 36A-125.6(b), shall consider provisions making the interest of a beneficiary inalienable, including those described in G.S. 36A-115(b), but the court or trustee is not precluded from the exercise of that discretion solely because of such provisions.

"**§ 36A-125.9. Distribution to minors or incompetents.**

If any trust property becomes distributable to a minor or incompetent under this Article it may be distributed:

(1) To the guardian of the estate or general guardian of such beneficiary;

(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or

(3) In accordance with the North Carolina Custodial Trust Act, Chapter 33B of the General Statutes.

"**§ 36A-125.10. Procedure.**

A proceeding under this Article may be brought under the Uniform Declaratory Judgment Act, Article 26 of Chapter 1 of the General Statutes, the provisions of which shall apply to that proceeding to the extent not inconsistent with this Article.

"**§ 36A-125.11. Exclusiveness of remedy.**

This Article does not include or abridge any other rights or proceedings existing under any other statute or otherwise provided by law to modify, terminate, reform, or rescind an irrevocable trust."

Section 3. This act becomes effective January 1, 2000, and applies to all trusts created before or after that date, except that G.S. 36A-125.6(b) shall not apply to trusts created before October 1, 1991, if the trust instrument contains spendthrift or similar protective provisions, including provisions described in G.S. 36A-115(b)(3).

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. _____ DATE 4-13-98

S. B. No. 526 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)) Sen.) Hagan

moves to amend the bill on page 2 and on page 3, line 13, lines 10, 12, & 28

( ) WHICH CHANGES THE TITLE

by deleting the word "and" and substituting the word "or".

(so that in each case the phrase reads modification or termination)

and on page 3, line 43

by inserting after the word "modify" the words "or terminate".

SIGNED Kay L. Hagan

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

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PROPOSED STATUTE REGARDING MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS
(SB 526)

In North Carolina common law rules govern the means by which a non-charitable irrevocable trust may be modified or terminated, with the exception of G.S. §36A-125 allowing a trustee to terminate a small trust of $10,000 or less. North Carolina courts have recognized general common law rules to the effect that a trust may be modified or terminated (i) by the settlor if sole beneficiary, (ii) by consent of the settlor and the beneficiaries, and, under certain circumstances, (iii) by the consent of the beneficiaries alone or (iv) by court order.

However, because our courts have not ruled on a number of specific issues, uncertainties exist as to whether a trust can be validly modified or terminated. For example, our courts have not decided whether to follow the "English rule" allowing a termination by consent of the beneficiaries in any event or the "American rule" allowing such a termination only if continuance of the trust is not necessary to carry out a material purpose. Moreover, it is not clear whether and under what circumstances a guardian ad litem may consent to a termination on behalf of minors or unborns. In some situations the common law rules have proved to be too inflexible in reaching an equitable result.

The Estate Planning and Fiduciary Law Section of the North Carolina Bar Association recommends the enactment of the proposed statute to restate and clarify the common law rules and to allow more flexibility in modifying and terminating irrevocable trusts. For example, the proposed statute adopts the "American rule" noted above but gives the court discretion in applying the material purpose doctrine. The proposed statute also provides that a guardian ad litem may consent to a modification or termination of a trust and rely on benefits accruing to family members in doing so.

In providing for the modification and termination of irrevocable trusts in general, the proposed statute rewrites G.S. §36A-125. It includes the current provisions of G.S. §36A-125 allowing a trustee to terminate an uneconomically low trust but increases the threshold amount from $10,000 to $50,000.

The Bar Association believes that the proposed statute would eliminate uncertainties that currently exist in this area and provide the means to modify or terminate an irrevocable trust in appropriate circumstances without unnecessarily defeating the purpose of the settlor or testator in establishing the trust.

MILLER

Illustrations of Cases Involving Modification and Termination of Irrevocable Trusts Under the Proposed Bill

I. Section 36A-125.2. Modification and termination where settlor is sole beneficiary.

Example 1. Settlor creates a trust to pay the income to himself for life. On his death the trust property goes as he may appoint by will and, in default of appointment, to his estate. The settlor is sole beneficiary of the trust and can revoke it.

Example 2. Same facts as Example 1, except in default of the power to appoint by will the trust property goes to the settlor's issue. The settlor is not the sole beneficiary of the trust and cannot revoke it. See Wachovia Bank v. Sevier, 41 N.C. App. 762, 255 S.E. 2d 636 (1976).

II. Section 36A-125.3. Modification and termination by consent of settlor and beneficiaries.

Example 1. Settlor creates a trust with the income and principal payable to A in the trustee's discretion until A reaches age 35 when the remaining trust property is payable to A or, if A dies before then, to A's estate. The settlor and A can compel a termination of the trust.

Example 2. Settlor creates a trust with the income payable to A and upon A's death to B if he is living and if not, to B's issue who are not sui juris. The trust provides that A's income interest in the trust is inalienable. If the settlor and A consent, the court may modify the trust to remove the restraint on A's income interest since the interest of B and his issue are not affected by such removal.

III. Section 36A-125.4. Modification and termination by consent of beneficiaries.

Example 1. A testator creates a trust with the income and principal payable to A for A's support in the trustee's discretion until A reaches age 35 when the remaining trust property is payable to A or, if A dies before then, to A's estate. A cannot terminate the trust before reaching age 35 even though A is sui juris and is sole beneficiary because the premature termination would defeat the material purpose of the trust to provide for management of assets and support of A until A reached a designated age. However, the court may allow a termination of the trust if the court, in its discretion, determines that the reason for terminating the trust substantially outweighs the interest in accomplishing such material purpose.

Example 2. A testator creates a trust with the income payable to A, the testator's spouse, for life with the remainder in equal shares to the testator's children, B and C, if living and, if not, to their estate. The only purpose in creating the trust was to preserve principal during the life of A so that it may be ultimately enjoyed by B and C. A, B and C can terminate the trust. See Fisher v. Ladd, 47 N.C. App. 587, 268 S.E. 2d 20 (1980).

Example 3. A testator creates a trust to pay income to the testator's spouse, A, for life with the principal also payable to A in the trustee's discretion for A's support. On A's death the remaining trust property goes to the testator's children, B and C, who are then living or if not, to their issue. A and the children, B and C, and the guardians ad litem for their issue cannot compel a termination of the trust because its continuation is necessary to provide for A's support as determined by the trustee. However, the court may allow a termination of the trust if the court, in its discretion, determines that the reason for terminating the trust substantially outweighs the interest in accomplishing the material purpose.

IV. Section 36A-127.7. Modification or termination because of change in circumstances.

Example 1. A testator leaves a farm in trust with income and principal payable, in the trustee's discretion, to the testator's spouse, A, and the testator's children during A's lifetime. On A's death the trust property goes to the testator's children. The testator directs the trustee to carry on the farming operation for 20 years. After 10 years it becomes impossible to carry on the farm because (i) unprecedented growth of the city near the farm's boundaries has increased the value of the property and ad valorem taxes significantly, (ii) the farm does not produce income sufficient to pay the ad valorem taxes, and (iii) the most productive use of the property is the sale for single family residential development. Because of the change in circumstances not anticipated by the testator, the court may modify the trust to authorize a sale of the farm and reinvestment of the proceeds of sale. See Wachovia Bank & Trust Co. v. John Thomasson Constr. Co., 3 N.C. App. 157, 164 S.E. 2d 519, mod. on other grounds, 275 N.C. 399, 168 S.E. 2d 358 (1968).

Example 2. A testator created a trust with income payable to A, the testator's spouse, and principal payable to A in the trustee's discretion. On A's death the trust principal goes to B, the testator's child, if living and if not, to the child's issue. A brings an action to terminate the trust on grounds that A is dissatisfied with the consideration, benefits and administration of the trust. The trust cannot be terminated because A's objections do not amount to a change in circumstances not anticipated by the testator. See Moore v. Wachovia Bank & Trust Co., 24 N.C. App. 675, 212 S.E. 2d 170 (1975).

SENATE BILL 526: Modification & Termination of Irrevocable Trusts

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Hagan
Date:	March 30, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 526 makes changes to the law regarding the modification and termination of irrevocable trusts.***

CURRENT LAW: Currently, G.S. 36A-125 provides that if at any time the trustee of a noncharitable irrevocable trust determines in good faith that the value of the trust is $10,000 or less, and the continuance of the trust in relation to the cost of administration would defeat or impair the purpose of the trust, the trustee may terminate the trust and distribute the trust property to the beneficiaries.

BILL ANALYSIS: Senate Bill 526 repeals the current provisions and ***provides for modification or termination in the following instances***:

- ***Where the settler is not legally incapacitated and is the sole beneficiary of an irrevocable trust*** – the settlor may compel modification and termination without approval of the court regardless of whether the purpose of the trust has been accomplished.
- ***Where neither the settlor nor any of the beneficiaries is legally incapacitated*** – they may compel modification or termination without approval of the court regardless of whether the purpose of trust has been accomplished; if any beneficiary fails to consent, other beneficiaries may institute a proceeding to compel.
- ***Where all beneficiaries consent*** – they may compel modification and termination in a proceeding in superior court. If continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified unless the court determines that the reasons for modification or termination outweigh the interest in accomplishing the material purpose of the trust.
- ***In the case of a small trust*** – In a proceeding in superior court, the court may modify or terminate upon determination that fair market value of trust assets is so low that continuance would defeat or impair trust purposes. If the trustee determines that the fair market value of the trust is $50,000 or less (up from current $10,000) and continuance of the trust in relation to the cost of administration would defeat or impair the purpose of the trust, the trustee may terminate the trust and distribute the trust property to the beneficiaries.
- ***In the case of changed circumstances*** – In a proceeding in superior court, court may modify if trust has been fulfilled or has become illegal or impossible to fulfillment, or due to circumstances not know to settlor and not anticipated by settlor, continuation of the trust under its terms would defeat or impair trust purposes.

The bill provides that the consent of a beneficiary who is under a legal incapacity may be given by a guardian ad litem. It provides for distribution of trust property to minors or incompetents by way of the

guardian of the estate or general guardian of the beneficiary or in accordance with the N.C. Uniform Transfer to Minors Act or the N.C. Custodial Trust Act.

Proceedings under the new Modification and Termination of Trust provisions may be brought under the Uniform Declaratory Judgment Act.

The act becomes effective January 1, 2000 and applies to all created before or after that date. As is now the case, provisions regarding modification and termination of small trusts shall not apply to certain trusts created before October 1, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 756

Short Title: Increase Auto Insurance Coverage. (Public)

Sponsors: Senators Horton; Allran, Ballance, Ballantine, Carpenter, Cochrane, Dalton, East, Forrester, Foxx, Gulley, Hartsell, Kerr, Martin of Guilford, Miller, Odom, Perdue, Phillips, Rand, Rucho, Soles, and Wellons.

Referred to: Judiciary II.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE MANDATORY LIABILITY INSURANCE REQUIREMENTS FOR CERTAIN MOTOR VEHICLES AND TO MAKE CONFORMING CHANGES IN CHAPTER 58 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.1(11) reads as rewritten:

"(11) 'Proof of financial responsibility': Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. Nothing contained herein shall prevent an insurer and an insured from entering into a contract, not affecting third parties,

providing for a deductible as to property damage at a rate approved by the Commissioner of Insurance."

Section 2. G.S. 20-279.5(c) reads as rewritten:

"(c) This section shall not apply under the conditions stated in G.S. 20-279.6 nor:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Commissioner, covered by any other form of liability insurance policy or bond or sinking fund or group assumption of liability;

(4) To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor

(5) To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946, which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and

cost, of not less than ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident."

Section 3. G.S. 20-279.15 reads as rewritten:

"**§ 20-279.15. Payment sufficient to satisfy requirements.**

In addition to other methods of satisfaction provided by law, judgments herein referred to shall, for the purpose of this Article, be deemed satisfied:

(1) When ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(2) When, subject to such limit of ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person, the sum of ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section."

Section 4. G.S. 20-279.21(b)(2) reads as rewritten:

"(b) Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ~~twenty-five thousand dollars ($25,000)~~ fifty

thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident; and".

Section 5. G.S. 20-279.25(a) reads as rewritten:

"(a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him ~~sixty-five thousand dollars ($65,000)~~ one hundred twenty-five thousand dollars ($125,000) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of ~~sixty-five thousand dollars ($65,000).~~ one hundred twenty-five thousand dollars ($125,000). The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides."

Section 6. G.S. 20-280 reads as rewritten:

"**§ 20-280. Filing proof of financial responsibility with governing board of municipality or county.**

(a) Within 30 days after March 27, 1951, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs within a municipality shall file with the governing board of the municipality in which such business is operated proof of financial responsibility as hereinafter defined.

No governing board of a municipality shall hereafter issue any certificate of convenience and necessity, franchise, license, permit or other privilege or authority to any person, firm or corporation authorizing such person, firm or corporation to engage in the business of operating a taxicab or taxicabs within the municipality unless such person, firm or corporation first files with said governing board proof of financial responsibility as hereinafter defined.

Within 30 days after the ratification of this section, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities, shall file with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

No person, firm or corporation shall hereafter engage in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities in any county unless such person, firm or corporation first files with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

(b) As used in this section 'proof of financial responsibility' shall mean a certificate of any insurance carrier duly authorized to do business in the State of North Carolina certifying that there is in effect a policy of liability insurance insuring the owner and operator of the taxicab business, his agents and employees while in the

performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such taxicab or taxicabs, subject to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident.

(c) Every person, firm or corporation who engages in the taxicab business and who is a member of or participates in any trust fund or sinking fund, which said trust fund or sinking fund is for the sole purpose of paying claims, damages or judgments against persons, firms or corporations engaging in the taxicab business and which trust fund or sinking fund is approved by the governing body of any city or municipality with a population of over 50,000, shall be deemed a compliance with the financial responsibility provisions of this section.

Provided, however, that in the case of operators of 15 or more taxicabs, the limits (exclusive of interests and costs), with respect to each such motor vehicle shall be as follows: twenty thousand dollars ($20,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, forty thousand dollars ($40,000) because of bodily injury to or death of two or more persons in any one accident, and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident."

Section 7. G.S. 20-281 reads as rewritten:

"§ 20-281. Liability insurance prerequisite to engaging in business; coverage of policy.

From and after July 1, 1953, it shall be unlawful for any person, firm or corporation to engage in the business of renting or leasing motor vehicles to the public for operation by the rentee or lessee unless such person, firm or corporation has secured insurance for his own liability and that of his rentee or lessee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell motor vehicle liability insurance in this State. Each such motor vehicle leased or rented must be covered by a policy of liability insurance insuring the owner and rentee or lessee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such motor vehicle, subject to the following minimum limits: ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident, and ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more

persons in any one accident, and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. Provided, however, that nothing in this Article shall prevent such operators from qualifying as self-insurers under terms and conditions to be prepared and prescribed by the Commissioner of Motor Vehicles or by giving bond with personal or corporate surety, as now provided by G.S. 20-279.24, in lieu of securing the insurance policy hereinbefore provided for."

Section 8. G.S. 58-37-35(b) reads as rewritten:

"(b) The Facility shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the plan of operation as follows:

(1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:

a. Bodily injury liability: ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) each person, ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) each accident;

b. Property damage liability: ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) each person;

c. Medical payments: one thousand dollars ($1,000) each person; except that this coverage shall not be available for motorcycles;

d. Uninsured motorist: ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) each person; ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) each accident for bodily injury; ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) each accident property damage (one hundred dollars ($100.00) deductible);

e. Any other motor vehicle insurance or financial responsibility limits in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission.

(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Underinsured motorist: one hundred thousand dollars ($100,000) each person and three hundred thousand dollars ($300,000) each accident for bodily injury liability;

Uninsured motorist: one hundred thousand dollars ($100,000) each person and each accident for bodily injury and ~~fifteen thousand dollars ($15,000)~~ fifty thousand dollars ($50,000) for property damage (one hundred dollars ($100.00) deductible).

(3) Whenever the additional ceding privileges are provided as in G.S. 58-37-35(b)(2) for any component of motor vehicle insurance, the same additional ceding privileges shall be available to 'all other' types of risks subject to the rating jurisdiction of the North Carolina Rate Bureau."

Section 9. This act becomes effective January 1, 2000, and applies to new or renewal policies written to become effective on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 767

Short Title: Lobbyist Waiting Period. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

April 6, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-47.5A. Waiting period before former State legislators may lobby.**

Notwithstanding the provisions of G.S. 120-47.8, no individual who has served as a member of the General Assembly may act as a lobbyist as defined in this Article within one year after the expiration of the term for which the individual was elected or appointed to serve in the General Assembly."

Section 2. G.S. 120-47.2(b) reads as rewritten:

"(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; an indication of whether the registrant has served as a member of the General Assembly and the period served; and a general description of the matters on which the registrant expects to act as a lobbyist."

Section 3. This act is effective when it becomes law and applies to individuals who serve terms beginning on or after January 1, 1999.

S756:
Increase Auto Insurance Coverage

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Sen. Horton
Date:	April 13, 1999	**Summary by:**	Ed Rossi
Version:	1st.Ed.		Committee Co-Counsel

SUMMARY: Senate bill 756 raises the mandatory minimum automobile insurance liability limits from:

- *$25,000 to $50,000 for the death or injury of one person.*
- *$50,000 to $100,000 for the death or injury of two or more persons.*
- *$15,000 to $25,000 for property damage.*

This bill applies to passenger automobiles, taxicabs, and rental cars.

CURRENT LAW: North Carolina law requires drivers to carry a minimum amount of insurance. Without proof of such insurance, no driver's license can be issued. See G.S. § 20-7(c1). In addition, drivers must also provide proof of insurance in order to get their license restored after it has been suspended or revoked requires driver and to get limited driving privileges. See G.S. § § 20-13.2(e) 20-16.1(g), 20-19(k), and 20-179.3(l).

BACKGROUND: The Department of Insurance estimates that about one-third of the policies in North Carolina are written at the basic $25,000/$50,000 limits. According to the Department these policyholders stand to get an increase of about 22% if the minimum liability limits are moved to the $50/$100 limits. The Department estimates this would result in an increase of about 7.2% on all bodily injury premiums.

According to the Department "the remaining two-thirds of the policyholders at the higher limits would get an offsetting 6.7% decrease because they no longer need to buy underinsured motorist coverage for the $25,000/$50,000 to $50,000/$100,000 gap, amounting to a decrease of about 4.5% on all bodily injury premiums."[1]

"Barring other offsets, this amounts to about 2.5% increase on all bodily injury premiums. Bodily injury premiums are about 28.3% of premiums for all coverages. The increase over all premiums would be about three-fourths of one percent (about $19 million using data from the 1998 filing)."[2]

[1] Department Memo.
[2] Id.

S767:
Lobbyist Waiting Period

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Sen. Miller
Date:	April 7, 1999	**Summary by:**	Ed Rossi
Version:	1st. Ed.		Committee Co-Counsel

SUMMARY: ***Senate bill 767 would institute a one year waiting period before former members of the General Assembly may become lobbyists.***

CURRENT LAW: North Carolina laws do not specifically address lobbying efforts by former members of the General Assembly. G.S. § 120-47.8 exempts Members of the General Assembly from the State's lobbying laws. However, it is unclear whether that exemption applies to former members of the General Assembly, and a court has yet to rule on the issue.

BACKGROUND: Senate bill 767 is identical to a bill that was approved by the Senate Judiciary Committee in 1997. That bill (Senate bill 3) which was sponsored by former Senator Jenkins was later amended on the Senate floor to include individuals who served on the Council of State. The House later amended the bill by turning it into a study bill. Thereafter, the LRC's Lobbying and Conflict of Interest Issues Committee, which was co-chaired by Senator Miller, studied this bill but made no report.

Other States – At least 17 other states have codified similar provisions.[1] The waiting period in these states ranges from 1 to 2 years. A summary of the waiting periods imposed by these states can be found on the back of this memo.[2]

Federal Law – At the federal level, former members and staff of the legislative and executive branches are subject to waiting periods before they are allowed to lobby. 18 U.S.C. § 207 prohibits Members of Congress and their personal staff from lobbying for a period of 1 year after leaving office.

[1] National Council of Sate Legislatures: *Revolving Door*, April, 1998.
[2] Id.

Alabama – 2 years

Alaska – 1 year – Alaska Stat. § 24.45.121(c)

Arizona – 1 year – Ariz. Rev. Stat. § 38.504

California – 1 year – Cal. Gov. Code § 87406

Connecticut – 1 year – Conn. Gen. Stat. § 1-84b

Florida – 2 years – Article II, Section 8 Florida Constitution

Hawaii – 1 year

Iowa – 2 years – Iowa Code § 68B.5A(4)

Kentucky – 2 years – Ky. Rev. Stat. § 6.811(8)

Massachusetts – 1 year; applies to lobbying the legislature, but not other governmental bodies

Maryland – until conclusion of the next regular session that begins after the member leaves office

New York – 2 years – N.Y. Public Officers Law § 73(8)

Ohio – 1 year, except for representing a state agency or political subdivision of the state

Pennsylvania – 1 year, before the body in which the legislator served – Pa. Cons. Stat. tit. 65, § 403

South Dakota – 1 year – S.D. Codified Laws Ann. § 2-12-8.2

Virginia – 1 year; former legislators cannot represent clients before the legislature – Va. Code § 2.1 639.33

Washington – 1 year – Wash. Rev. Code § 42-52-080

VISITOR REGISTRATION SHEET

S. H 2 — Name of Committee

April 13, 1999 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mark Taylor	NCATL
Britton Craig	NCATL
Charles Cromer	ncatl
[signature]	[illegible] UNC
Robert Passmore	Young, Moore & Henderson
Susan Valauri	Nationwide
[signature]	NATIONWIDE
Cf. Younger	Nationwide
Esthelma Davis	ElectriCities
TIM KENT	Am. Institute of Architects
John McMillan	NAIFA-NC
[signature]	NC Farm Bureau
Garrett Pendergraft	ZDA, PA
BILL SCOGGIN	NC BAR ASSOC.

SENATE JUDICIARY II COMMITTEE

APRIL 15, 1999

ROOM 1124

SB 24	Prelitigation Insurance Info./Mediation	Senator Dalton
SB 693	Prosecution Bonds/When Required	Senator Kinnaird
SB 756	Increase Auto Insurance Coverage	Senator Horton
SB 767	Lobbyist Waiting Period	Senator Miller

Adjournment

SENATE JUDICIARY II COMMITTEE

APRIL 15, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, April 15, 1999 at 9:30 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

SB 767, Lobbyist Waiting Period, was continued from the last meeting. Senator Miller moved to amend the bill. (see attachment) The motion carried unanimously. Senator Horton moved to roll the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Kinnaird was recognized to explain SB 693, Prosecution Bonds/When Required. Senator Forrester moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

SB 756, Increase Auto Insurance Coverage, was explained by Senator Horton. Speaking from the public in opposition to the bill were: Susan Valauri, Nationwide Insurance, and Tommy Harrelson, Enterprise Rent A Car. Senator Odom moved a favorable report of the bill. The motion carried. **Favorable report.**

SB 24, Prelitigation Insurance Info./Mediation, was explained by Senator Dalton. Senator Miller announced that the bill would be carried over to the next meeting. The meeting adjourned at 10:45 a.m.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Thursday, April 15, 1999

SENATOR MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **693** Prosecution Bonds/When Required.
Sequential Referral: None
Recommended Referral: None

S.B. **756** Increase Auto Insurance Coverage.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Thursday, April 15, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

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

S.B. **526** Mod. & Term. of Irrevocable Trusts.

Draft Number:	PCS1688
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **742** Teacher/Student/No Sex Acts.

Draft Number:	PCS1677
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Monday, April 19, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

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

S.B. **767** Lobbyist Waiting Period.

Draft Number:	PCS4677
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 24

Short Title: Prelitigation Insurance Info./Mediation. (Public)

Sponsors: Senators Dalton; Ballance, Cooper, Hartsell, Horton, Lucas, Rand, Soles, Warren, and Wellons.

Referred to: Judiciary II.

February 3, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE INSURERS TO PROVIDE INFORMATION PRIOR TO LITIGATION REGARDING POLICY PROVISIONS AND POLICY LIMITS UPON WRITTEN REQUEST AND TO GIVE AN INSURER WHO PROVIDES SUCH INFORMATION THE OPTION OF INITIATING MEDIATION WITH THE PERSON WHO SOUGHT THE INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-33. Insurer required to provide information.**

Upon receiving a written request for information regarding policy provisions or policy limits by any person who claims to have been physically injured or incurred property damage subject to the policy, an insurance company shall notify the person within five business days, on a form developed by the Department, that the insurer is required to provide this information under this section prior to litigation only if the person seeking the information gives written consent to participate in mediation of the person's claim subject to the policy pursuant to G.S. 7A-38.4. Within 30 days of receiving the person's written consent to participate in mediation pursuant to G.S. 7A-38.4, the insurer shall provide the policy limits and a copy of the policy to that person."

Section 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.5. Prelitigation of insurance claims.**

(a) Initiation of Mediation. -- Prelitigation mediation of an insurance claim may be initiated by an insurer that has provided the policy limits and a copy of the policy in accordance with G.S. 58-3-33 by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The insurer also shall mail a copy of the request by certified mail, return receipt requested, to the person who requested the information under G.S. 58-3-33.

(b) Costs of Mediation. -- Costs of mediation, including the mediator's fees, shall be borne by the insurer. When a party to the mediation is represented by an attorney, that party shall pay his or her attorneys' fees.

(c) Mediation Procedure. -- Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(d) Certification That Mediation Concluded. -- Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused, without good cause, to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(e) Time Periods Tolled. -- Time periods relating to the filing of a claim or the taking of other action with respect to an insurance claim, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section."

Section 3. This act becomes October 1, 1999, and applies to physical injury or property damage that is incurred on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 693

Short Title: Prosecution Bonds/When Required. (Public)

Sponsors: Senators Kinnaird; Ballance, Clodfelter, Hartsell, Horton, Martin of Guilford, Miller, and Wellons.

Referred to: Judiciary II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE, UPON THE MOTION OF A DEFENDANT MADE AFTER ISSUANCE OF SUMMONS, THAT A PLAINTIFF IS NOT ALWAYS REQUIRED TO POST A PROSECUTION BOND, PROVIDE SECURITY, OR SHOW THE PLAINTIFF IS SUING AS AN INDIGENT BUT TO PROVIDE THAT THE PLAINTIFF MAY BE SO REQUIRED BY THE CLERK OR JUDGE UPON A SHOWING OF GOOD CAUSE BY THE DEFENDANT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-109 reads as rewritten:

"**§ 1-109. Bond required of plaintiff for costs.**

At any time after the issuance of summons, the clerk or judge, upon motion of the defendant, ~~shall~~ may, upon a showing of good cause, require the plaintiff to do one of the following things and the failure to comply with such order within 30 days from the date thereof shall constitute grounds for dismissal of such civil action or special proceeding:

(1) Give an undertaking with sufficient surety in the sum of two hundred dollars, with the condition that it will be void if the plaintiff pays the defendant all costs which the latter recovers of him in the action.

(2) Deposit two hundred dollars ($200.00) with him as security to the defendant for these costs, in which event the clerk must give to the plaintiff and defendant all costs which the latter recovers of him in the action.

(3) File a copy of an order from a superior or district court judge or clerk of a superior court authorizing the plaintiff to sue as an indigent.

The requirements of this section shall not apply to the State of North Carolina or any of its agencies, commissions or institutions, or to counties, drainage districts, cities and towns; provided, further, that the State of North Carolina or any of its agencies, commissions or institutions, and counties, drainage districts, cities and towns may institute civil actions and special proceedings without being required to give a prosecution bond or make deposit in lieu of bond."

Section 2. This act becomes effective October 1, 1999, and applies to all causes of action commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 756

Short Title: Increase Auto Insurance Coverage. (Public)

Sponsors: Senators Horton; Allran, Ballance, Ballantine, Carpenter, Cochrane, Dalton, East, Forrester, Foxx, Gulley, Hartsell, Kerr, Martin of Guilford, Miller, Odom, Perdue, Phillips, Rand, Rucho, Soles, and Wellons.

Referred to: Judiciary II.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE MANDATORY LIABILITY INSURANCE REQUIREMENTS FOR CERTAIN MOTOR VEHICLES AND TO MAKE CONFORMING CHANGES IN CHAPTER 58 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.1(11) reads as rewritten:

"(11) 'Proof of financial responsibility': Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. Nothing contained herein shall prevent an insurer and an insured from entering into a contract, not affecting third parties,

providing for a deductible as to property damage at a rate approved by the Commissioner of Insurance."

Section 2. G.S. 20-279.5(c) reads as rewritten:

"(c) This section shall not apply under the conditions stated in G.S. 20-279.6 nor:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Commissioner, covered by any other form of liability insurance policy or bond or sinking fund or group assumption of liability;

(4) To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor

(5) To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946, which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and

cost, of not less than ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident."

Section 3. G.S. 20-279.15 reads as rewritten:

"**§ 20-279.15. Payment sufficient to satisfy requirements.**

In addition to other methods of satisfaction provided by law, judgments herein referred to shall, for the purpose of this Article, be deemed satisfied:

(1) When ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(2) When, subject to such limit of ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person, the sum of ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section."

Section 4. G.S. 20-279.21(b)(2) reads as rewritten:

"(b) Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ~~twenty-five thousand dollars ($25,000)~~ fifty

thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident; and".

Section 5. G.S. 20-279.25(a) reads as rewritten:

"(a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him ~~sixty-five thousand dollars ($65,000)~~ one hundred twenty-five thousand dollars ($125,000) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of ~~sixty-five thousand dollars ($65,000).~~ one hundred twenty-five thousand dollars ($125,000). The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides."

Section 6. G.S. 20-280 reads as rewritten:

"**§ 20-280. Filing proof of financial responsibility with governing board of municipality or county.**

(a) Within 30 days after March 27, 1951, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs within a municipality shall file with the governing board of the municipality in which such business is operated proof of financial responsibility as hereinafter defined.

No governing board of a municipality shall hereafter issue any certificate of convenience and necessity, franchise, license, permit or other privilege or authority to any person, firm or corporation authorizing such person, firm or corporation to engage in the business of operating a taxicab or taxicabs within the municipality unless such person, firm or corporation first files with said governing board proof of financial responsibility as hereinafter defined.

Within 30 days after the ratification of this section, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities, shall file with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

No person, firm or corporation shall hereafter engage in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities in any county unless such person, firm or corporation first files with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

(b) As used in this section 'proof of financial responsibility' shall mean a certificate of any insurance carrier duly authorized to do business in the State of North Carolina certifying that there is in effect a policy of liability insurance insuring the owner and operator of the taxicab business, his agents and employees while in the

performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such taxicab or taxicabs, subject to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more persons in any one accident, and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident.

(c) Every person, firm or corporation who engages in the taxicab business and who is a member of or participates in any trust fund or sinking fund, which said trust fund or sinking fund is for the sole purpose of paying claims, damages or judgments against persons, firms or corporations engaging in the taxicab business and which trust fund or sinking fund is approved by the governing body of any city or municipality with a population of over 50,000, shall be deemed a compliance with the financial responsibility provisions of this section.

Provided, however, that in the case of operators of 15 or more taxicabs, the limits (exclusive of interests and costs), with respect to each such motor vehicle shall be as follows: twenty thousand dollars ($20,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, forty thousand dollars ($40,000) because of bodily injury to or death of two or more persons in any one accident, and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident."

Section 7. G.S. 20-281 reads as rewritten:

"**§ 20-281. Liability insurance prerequisite to engaging in business; coverage of policy.**

From and after July 1, 1953, it shall be unlawful for any person, firm or corporation to engage in the business of renting or leasing motor vehicles to the public for operation by the rentee or lessee unless such person, firm or corporation has secured insurance for his own liability and that of his rentee or lessee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell motor vehicle liability insurance in this State. Each such motor vehicle leased or rented must be covered by a policy of liability insurance insuring the owner and rentee or lessee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such motor vehicle, subject to the following minimum limits: ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) because of bodily injury to or death of one person in any one accident, and ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) because of bodily injury to or death of two or more

persons in any one accident, and ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. Provided, however, that nothing in this Article shall prevent such operators from qualifying as self-insurers under terms and conditions to be prepared and prescribed by the Commissioner of Motor Vehicles or by giving bond with personal or corporate surety, as now provided by G.S. 20-279.24, in lieu of securing the insurance policy hereinbefore provided for."

Section 8. G.S. 58-37-35(b) reads as rewritten:

"(b) The Facility shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the plan of operation as follows:

(1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:

a. Bodily injury liability: ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) each person, ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) each accident;

b. Property damage liability: ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) each person;

c. Medical payments: one thousand dollars ($1,000) each person; except that this coverage shall not be available for motorcycles;

d. Uninsured motorist: ~~twenty-five thousand dollars ($25,000)~~ fifty thousand dollars ($50,000) each person; ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) each accident for bodily injury; ~~fifteen thousand dollars ($15,000)~~ twenty-five thousand dollars ($25,000) each accident property damage (one hundred dollars ($100.00) deductible);

e. Any other motor vehicle insurance or financial responsibility limits in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission.

(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Underinsured motorist: one hundred thousand dollars ($100,000) each person and three hundred thousand dollars ($300,000) each accident for bodily injury liability;

Uninsured motorist: one hundred thousand dollars ($100,000) each person and each accident for bodily injury and ~~fifteen thousand dollars ($15,000)~~ fifty thousand dollars ($50,000) for property damage (one hundred dollars ($100.00) deductible).

(3) Whenever the additional ceding privileges are provided as in G.S. 58-37-35(b)(2) for any component of motor vehicle insurance, the same additional ceding privileges shall be available to 'all other' types of risks subject to the rating jurisdiction of the North Carolina Rate Bureau."

Section 9. This act becomes effective January 1, 2000, and applies to new or renewal policies written to become effective on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 767

Short Title: Lobbyist Waiting Period. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

April 6, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-47.5A. Waiting period before former State legislators may lobby.**

Notwithstanding the provisions of G.S. 120-47.8, no individual who has served as a member of the General Assembly may act as a lobbyist as defined in this Article within one year after the expiration of the term for which the individual was elected or appointed to serve in the General Assembly."

Section 2. G.S. 120-47.2(b) reads as rewritten:

"(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; an indication of whether the registrant has served as a member of the General Assembly and the period served; and a general description of the matters on which the registrant expects to act as a lobbyist."

Section 3. This act is effective when it becomes law and applies to individuals who serve terms beginning on or after January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S24-PCSSD-03.1
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL NO. 24
THIS IS A DRAFT 1-APR-99 12:19:55
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Prelitigation Insurance Info./Mediation. (Public)

Sponsors:

Referred to: Judiciary II.

February 3, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE INSURERS TO PROVIDE INFORMATION PRIOR TO LITIGATION REGARDING POLICY PROVISIONS AND POLICY LIMITS UPON WRITTEN REQUEST AND TO GIVE AN INSURER WHO PROVIDES SUCH INFORMATION THE OPTION OF INITIATING MEDIATION WITH THE PERSON WHO SOUGHT THE INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-33. Insurer required to provide information.

(a) A person who claims to have suffered damages as the result of an automobile accident may obtain a copy of the declarations page from a potential defendant's automobile insurance policy by:

(1) Filing a police accident report;

(2) Mailing a written request for a copy of the declarations page by certified mail to the potential defendant's insurer that is listed on the police accident report.

(3) Including with the request for a copy of the declarations page the person's signed and notarized consent to participate in prelitigation mediation.

(b) If the person's alleged damages include lost wages, the request for the declarations page shall include documentation of all wages earned by the person in the three years prior to the accident.

(c) If the person's alleged damages include physical injuries, the request for the declarations page shall include a copy of all of the person's medical records for the three years prior to the accident, as well as copies of all medical records and charges that were alleged to be generated as a result of the accident.

(d) Within 30 days of receiving a person's written request for a copy of the declarations page as provided for in this section, an insurance company shall:

(1) Mail a copy of the declarations page, to person making the request.

(2) Determine, after reasonable inquiry of its insured, what other insurance policies may provide coverage to the person requesting a copy of the declarations page, and mail that information to the person.

(e) All requests for information, submissions of information, and submission of documents as provided for in this section shall be made in good faith after reasonable inquiry."

Section 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.5. Prelitigation of insurance claims.**

(a) Initiation of Mediation. -- Prelitigation mediation of an insurance claim may be initiated by an insurer that has provided the a copy of the policy and declarations page in accordance with G.S. 58-3-33 by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The insurer also shall mail a copy of the request by certified mail, return receipt requested, to the person who requested the information under G.S. 58-3-33.

(b) Costs of Mediation. -- Costs of mediation, including the mediator's fees, shall be borne by the insurer. When a party to the mediation is represented by an attorney, that party shall pay his or her attorneys' fees.

(c) Mediation Procedure. -- Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The

Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(d) Certification That Mediation Concluded. -- Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused, without good cause, to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(e) Time Periods Tolled. -- Time periods relating to the filing of a claim or the taking of other action with respect to an insurance claim, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section."

Section 3. This act becomes effective October 1, 1999, and applies to physical injury or property damage that is incurred on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 526
Proposed Committee Substitute S526-PCS1688-RV

Short Title: Mod. & Term. of Irrevocable Trusts. (Public)

Sponsors:

Referred to:

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 36A of the General Statutes is repealed.

Section 2. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11A.

"Modification and Termination of Trusts.

"**§ 36A-125.1. Definitions.**

As used in this section:

(1) 'Beneficiary' means a person who has a present or future interest, vested or contingent, in a trust, including any such person who is not in esse or cannot be determined until the occurrence of a future event.

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

(3) 'Irrevocable trust' means an express noncharitable irrevocable trust. A trust is noncharitable if it is neither a wholly charitable trust nor a charitable split-interest trust subject to the provisions of Article 4 or 4A of Chapter 36A of the General Statutes.

(4) 'Sole beneficiary' means a beneficiary of a trust for which the settlor does not manifest an intention to give a beneficial interest to anyone else.

(5) 'Sui juris' means a person who is in esse and not a minor or otherwise legally incapacitated. With regard to a beneficiary, 'sui juris' also means that such beneficiary is ascertained and that the trustee knows the identity of the beneficiary.

(6) 'Trustee' means the trustee or trustees acting under an irrevocable trust.

"§ 36A-125.2. Modification or termination where settlor is sole beneficiary.

If a settlor is sui juris and the sole beneficiary of an irrevocable trust, the settlor may compel the modification or termination of the trust without the approval of the court even though the purposes for which the trust was created have not been accomplished.

"§ 36A-125.3. Modification or termination by consent of settlor and beneficiaries.

(a) If the settlor and all beneficiaries of an irrevocable trust are sui juris and consent, they may compel the modification or termination of the trust without the approval of the court even though the purposes for which the trust was created have not been accomplished.

(b) If any beneficiary does not consent to the modification or termination of the trust or is not sui juris, the other beneficiaries may institute a proceeding before the superior court to compel a modification or partial termination of the trust. The court may, with the consent of the settlor, allow such a modification or partial termination upon a finding that such action would not substantially impair the interests of the beneficiaries who do not consent or who are not sui juris.

"§ 36A-125.4. Modification or termination by consent of beneficiaries.

(a) Except as provided in subsection (b) of this section, if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust in a proceeding before the superior court.

(b) Where the beneficiaries of an irrevocable trust seek to compel a termination of the trust or modify it in a manner that affects its continuance according to its terms, and if the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court in its discretion determines that the reason for modifying or terminating the trust under the circumstances substantially outweighs the interest in accomplishing a material purpose of the trust.

"§ 36A-125.5. Provisions relating to consent of beneficiaries.

For purposes of this Article:

(1) The consent of a beneficiary who is not sui juris may be given in proceedings before the court by a guardian ad litem appointed for that beneficiary if the guardian ad litem finds that it would be appropriate to do so. The guardian ad litem may base a decision to consent to modification or termination of a trust upon a finding

that living members of the beneficiary's family would generally benefit from such action.

(2) In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust, the presumption of fertility is rebuttable.

(3) If the trust provides for the disposition of property to a class of persons described only as 'heirs' or 'next of kin' of any person or uses other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

"§ 36A-125.6. Modification or termination of a small trust.

(a) In a proceeding before the superior court, the court in its discretion may modify or terminate an irrevocable trust if the court determines that the fair market value of the assets held in trust is so low that the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) Notwithstanding the provisions of subsection (a) of this section, if at any time the trustee of an irrevocable trust determines in good faith that the fair market value of the assets held in trust is fifty thousand dollars ($50,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may in its discretion terminate the trust and distribute the trust property, including principal and undistributed income, to any one or more of the beneficiaries to whom the income could be paid, or if there is no beneficiary to whom the income could be paid, to any one or more of the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust instrument. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust.

The trustee shall not be liable for such termination and distribution, notwithstanding the existence or potential existence of other beneficiaries who are not sui juris. Any beneficiary receiving a distribution from a trust terminated under this section shall incur no liability and shall not be required to account to anyone for such distribution.

The provisions of this subsection shall not apply where the instrument creating the trust, by specific reference to this section, or to former G.S. 36A-125, provides that it shall not apply.

"§ 36A-125.7. Modification or termination because of changed circumstances.

(a) In a proceeding before the superior court, the court in its discretion may modify or terminate an irrevocable trust:

(1) If the purpose of the trust has been fulfilled or has become illegal or impossible of fulfillment; or

(2) If, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust.

(b) In exercising its discretion under subsection (a) of this section, the court may order the trustee to do acts that are not authorized or are prohibited by the trust instrument if necessary to carry out the purposes of the trust.

"**§ 36A-125.8. Inalienability of the beneficiary's interest.**

The court, in exercising its discretion to modify or terminate an irrevocable trust pursuant to the provisions of G.S. 36A-125.4, 36A-125.6(a), and 36A-125.7, and the trustee, in exercising its discretion to terminate a trust pursuant to G.S. 36A-125.6(b), shall consider provisions making the interest of a beneficiary inalienable, including those described in G.S. 36A-115(b), but the court or trustee is not precluded from the exercise of that discretion solely because of such provisions.

"**§ 36A-125.9. Distribution to minors or incompetents.**

If any trust property becomes distributable to a minor or incompetent under this Article it may be distributed:

(1) To the guardian of the estate or general guardian of such beneficiary;

(2) In accordance with the North Carolina Uniform Transfer to Minors Act, Chapter 33A of the General Statutes; or

(3) In accordance with the North Carolina Custodial Trust Act, Chapter 33B of the General Statutes.

"**§ 36A-125.10. Procedure.**

A proceeding under this Article may be brought under the Uniform Declaratory Judgment Act, Article 26 of Chapter 1 of the General Statutes, the provisions of which shall apply to that proceeding to the extent not inconsistent with this Article.

"**§ 36A-125.11. Exclusiveness of remedy.**

This Article does not include or abridge any other rights or proceedings existing under any other statute or otherwise provided by law to modify, terminate, reform, or rescind an irrevocable trust."

Section 3. This act becomes effective January 1, 2000, and applies to all trusts created before or after that date, except that G.S. 36A-125.6(b) shall not apply to trusts created before October 1, 1991, if the trust instrument contains spendthrift or similar protective provisions, including provisions described in G.S. 36A-115(b)(3).

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 767

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

S767-ARR-001 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Senator

moves to amend the bill on page 1, line 8,
by deleting the term "Notwithstanding the provisions of G.S. 120-47.8, no" and substituting the term "No"; and

on page 1, lines 10 and 11,
by deleting the term "expiration of the term for which the individual was elected or appointed to serve in the General Assembly." and substituting "individual leaves office."; and

on page 1, line 20,
by deleting the term "who serve terms beginning on or after January 1, 1999." and substituting "who leave office on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 767

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

S767-ARR-001

Date_____,1999

Comm. Sub. [ ]
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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 767
Proposed Committee Substitute S767-PCS4677-RR

Short Title: Lobbyist Waiting Period. (Public)

Sponsors:

Referred to:

April 6, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-47.5A. Waiting period before former State legislators may lobby.**

No person who has served as a member of the General Assembly may act as a lobbyist as defined in this Article within one year after the individual leaves office."

Section 2. G.S. 120-47.2(b) reads as rewritten:

"(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; an indication of whether the registrant has served as a member of the General Assembly and the period served; and a general description of the matters on which the registrant expects to act as a lobbyist."

Section 3. This act is effective when it becomes law and applies to individuals who leave office on or after that date.

S24:
Prelitigation Insurance Info./Mediation

BILL ANALYSIS

Committee:	Senat JII	**Introduced by:**	Sen. Dalton
Date:	April 15, 1999	**Summary by:**	Ed Rossi
Version:	S24-PCSSD-03.1		Committee Co-Counsel

SUMMARY: ***Senate bill 24 creates a mechanism that allows persons who claim to have been injured in an automobile accident to exchange information with insurers and possibly mediate their claims. Persons who claim to have been injured in an automobile accident can get a copy of the potential defendant's insurance declarations page by requesting that page from the insurer listed in the accident report by certified mail and including the following:***

1. ***A signed notarized consent to participate in prelitigation mediation.***
2. ***Proof of earning for the 3 years prior to the accident – if lost wages are claimed.***
3. ***Copies of all medical records for the 3 years prior to the accident and copies of all medical records allegedly generated as a result of the accident – If physical injuries are claimed.***

Upon receipt of the above, the insurer has 30 days to comply and can then initiate prelitigation mediation by filing a request for mediation with the clerk of the Superior Court in a county where the action may be brought. The costs of mediation are borne by the insurer, and the mediation procedure is governed by existing provisions relating to mediated settlements in civil cases. The statute of limitations is tolled by the filing of a request for mediation.

CURRENT LAW: Most civil cases in superior court undergo court ordered mediation. This court ordered mediation, in effect, creates a two tiered process that allows the parties to explore settlement while at the same time being able to file motions and conduct discovery. Court ordered mediation is governed by G.S. 7A-38.1, which permits the court in appropriate instances to impose sanctions.[1]

Prelitigation Mediation /Farm Nuisance Disputes – In 1995, the General Assembly passed a law (G.S. § 7A-38.3) that mandates prelitigation mediation of farm nuisance disputes. That law makes mediation a precondition to filing a farm nuisance lawsuit. The exceptions to this rule include (1) class action disputes; (2) good cause; (3) voluntary waiver of mediation by the parties.

BILL ANALYSIS: Senate bill 24 is similar to the law requiring mediation of farm nuisance disputes in that it contemplates mediation prior to litigation and also incorporates by reference the mediation procedures established under G.S. §7A-38.1. It should be noted, however, that unlike mediation practice in superior court, in which the court relies on G.S. §7A-38.1, the court in the mediation cases contemplated by Senate bill 24 might not technically have obtained jurisdiction over the parties. Thus, it may not be able to enforce its rules under threat of sanctions.

[1] See Triad Mack Sales & Serv., Inc. v. Clement Bros. Co., 113 N.C. App. 405, 438 S.E.2d 485 (1994). (Trial court did not abuse its discretion by striking defendant's answer and entering default where corporate defendant had no good cause for failing to have an officer present at the mediation settlement conference.)

§ 7A-38.1. Mediated settlement conferences in superior court civil actions.

(a) Purpose. - The General Assembly finds that a system of court-ordered mediated settlement conferences should be established to facilitate the settlement of superior court civil actions and to make civil litigation more economical, efficient, and satisfactory to litigants and the State. Therefore, this section is enacted to require parties to superior court civil actions and their representatives to attend a pretrial, mediated settlement conference conducted pursuant to this section and pursuant to rules of the Supreme Court adopted to implement this section.

(b) Definitions. - As used in this section:

(1) "Mediated settlement conference" means a pretrial, court-ordered conference of the parties to a civil action and their representatives conducted by a mediator.

(2) "Mediation" means an informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.

(3) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a pending civil action. A mediator does not make an award or render a judgment as to the merits of the action.

(c) Rules of procedure. - The Supreme Court may adopt rules to implement this section.

(d) Statewide implementation. - Mediated settlement conferences authorized by this section shall be implemented in all judicial districts as soon as practicable, as determined by the Director of the Administrative Office of the Courts.

(e) Cases selected for mediated settlement conferences. - The senior resident superior court judge of any participating district may order a mediated settlement conference for any superior court civil action pending in the district. The senior resident superior court judge may by local rule order all cases, not otherwise exempted by the Supreme Court rule, to mediated settlement conference.

(f) Attendance of parties. - The parties to a superior court civil action in which a mediated settlement conference is ordered, their attorneys and other persons or entities with authority, by law or by contract, to settle the parties' claims shall attend the mediated settlement conference unless excused by rules of the Supreme Court or by order of the senior resident superior court judge. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or demand which it deems is contrary to its best interests.

(g) Sanctions. - Any person required to attend a mediated settlement conference who, without good cause, fails to attend in compliance with this section and the rules adopted under this section, shall be subject to any appropriate monetary sanction imposed by a resident or presiding superior court judge, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the conference. If the court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence.

(h) Selection of mediator. - The parties to a superior court civil action in which a mediated settlement conference is to be held pursuant to this section shall have the right to designate a mediator. Upon failure of the parties to designate a mediator within the time established by the rules of the Supreme Court, a mediator shall be appointed by the senior resident superior court judge.

(i) Promotion of other settlement procedures. - Nothing in this section is intended to preclude the use of other dispute resolution methods within the superior court. Parties to a superior court civil action are encouraged to select other available dispute resolution methods. The senior resident superior court judge, at the request of and with the consent of the parties, may order the parties to attend and participate in any other settlement procedure authorized by rules of the Supreme Court or by the local superior court rules, in lieu of attending a mediated settlement conference. Neutral third parties acting pursuant to this section shall be selected and compensated in accordance with such rules or pursuant to agreement of the parties. Nothing in this section shall prohibit the parties from participating in, or the court from ordering, other dispute resolution procedures, including arbitration to the extent authorized under State or federal law.

(j) Immunity. - Mediator and other neutrals acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(k) Costs of mediated settlement conference. - Costs of mediated settlement conferences shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. For purposes of this section, multiple parties shall be considered one party when they are represented by the same counsel. The rules adopted by the Supreme Court implementing this section shall set out a method whereby parties found by the court to be unable to pay the costs of the mediated settlement conference are afforded an opportunity to participate without cost. The rules adopted by the Supreme Court shall set the fees to be paid a mediator appointed by a judge upon the failure of the parties to designate a mediator.

(l) Inadmissibility of negotiations. - Evidence of statements made and conduct occurring in a mediated settlement conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference.

No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference in any civil proceeding for any purpose, except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

(m) Right to jury trial. - Nothing in this section or the rules adopted by the Supreme Court implementing this section shall restrict the right to jury trial.

§ 7A-38.3. Prelitigation mediation of farm nuisance disputes.

(a) Definitions. - As used in this section:

(1) "Farm nuisance dispute" means a claim that the farming activity of a farm resident constitutes a nuisance.

(2) "Farm resident" means a person holding an interest in fee, under a real estate contract, or under a lease, in land used for farming activity when that person manages the operations on the land.

(3) "Farming activity" means the cultivation of farmland for the production of crops, fruits, vegetables, ornamental and flowering plants, and the utilization of farmland for the production of dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(4) "Mediator" means a neutral person who acts to encourage and facilitate a resolution of a farm nuisance dispute.

(5) "Nuisance" means an action that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property.

(6) "Party" means any person having a dispute with a farm resident.

(7) "Person" means a natural person, or any corporation, trust, or limited partnership as defined in G.S. 59-102.

(b) Voluntary Mediation. - The parties to a farm nuisance dispute may agree at any time to mediation of the dispute under the provisions of this section.

(c) Mandatory Mediation. - Prior to bringing a civil action involving a farm nuisance dispute, a farm resident or any other party shall initiate mediation pursuant to this section. If a farm resident or any other party brings an action involving a farm nuisance dispute, this action shall, upon the motion of any party prior to trial, be dismissed without prejudice by the court unless any one or more of the following apply:

(1) The dispute involves a claim that has been brought as a class action.

(2) The nonmoving party has satisfied the requirements of this section and such is indicated in a mediator's certification issued under subsection (g) of this section.

(3) The court finds that a mediator improperly failed to issue a certification indicating that the nonmoving party satisfied the requirements of this section.

(4) The court finds good cause for a failure to attempt mediation. Good cause includes, but is not limited to, a determination that the time delay required for mediation would likely result in irreparable harm or that injunctive relief is otherwise warranted.

(d) Initiation of Mediation. - Prelitigation mediation of a farm nuisance dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(e) Mediation Procedure. - Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(f) Waiver of Mediation. - The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(g) Certification That Mediation Concluded. - Immediately upon a waiver of mediation under subsection (f) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(h) Time Periods Tolled. - Time periods relating to the filing of a claim or the taking of other action with respect to a farm nuisance dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section.

(1995, c. 500, s. 1.)

SENATE BILL 693:
Prosecution Bonds/When Required

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Kinnaird
Date:	April 15, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: Senate Bill 693 would no longer require that a judge, upon motion of the defendant in a civil action, must require the plaintiff in a civil action to post a surety bond, provide a security deposit, or file a copy of an order authorizing the plaintiff to sue as an indigent. The bill would give the judge the discretion to order the bond or deposit upon a showing of good cause.

CURRENT LAW: In a civil action, upon motion of the defendant, the judge is required to order the plaintiff in the action to do one of three things to ensure that the plaintiff will pay the defendant all costs which the defendant might later recover of the plaintiff in the action. The judge must require that the plaintiff post a surety bond in the amount of $200, deposit $200 with the court as security for defendant's costs, or that the plaintiff file a copy of an order from a judge or clerk of court authorizing the plaintiff to sue as an indigent. If the plaintiff fails to comply with the requirement within 30 days, the proceeding may be dismissed. The statutes set out at the bottom of this page govern the assignment of costs in civil actions. Also attached to this summary is a copy of G.S. 7A-305, which specifically sets out the costs in civil actions.

BILL ANALYSIS: The bill gives the judge some discretion, and rather mandating that the plaintiff be required to post the prosecution bond in all cases when the defendant so moves, the bill provides that the bond may be required ***upon a showing of good cause.***

EFFECTIVE DATE: The bill would become effective October 1, 1999 and apply to all causes of action commenced on or after that date.

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§ 6-1. Items allowed as costs.
To the party for whom judgment is given, costs shall be allowed as provided in Chapter 7A and this Chapter.

§ 6-3. Sureties on prosecution bonds liable for costs.
When an action is brought in any court in which security is given for the prosecution thereof, or when any case is brought up to a court by an appeal or otherwise, in which security for the prosecution of the suit has been given, and judgment is rendered against the plaintiff for the costs of the defendant, the appellate court shall also give judgment against the surety for said costs, and execution may issue jointly against the plaintiff and his surety.

§ 6-4. Execution for unpaid costs; bill of costs to be attached.
When costs are not paid by the party from whom they are due, the clerk of superior court shall issue an execution for the costs, and attach a bill of costs to each execution. The sheriff shall levy the execution as in other cases.

§ 6-7. Clerk to enter costs in case file.
The clerk of superior court shall enter in the case file, after judgment, the costs allowed by law.

§ 7A-305. Costs in civil actions.

(a) In every civil action in the superior or district court the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of fifty-five dollars ($55.00) in the superior court, and the sum of forty dollars ($40.00) in the district court except that if the case is assigned to a magistrate the sum shall be twenty-eight dollars ($28.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(a2) In every final action for absolute divorce filed in the district court, a cost of twenty dollars ($20.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina Fund for Displaced Homemakers established under G.S. 143B-394.10. Costs assessed under this subsection shall be in addition to any other costs assessed under this section.

(b) On appeal, costs are cumulative, and when cases heard before a magistrate are appealed to the district court, the General Court of Justice fee and the facilities fee applicable in the district court shall be added to the fees assessed before the magistrate. When an order of the clerk of the superior court is appealed to either the district court or the superior court, no additional General Court of Justice fee or facilities fee shall be assessed.

(b1) When a defendant files an answer in an action filed as a small claim which requires the entire case to be withdrawn from a magistrate and transferred to the district court, the difference between the General Court of Justice fee and facilities fee applicable to the district court and the General Court of Justice fee and facilities fee applicable to cases heard by a magistrate shall be assessed. The defendant is responsible for paying the fee.

(c) The clerk of superior court, at the time of the filing of the papers initiating the action or the appeal, shall collect as advance court costs, the facilities fee, General Court of Justice fee, and the divorce fee imposed under subsection (a2) of this section, except in suits by an indigent. The clerk shall also collect the fee for discovery procedures under Rule 27(a) and (b) at the time of the filing of the verified petition.

(d) The following expenses, when incurred, are also assessable or recoverable, as the case may be:

(1) Witness fees, as provided by law.

(2) Jail fees, as provided by law.

(3) Counsel fees, as provided by law.

(4) Expense of service of process by certified mail and by publication.

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(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of interpreters, when authorized and approved by the court.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

(e) Nothing in this section shall affect the liability of the respective parties for costs as provided by law.

(1965, c. 310, s. 1; 1967, c. 108, s. 10; c. 691, s. 30; 1971, c. 377, ss. 23, 24; c. 1181, s. 1; 1973, c. 503, ss. 12-14; c. 1267, s. 3; 1975, c. 558, s. 3; 1975, 2nd Sess., c. 980, ss. 2, 3; 1979, 2nd Sess., c. 1234, s. 1; 1981, c. 555, s. 6; c. 691, s. 2; 1983, c. 713, ss. 4-6; 1989, c. 786, s. 2; 1991, c. 742, s. 15(b); 1991 (Reg. Sess., 1992), c. 811, s. 2; 1993, c. 435, s. 6; 1995, c. 275, s. 2; 1998-212, s. 29A.12(b); 1998-219, ss. 2, 3.)

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S756:
Increase Auto Insurance Coverage

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Sen. Horton
Date:	April 13, 1999	**Summary by:**	Ed Rossi
Version:	1st.Ed.		Committee Co-Counsel

SUMMARY: Senate bill 756 raises the mandatory minimum automobile insurance liability limits from:

- *$25,000 to $50,000 for the death or injury of one person.*
- *$50,000 to $100,000 for the death or injury of two or more persons.*
- *$15,000 to $25,000 for property damage.*

This bill applies to passenger automobiles, taxicabs, and rental cars.

CURRENT LAW: North Carolina law requires drivers to carry a minimum amount of insurance. Without proof of such insurance, no driver's license can be issued. See G.S. § 20-7(c1). In addition, drivers must also provide proof of insurance in order to get their license restored after it has been suspended or revoked requires driver and to get limited driving privileges. See G.S. § § 20-13.2(e) 20-16.1(g), 20-19(k), and 20-179.3(l).

BACKGROUND: The Department of Insurance estimates that about one-third of the policies in North Carolina are written at the basic $25,000/$50,000 limits. According to the Department these policyholders stand to get an increase of about 22% if the minimum liability limits are moved to the $50/$100 limits. The Department estimates this would result in an increase of about 7.2% on all bodily injury premiums.

According to the Department "the remaining two-thirds of the policyholders at the higher limits would get an offsetting 6.7% decrease because they no longer need to buy underinsured motorist coverage for the $25,000/$50,000 to $50,000/$100,000 gap, amounting to a decrease of about 4.5% on all bodily injury premiums."[1]

"Barring other offsets, this amounts to about 2.5% increase on all bodily injury premiums. Bodily injury premiums are about 28.3% of premiums for all coverages. The increase over all premiums would be about three-fourths of one percent (about $19 million using data from the 1998 filing)."[2]

[1] Department Memo.
[2] Id.

S767:
Lobbyist Waiting Period

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Sen. Miller
Date:	April 7, 1999	**Summary by:**	Ed Rossi Committee Co-Counsel
Version:	1st. Ed.		

SUMMARY: Senate bill 767 would institute a one year waiting period before former members of the General Assembly may become lobbyists.

CURRENT LAW: North Carolina laws do not specifically address lobbying efforts by former members of the General Assembly. G.S. § 120-47.8 exempts Members of the General Assembly from the State's lobbying laws. However, it is unclear whether that exemption applies to former members of the General Assembly, and a court has yet to rule on the issue.

BACKGROUND: Senate bill 767 is identical to a bill that was approved by the Senate Judiciary Committee in 1997. That bill (Senate bill 3) which was sponsored by former Senator Jenkins was later amended on the Senate floor to include individuals who served on the Council of State. The House later amended the bill by turning it into a study bill. Thereafter, the LRC's Lobbying and Conflict of Interest Issues Committee, which was co-chaired by Senator Miller, studied this bill but made no report.

Other States – At least 17 other states have codified similar provisions.[1] The waiting period in these states ranges from 1 to 2 years. A summary of the waiting periods imposed by these states can be found on the back of this memo.[2]

Federal Law – At the federal level, former members and staff of the legislative and executive branches are subject to waiting periods before they are allowed to lobby. 18 U.S.C. § 207 prohibits Members of Congress and their personal staff from lobbying for a period of 1 year after leaving office.

[1] National Council of Sate Legislatures: *Revolving Door*, April, 1998.
[2] Id.

Alabama – 2 years

Alaska – 1 year – Alaska Stat. § 24.45.121(c)

Arizona – 1 year – Ariz. Rev. Stat. § 38.504

California – 1 year – Cal. Gov. Code § 87406

Connecticut – 1 year – Conn. Gen. Stat. § 1-84b

Florida – 2 years – Article II, Section 8 Florida Constitution

Hawaii – 1 year

Iowa – 2 years – Iowa Code § 68B.5A(4)

Kentucky – 2 years – Ky. Rev. Stat. § 6.811(8)

Massachusetts – 1 year; applies to lobbying the legislature, but not other governmental bodies

Maryland – until conclusion of the next regular session that begins after the member leaves office

New York – 2 years – N.Y. Public Officers Law § 73(8)

Ohio – 1 year, except for representing a state agency or political subdivision of the state

Pennsylvania – 1 year, before the body in which the legislator served – Pa. Cons. Stat. tit. 65, § 403

South Dakota – 1 year – S.D. Codified Laws Ann. § 2-12-8.2

Virginia – 1 year; former legislators cannot represent clients before the legislature – Va. Code § 2.1 639.33

Washington – 1 year – Wash. Rev. Code § 42-52-080

DEPARTMENT OF INSURANCE

State of North Carolina

JIM LONG
COMMISSIONER OF INSURANCE

P. O. Box 26387
RALEIGH, N. C. 27611

(919) 733-7343

February 12, 1999

Honorable Roy A. Cooper, III
North Carolina Senate
Room 2117
Legislative Building
Raleigh, North Carolina 27601-2808

Dear Roy:

Thank you for your recent inquiry regarding the potential increase in the base rate for private passenger automobile insurance in North Carolina should the General Assembly increase the minimum liability limits from $25,000/50,000 to $50,000/100,000. I offer the following observations:

The industry's 1992 filing had the last change in limits—property damage limits changed from a $10,000 base to a $15,000 base.

Based on the 1998 filing, approximately one-third of policies are written at basic $25/50 limits. Those policyholders would get an increase of about 22% to move them to the $50/100 level, amounting to an increase of about 7.2% on all bodily injury premiums.

The remaining two-thirds of policyholders at the higher limits would get an offsetting 6.7% decrease because they no longer need to buy underinsured coverage for that $25/50 to $50/100 gap, amounting to a decrease of about 4.5% on all bodily injury premiums.

Barring other offsets, this amounts to about 2.7% increase on all bodily injury premiums. Bodily injury premiums are about 28.3% of premiums for all coverages. The increase over all premiums would be about three-fourths of one percent (about $19 million using data from the 1998 filing).

It is likely, however, that there would be offsets to make this change revenue neutral.

Based on these calculations, about one-third of policyholders would get an increase and the remaining two-thirds would get a decrease. The actual percentage impact on the policyholder would vary depending on the coverages and limits purchased. The overall impact on revenue should be less than one percent of total premium.

Roy, if we may furnish any further information, please let me know.

Very truly yours,

Jim Long

JL/li

DEPARTMENT OF INSURANCE

State of North Carolina

P. O. Box 26387
RALEIGH, N. C. 27611

JIM LONG
COMMISSIONER OF INSURANCE

(919) 733-7343

March 31, 1999

The Honorable Hamilton C. Horton, Jr.
North Carolina General Assembly
Senate Chamber
1117 Legislative Building
Raleigh, NC 27601-2808

Dear Ham:

We did receive a rate filing March 5, 1999, from the North Carolina Rate Bureau on behalf of the companies writing automobile insurance in North Carolina.

We have returned that filing to the Bureau as it did not conform with state law, thus no premium adjustments have occurred since my letter of February 12, 1999, to Senator Cooper.

Very truly yours,

Jim Long

JEL/jmg

cc: Senator Roy Cooper

Protect all North Carolinians:

Raise Auto Insurance Minimum Limits to Match Cost of Living Increases

It has been 20 years since the minimum limit for automobile liability insurance for bodily injury was set at $25,000 per person and $50,000 for all persons involved in one accident. Since that time, the costs associated with automobile accidents have increased substantially, while insurance limits remained the same. That's why **SB 756** proposes these limits should be increased to $50,000 per person, and $100,000 for all persons.

- Currently, if you are severely injured by a bad driver who carries the minimum level of insurance, you may end up in the hospital for several weeks, and have permanent injuries. Despite mounting medical bills, ***you could recover only $25,000 from the driver who was at fault for your injuries.***

- In the last two decades, ***costs for goods and services purchased by innocent victims of auto accidents have skyrocketed***, with the cost of medical care increasing by 255%, and the consumer price index increasing 104%

- This year ***insurance rates will decline*** for the first time in many years. The North Carolina Rate Bureau is proposing an overall decrease in rates by nearly 5%, and the Department of Insurance will likely cut them even further.

- For the first time in two decades ***we can increase our protection from bad drivers without paying significantly higher insurance rates***. This is a rare opportunity to protect North Carolina's consumers without hurting their pocketbooks.

For more information, contact Dick Taylor or Charles Cromer at the NC Academy of Trial Lawyers at (919) 832-1413.

Page 1

VISITOR REGISTRATION SHEET

Name of Committee

April 15-99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kirsten Mitchell	NYSRNG
[illegible]	[illegible]
Dick [illegible]	NCATL
Burton Craige	NCATL
Stella Boswell	NCATL
Charles Ogburn	NCATL
Bill Hart	NC PBA
[illegible]	NCPBA
[illegible]	NC PBA
Bill Alexander	NC PBA
Katherine Davis	Electricities
Mike Quarles	NCHFSA
Alan Miles	Bailey & Dixon LLP
Andy Ellen	NC Retail Merchants
Tommy Thornton	Enterprise Rent a Car

page 2

VISITOR REGISTRATION SHEET

Name of Committee

April 15, 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valaura	Naturescape
John McMillan	MFS
Alice Garland	Electricities
Lyman Cooper	CSX Corp
Eddie Caldwell	H McCC&C, P.A.
Mary Carmichael	Mecklenburg County
Steve Keene	NCHSOZ
Amy Jo Bain	NC MS
Mari Scott	AL SA
John Morgan	Moore & Van Allen
Dave Hand	Smith Land
HUGH TILSON	NCHA
Leonard Jason	NATIONWIDE
Dwight Spencer	Eastern Pol. Board Cleaners

SENATE JUDICIARY II COMMITTEE

APRIL 20, 1999

ROOM 1124

SB 109	Lobbyist Disclosure	Senator Miller
SB 812	Alcoholic Beverage Sales	Senator Reeves
SB 877	Workers' Comp. For National/State Guard	Senator Kerr
SB 921	Amend Rule 55	Senator Miller
SB 992	Workers' Comp. for Prisoners	Senator Balance
SB 1018	Marriage Licenses and Study – 2	Senator Dalton
SB 1019	Ltd. Entry by Surveyor	Senator Dalton
SB 1060	Division of Trusts	Senator Hagan
SB 1126	Repeal Penal Bond Exception	Senator Horton

SENATE JUDICIARY II COMMITTEE

APRIL 20, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, April 20, 1999 at 9:30 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

Senator Reeves was introduced to explain SB 812, Alcoholic Beverage Sales. Senator Ballance moved to amend the bill. Questions were raised concerning the provision in the amendment requiring stores to record the size of beverage containers. Ann Fulton, with the ABC Commission, explained that the information in question is already provided by the wholesaler. Steve Levitas, NC Association of Convenience Stores, expressed concern with the requirement for record keeping and the need to review the changes. Senator Miller displaced the bill until the next meeting to allow time for members of the public to read the amendment.

SB 877, Workers' Comp. For National/State Guard, was explained by Senator Kerr. Jon Williams, with the NC Department of Crime Control and Public Safety, was introduced by Senator Kerr to further explain the bill. Senator Ballance moved to amend the bill by inserting after the word law, on page 3, line 27, "and applies to claims for injuries or deaths occurring on or after that date". The motion carried unanimously. Senator Moore moved to roll the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 921, Amend Rule 55, was explained by Senator Miller. Robert Bernhardt, with Erwin and Bernhardt in Charlotte, NC, spoke in favor of the bill. Senator Dalton moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

SB 1019, Ltd. Entry by Surveyor, was explained by Senator Dalton. Senator Kerr moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

SB 1018, Marriage Licenses and Study – 2, was explained by Senator Dalton. Senator Bill Martin moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

SB 992, Workers' Comp. for Prisoners, was explained by Senator Ballance. Senator Ballance moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Kinnaird moved to give the committee substitute a favorable

report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.** The bill was referred to Appropriations/Base Budget.

The meeting adjourned at 11:00 a.m. to reconvene at 2:00 p.m.

The Senate Judiciary II Committee was called to order at 2:10 p.m. in room 1124 of the Legislative Building. Eight members were present, including Senator Brad Miller, who presided.

Senator Reeves was recognized to continue the discussion of SB 812, Alcoholic Beverage Sales. Senator Hagan moved to amend the bill. The motion carried unanimously. Senator Forrester moved to roll the amendment into a committee substitute and to give the committee substitute a favorable report. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 992, Workers' Comp. for Prisoners, was explained by Senator Ballance. Senator Ballance sent forth an amendment. The motion carried unanimously. Senator Kinnaird moved to roll the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 109, Lobbyist Disclosure, was explained by Senator Miller. Senator Miller moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Tuesday, April 20, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **921** Amend Rule 55.
Sequential Referral: None
Recommended Referral: None

S.B. **1018** Marriage Licenses and Study.
Sequential Referral: None
Recommended Referral: None

S.B.an **1019** Ltd. Entry by Surveyor.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Tuesday, April 20, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **109** Lobbyist Disclosure.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 109

Short Title: Lobbyist Disclosure. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

February 16, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MORE SPECIFIC DISCLOSURE OF LOBBYING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.2 reads as rewritten:

"**§ 120-47.2. Registration procedure.**

(a) A lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying. A separate registration statement is required for each lobbyist's principal.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; ~~and a general description of the matters on which the registrant expects to act as a lobbyist.~~ a statement of the general issue areas in which the registrant expects to engage in lobbying on behalf of each principal; and the name of every political committee of which each principal is a parent entity under the provisions of G.S. 163-278.19.

(c) Each lobbyist shall register again with the Secretary of State no later than 10 days after any change in the information supplied in his last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as lobbyists and

whom they represent. A supplemental list shall be furnished periodically each 20 days thereafter as the session progresses.

(e) Each registration statement required under this Article shall be effective from the date of filing until January 1 of the following odd-numbered year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable."

Section 2. G.S. 120-47.6 reads as rewritten:

"**§ 120-47.6. Statements of lobbyist's lobbying expenses and lobbying activities required.**

(a) Each lobbyist shall file an expense report and a report of lobbying activities with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. ~~This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The lobbyist shall file both expense reports whether or not expenditures are made.~~

(b) The expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The lobbyist shall file both expense reports whether or not expenditures are made. Each expense report shall set forth the date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.

(b1) The report of lobbying activities shall cover the period between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report covering all lobbying activities engaged in after the last day of the regular session, but during the calendar year, by February 28 of the following year. The lobbyist shall file both reports of lobbying activities, whether or not any lobbying occurred. The report of lobbying activities shall state the specific issues upon which that lobbyist engaged in lobbying as defined in G.S. 120-47.1, including, to the maximum extent practicable, a list of bill numbers.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection. The Secretary of State may combine the expense report and the lobbying activities report on a single form, or place them on separate forms.

(d) When a lobbyist fails to file a lobbying expense report or report of lobbying activities as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ($10.00). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file ~~an expense~~ a report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 3. G.S. 120-47.7 reads as rewritten:

"**§ 120-47.7. Statements ~~of~~ by lobbyist's principal of lobbying expenses and of lobbying activities required.**

(a) Each lobbyist's principal shall file an expense report and a report of lobbying activities with the Secretary of State within 60 days after the last day of the regular session. ~~This expense report shall include all expenditures made between January 1 and the last day of the regular session. The principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The principal shall file both expense reports whether or not expenditures are made during a reporting period.~~

(b) The expense report shall include all expenditures made between January 1 and the last day of the regular session. The principal shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The principal shall file both expense reports whether or not expenditures are made. Each expense report shall set forth the name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to

report the number of legislators or the basis for their selection. In the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.

(b1) The report of lobbying activities shall cover the period between January 1 and the last day of the regular session. The principal shall file a supplemental report covering all lobbying activities engaged in after the last day of the regular session, but during the calendar year, by February 28 of the following year. The principal shall file both reports of lobbying activities, whether or not lobbying occurred. The report of lobbying activities shall state the following:

(1) The name and address of each lobbyist employed, appointed, or retained by the principal; and

(2) A list of the specific issues upon which each lobbyist lobbied on behalf of the principal, including, to the maximum extent practicable, a list of the bill numbers.

(b2) The principal shall state in its report of lobbying activities the name of any political committee of which it is the parent entity under the provisions of G.S. 163-278.19.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection. The Secretary of State may combine the expense report and the lobbying activities report on a single form, or place them on separate forms.

(d) When a lobbyist's principal fails to file a lobbying expense report or a report of lobbying activities as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ($10.00). Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 4. G.S. 163-278.11 is amended by adding a new subsection to read:

"(d) Each statement filed by a political committee pursuant to the provisions of this Article shall state whether the political committee or its parent entity employed or contracted with a lobbyist required to be registered pursuant to Article 9A of Chapter 120 of the General Statutes. The statement shall identify the lobbyist and shall specify the period of time during which the political committee or its parent entity employed or contracted with the lobbyist."

Section 5. This act becomes effective January 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 812

Short Title: Alcoholic Beverage Sales. (Public)

Sponsors: Senators Reeves and Miller.

Referred to: Judiciary II.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A FOOD OR RETAIL BUSINESS THAT HOLDS AN ABC PERMIT AND IS LOCATED IN AN URBAN REDEVELOPMENT AREA SHALL NOT HAVE ALCOHOLIC BEVERAGE SALES IN EXCESS OF FIFTY PERCENT OF THE BUSINESS'S TOTAL ANNUAL SALES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-309. Alcoholic beverage sales in Urban Redevelopment Zones.**

A food business as defined in G.S. 18B-1000(3) or a retail business as defined in G.S. 18B-1000(7) that holds an ABC permit under this Chapter and is located in a part of a city that has been designated as an Urban Redevelopment Area under Article 22 of Chapter 160A of the General Statutes shall not have alcoholic beverage sales in excess of fifty percent (50%) of the business's total annual sales. Upon request of a city, the Commission shall investigate the total annual alcohol sales and total sales of a business as defined in this section. The Commission shall report the results of such an investigation to the city council, and the report shall contain only the percentage of annual alcohol sales in proportion to the business's total annual sales. A city may request an investigation of a business by the Commission only once in each calendar year."

Section 2. G.S. 18B-904(e) reads as rewritten:

"(e) Business or Location No Longer Suitable. --

(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the

General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).

(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 877

Short Title: Workers' Comp. for National/State Guard. (Public)

Sponsors: Senator Kerr.

Referred to: Judiciary II.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD AND NORTH CAROLINA STATE GUARD ARE EMPLOYEES SUBJECT TO THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2(2) reads as rewritten:

"(2) Employee. -- The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national ~~guard, except when called into the service of the United States,~~ guard while on State active duty under orders of the Governor and members of the North Carolina

State ~~guard, and members of these organizations shall be entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty~~ guard while on State active duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty

members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term employee shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 921

Short Title: Amend Rule 55. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUDGMENT BY DEFAULT TO BE ENTERED BY THE JUDGE WITHOUT A HEARING SUBJECT TO CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 55(b) reads as rewritten:

"(b) Judgment. -- Judgment by default may be entered as follows:

(1) By the Clerk. -- When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if ~~he~~ the defendant has been defaulted for failure to appear and if ~~he~~ the defendant is not an infant or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

In all cases wherein, pursuant to this rule, the clerk enters judgment by default upon a claim for debt which is secured by any pledge, mortgage, deed of trust or other contractual security in respect of which foreclosure may be had, or upon a claim to enforce a lien for unpaid taxes or assessments under G.S. 105-414, the clerk may likewise make all further orders required to consummate foreclosure in accordance with the procedure provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales."

(2) By the Judge. --

a. In all other cases the party entitled to a judgment by default shall apply to the judge therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian ad litem or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, ~~he~~ that party (or, if appearing by representative, ~~his~~ the representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the judge to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to take an investigation of any other matter, the judge may conduct such hearings or order such references as ~~he~~ the judge deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by the Constitution or by any statute of North Carolina. If the plaintiff seeks to establish paternity under Article 3 of Chapter 49 of the General Statutes and the defendant fails to appear, the judge shall enter judgment by default.

b. A motion for judgment by default may be decided by the court without a hearing if:

1. The motion specifically provides that the court will decide the motion for judgment by default without a hearing if the party against whom judgment is sought fails to serve a written response, stating the grounds for opposing the motion, within 30 days of service of the motion; and

2. The party against whom judgment is sought fails to serve the response in accordance with this sub-subdivision."

Section 2. This act becomes effective October 1, 1999, and applies to causes of action commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 992

Short Title: Workers' Comp. for Prisoners. (Public)

Sponsors: Senator Ballance.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRISONERS WHO SUFFER PERMANENT INJURY OR DEATH TO RECEIVE COMPENSATION UNDER THE WORKERS' COMPENSATION ACT BASED ON THE MINIMUM WAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-13(c) reads as rewritten:

"(c) Prisoners. -- This Article shall not apply to prisoners being worked by the State or any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the State Department of Correction ~~shall suffer~~ suffers accidental injury or accidental death arising out of and in the course of the employment to which ~~he~~ the prisoner had been assigned, ~~if there be death or if the results of such injury continue until after the date of the lawful discharge of such prisoner to such an extent as to amount to a disability as defined in this Article, then such discharged prisoner or the dependents or next of kin of such discharged prisoner may have the benefit of this Article by applying to the Industrial Commission as any other employee; provided, such application is made within 12 months from the date of the discharge; and provided further that the maximum compensation to any prisoner or to the dependents or next of kin of any deceased prisoner shall not exceed thirty dollars ($30.00) per week and the period of compensation shall relate to the date of his discharge rather than the date of the accident. If any person who has been awarded compensation under the provisions of this subsection shall be recommitted to prison upon conviction of an offense committed subsequent to the award, such compensation shall immediately cease.~~ such prisoner may receive compensation based on an hourly wage equal to the minimum wage under G.S. 95-25.3. Any awards

made under the terms of this subsection shall be paid by the State Department of Correction from the funds available for the operation of the Department of ~~Corrections.~~ Correction. The provisions of G.S. 97-10.1 and G.S. 97-10.2 shall apply to prisoners and discharged prisoners entitled to compensation under this subsection and to the State in the same manner as ~~said section applies~~ these sections apply to employees and employers."

Section 2. This act is effective when it becomes law and applies to awards for compensation entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1018

Short Title: Marriage Licenses and Study. (Public)

Sponsors: Senators Dalton; and Phillips.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING MARRIAGE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons if it appears that such persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. If an applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of a sworn or affirmed statement, the register of deeds shall issue the license, provided all other requirements are met, and retain the statement with the register's copy of the license. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

Section 2. The Legislative Research Commission may study Chapter 51 of the General Statutes. The study may address any of the following matters:

(1) The responsibilities of the register of deeds in determining whether applicants are eligible for a marriage license.

(2) The issuance of marriage licenses to persons under 18 years of age, including situations where the female applicant is pregnant or has born a child.

(3) Persons authorized to give consent to marriage of underage applicants.

(4) Persons authorized to solemnize marriages.

(5) The duration and geographical scope of a marriage license.

(6) The penalties for solemnizing a marriage without a license or with an invalid license.

(7) Any other matters relating to marriages or marriage licenses in this State.

The Legislative Research Commission may file an interim report with the 2000 Session of the General Assembly and shall file a final report with the 2001 Session of the General Assembly.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1019

Short Title: Ltd. Entry by Surveyor. (Public)

Sponsors: Senator Dalton.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF LAND SURVEYORS TO ENTER ON LAND.

The General Assembly of North Carolina enacts:

Section 1. Chapter 89C of the General Statutes is amended by adding a new section to read:

"**§ 89C-29. Entry on land by professional land surveyors; minimum access.**

(a) Licensed professional land surveyors may enter onto the lands of others and carry with them their customary equipment for the sole purpose of performing the customary and necessary acts which are required to perform surveys of land. The duty owed by a landowner to licensed professional surveyors shall be that duty owed to a trespasser. Nothing in this section shall be construed to abrogate the liability of licensed professional surveyors under any other provision of law for injury or damage arising from acts performed by them under this section.

(b) As used in this section, 'licensed professional surveyors' means licensed professional surveyors, their employees, and agents."

Section 2. Article 22B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-159.15. Land surveying exception.**

This Article shall not apply to acts authorized by G.S. 89C-29."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1060

Short Title: Division of Trusts. (Public)

Sponsors: Senators Hagan; and Kinnaird.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TRUSTEES WITH ADDITIONAL AUTHORITY TO SEVER TRUSTS INTO SEPARATE TRUSTS CONSISTENT WITH THE BEST INTERESTS OF THE TRUST BENEFICIARIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-27(25a) reads as rewritten:

"(25a) Divide One Trust into Several Trusts and Make Distributions From Those Trusts. --

a. To divide the funds and properties constituting any trusts into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or

discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (i) the new trusts so created are not inconsistent with the terms of the governing instrument; and (ii) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

c. To fund the new trusts created pursuant to the authority granted under this subsection either (i) by pro rata allocation of the assets of the original trust; (ii) based upon the fair market value of the assets at the date of funding; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding."

Section 2. G.S. 36A-136(24) reads as rewritten:

"(24) To divide one trust into several trusts and make distributions from those trusts:

a. To divide the funds and properties constituting any trust into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts treated for purposes of the federal generation-skipping

transfer tax as separate trusts into two or more separate trusts to reflect that tax treatment, provided that (i) the separate trusts so created are not inconsistent with the terms of the governing instrument and that (ii) the severance is carried out in a manner permitted under the regulations promulgated under section 2654 of the Internal Revenue Code of 1986, as amended.

c. To divide the funds and properties constituting any testamentary trusts and any trusts included in the gross estate of the grantor of the trust for federal tax purposes into two or more separate trusts, provided that (i) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust and that (ii) the severance is carried out in a manner permitted under the regulations promulgated under section 2654 of the Internal Revenue Code of 1986, as amended.

d. To fund the new trusts created pursuant to the authority granted under this subsection either (i) by pro rata allocation of the assets of the original trust; (ii) based upon the fair market value of the assets at the date of funding; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding. In the case of a pecuniary amount set aside as a separate trust, the provisions of G.S. 37-21.1 shall apply."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1126

Short Title: Repeal Penal Bond Exception. (Public)

Sponsors: Senators Horton; Cochrane and Garrou.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE EXCEPTION FOR PENAL BONDS IN THE LAW THAT GOVERNS THE INTEREST ON AWARDS IN BREACH OF CONTRACT ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-5 reads as rewritten:

"**§ 24-5. ~~Contracts, except penal bonds,~~ Contracts and judgments to bear interest.**

(a) Contracts. -- In an action for breach of ~~contract, except an action on a penal bond,~~ contract the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment then interest on an award in a contract action shall be at the contract rate after judgment, otherwise it shall be at the legal rate; provided, however, that on awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, interest shall be at the legal rate, provided however, such rate shall not exceed the contract rate.

(b) Other Actions. -- In an action other than contract, the portion of money judgment designated by the fact finder as compensatory damages bears interest from the date the action is instituted until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill No. 812

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

S812-ASD-001.1 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 1, lines 10 and 11 by rewriting the lines to read:

" A food business as defined in G.S. 18B-1000(3), a retail business as defined in G.S. 18B-1000(7), or an eating establishment as defined in G.S. 18B-1000(2) that holds an ABC permit under this Chapter and is located in a"

And on Page 1 line 19 by inserting the word " particular" between the phrase "investigation of a" and the word "business."

And on page 1 page 1 line 20 by rewriting the line to read:

" in each calendar year. These audits may be conducted by the Commission only upon the request of the city council. Business' covered by this section shall maintain full and accurate monthly records of their finances, separately indicating each of the following:
(1) amounts expended by the business for the purchase of alcoholic beverages and the quantity of alcoholic beverages purchased;
(2) amounts collected from the sale of alcoholic beverages sold; and
(3) amounts collected from the sale of food, non alcoholic beverages, and all other items sold by the business.
Records of purchases of alcoholic beverages and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises, and all records related to alcoholic beverages, including original invoices, shall be maintained on the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill No. 812

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

S812-ASD-001.1

premises for three years and shall be open for inspection and audit pursuant to G.S. 18B-502."

SIGNED Kay R. Hagan
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill No. 812

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

s812-ASD-001 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 1, lines 10 and 11 by rewriting the lines to read:

" A food business as defined in G.S. 18B-1000(3), a retail business as defined in G.S. 18B-1000(7), or an eating establishment as defined in G.S. 18B-1000(2) that holds an ABC permit under this Chapter and is located in a"

And on Page 1 line 19 by inserting the word " particular" between the phrase "investigation of a" and the word "business."

And on page 1 page 1 line 20 by inserting the following after the period:

" Businesses covered by this section shall maintain full and accurate monthly records of their finances, separately indicating each of the following:

(1) amounts expended by the business for the purchase of alcoholic beverages and the quantity of alcoholic beverages purchased;

(2) amounts collected from the sale of alcoholic beverages by brand and container size, and the quantity of alcoholic beverages sold; and

(3) amounts collected from the sale of food, non alcoholic beverages, and all other items sold by the business.

Records of purchases of alcoholic beverages and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises, and all records related to alcoholic beverages, including original invoices, shall be maintained on the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill No. 812

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

s812-ASD-001 Page 2 of __

premises for three years and shall be open for inspection and audit pursuant to G.S. 18B-502."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/20/99

S. B. No. 877 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 3, line 27

( ) WHICH CHANGES THE TITLE

by inserting after the word law the following:

"and applies to claims for injuries or deaths occurring on or after that date."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 992 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 20

( ) WHICH CHANGES THE TITLE

by deleting the words "totally and"

and on page 1, line 16

by deleting "total and"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 992
Proposed Committee Substitute S992-CSLD-1
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Workers' Comp. for Prisoners. (Public)

Sponsors:

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRISONERS WHO SUFFER DEATH OR TOTAL AND PERMANENT DISABILITY TO RECEIVE COMPENSATION UNDER THE WORKERS' COMPENSATION ACT BASED ON THE MINIMUM WAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-13(c) reads as rewritten:

"§ 97-13. Exceptions from provisions of Article.

"(c) Prisoners. -- This Article shall not apply to prisoners being worked by the State or any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the State Department of Correction ~~shall suffer~~ suffers accidental injury ~~or accidental death~~ arising out of and in the course of the employment to which he had been ~~assigned, if there be death or if the results of such injury continue until after the date of the lawful discharge of such prisoner to such an extent as to amount to a~~ assigned that results in death or total and permanent disability as defined in this Article, then ~~such discharged prisoner or~~ the dependents or next of kin of ~~such discharged~~ the deceased prisoner shall be entitled to compensation under G.S. 97-38 and the injured prisoner who is totally and permanently disabled ~~may have the benefit of this Article by applying to the Industrial Commission as any other employee; provided, such~~

~~application is made within 12 months from the date of th~~ ~~discharge; and provided further that the maximum compensation to~~ ~~any prisoner or to the dependents or next of kin of any deceased~~ ~~prisoner shall not exceed thirty dollars ($30.00) per week and~~ ~~the period of compensation shall relate to the date of his~~ ~~discharge rather than the date of the accident. If any person who~~ ~~has been awarded compensation under the provisions of this~~ ~~subsection shall be recommitted to prison upon conviction of an~~ ~~offense committed subsequent to the award, such compensation~~ ~~shall immediately cease.~~ shall be entitled to compensation under G.S. 97-29. For purposes of calculating compensation under G.S. 97-29 and G.S. 97-38, the average weekly wage shall be based on an hourly wage equal to the minimum wage under G.S. 95-25.3. Any awards made under the terms of this subsection shall be paid by the State Department of Correction from the funds available for the operation of the Department of ~~Corrections.~~ Correction. The provisions of G.S. 97- 10.1 and G.S. 97-10.2 shall apply to prisoners ~~and discharged prisoners~~ entitled to compensation under this subsection and to the State in the same manner as ~~said section applies~~ these sections apply to employees and employers."

Section. 2. This act is effective when it becomes law and applies to awards for compensation entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1066 FILED - SENATE D

SENATE DRS6616-LL010(11)060 APR 14 1999

PRINCIPAL CLERK

Short Title: Division of Trusts. (Public)

Sponsors: Senator Hagan.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TRUSTEES WITH ADDITIONAL AUTHORITY TO SEVER TRUSTS INTO SEPARATE TRUSTS CONSISTENT WITH THE BEST INTERESTS OF THE TRUST BENEFICIARIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-27(25a) reads as rewritten:

"(25a) Divide One Trust into Several Trusts and Make Distributions From Those Trusts. --

a. To divide the funds and properties constituting any trusts into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis

of the combined value of both trusts, but may satisfy such distributions from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (i) the new trusts so created are not inconsistent with the terms of the governing instrument; and (ii) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

c. To fund the new trusts created pursuant to the authority granted under this subsection either (i) by pro rata allocation of the assets of the original trust; (ii) based upon the fair market value of the assets at the date of funding; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding."

Section 2. G.S. 36A-136(24) reads as rewritten:

"(24) To divide one trust into several trusts and make distributions from those trusts:

a. To divide the funds and properties constituting any trust into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts treated for purposes of the federal generation-skipping transfer tax as separate trusts into two or more separate

trusts to reflect that tax treatment, provided that (i) the separate trusts so created are not inconsistent with the terms of the governing instrument and that (ii) the severance is carried out in a manner permitted under the regulations promulgated under section 2654 of the Internal Revenue Code of 1986, as amended.

c. To divide the funds and properties constituting any testamentary trusts and any trusts included in the gross estate of the grantor of the trust for federal tax purposes into two or more separate trusts, provided that (i) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust and that (ii) the severance is carried out in a manner permitted under the regulations promulgated under section 2654 of the Internal Revenue Code of 1986, as amended.

d. To fund the new trusts created pursuant to the authority granted under this subsection either (i) by pro rata allocation of the assets of the original trust; (ii) based upon the fair market value of the assets at the date of funding; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding. In the case of a pecuniary amount set aside as a separate trust, the provisions of G.S. 37-21.1 shall apply."

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

S109:
Lobbyist Disclosure

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Sen. Miller
Date:	April 19, 1999	**Summary by:**	Ed Rossi
Version:	1st. Ed.		Committee Co-Counsel

SUMMARY: Senate bill 109 provides the following:

- ***Lobbyist Registration -- lobbyists are required to file a registration report with the Secretary of State that sets out:***
  1. ***The general issues that the lobbyist expects to lobby on behalf of each principal.***
  2. ***The name of every political committee of which each principal is a parent entity.***
- ***Lobbyist Expense Reports -- Requires lobbyists to file expense reports with the Secretary of State that:***
  1. ***Include all expenditures made during the calendar year, both before and after session, even if no expenditures were made.***
  2. ***Report all lobbying activities engaged in during the year, both before and after session, even if the lobbyist did not engage in any lobbying activity.***
  3. ***State the specific issues that the lobbyist lobbied on, including to the maximum extent practicable, a list a list of bill numbers.***
- ***Statements By The Lobbyist's Principal -- Requires the principal to file reports with the Secretary of State that:***
  1. ***List the lobbying expenditures that were made during the calendar year, both before and after session. These reports are required even if no expenditures were made.***
  2. ***List lobbying activities that were engaged in during the year, both before and after session. These reports are required, even if no lobbying activity took place.***
  3. ***List the names and addresses of lobbyists that lobbied on behalf of the principal.***
  4. ***List the specific issues which each lobbyist lobbied on for the principal, including to the maximum extent practicable, a list of bill numbers.***
- ***Political Committees -- Requires political committees to state whether the committee or its parent entity hired a lobbyist. Political committees must also identify the lobbyist and the time during which they were employed.***

Background

North Carolina's lobbying law only applies to direct attempts to influence legislative action in the General Assembly[1]. It does not cover the executive branch.

[1] G.S. § 120-47.1 defines "lobbying" as:
a. Influencing or attempting to influence legislative action through direct oral or written communication with a member of the General Assembly; or
b. Solicitation of others by lobbyists to influence legislative action.

Senate bill 109 is substantially similar to legislation that was introduced by Senator Miller in the 1997, General Assembly. That bill (Senate bill 539) passed the Senate in 1997, but got held up in the House Ethics Committee, where it was postponed indefinitely late last year. The bill borrows some of its provisions from federal law. The requirement that lobbyists provide, to the maximum extent practicable, a list of the bill numbers is found in 2 U.S.C. § 1604.

S812:
Alcohol Beverage Sales

BILL ANALYSIS

Committee: Senate JII
Date: April 19, 1999
Version: 1st. Ed.

Introduced by: Senators Reeves & Miller
Summary by: Ed Rossi
Committee Co-Counsel

SUMMARY: Senate bill 812 provides the following:

- *A food business that is located in an Urban Redevelopment Area and holds an ABC permit cannot have alcoholic beverage sales that exceed 50% of its total annual sales.*
- *A city can ask the Commission to investigate a particular business' is complying with 50% sales requirement. That request can only be made once per year and the Commission is required to make a report to the city council that contains only the percentage of alcohol sales in relation to the business' total sales.*
- *If the Commission finds that a particular business violates the requirements of this bill, it is required suspend or revoke the business'ABC permit.*

BILL ANALYSIS: This bill adds a new section, §18B-309, to Chapter 18B of the General Statutes. This new section provides that food[1] and retail[2] business that are located in an "Urban Redevelopment Area" cannot have alcoholic beverage sales in excess of 50% of their total annual sales.

This bill also amends G.S. 18B-904(e) by adding a new subdivision that requires the ABC Commission to suspend or revoke the ABC license of a business that violates the new section (§18B-309).

BACKGROUND: Senate bill 812 is nearly identical to the final committee substitute for Senate bill 1539 which passed the Senate State & Local Government Committee last year, but got stalled in the Appropriations Committee.

[1] G.S. §18b-1000(3): Food business. - An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten off the premises. Food businesses shall include grocery stores, convenience stores, and other establishments, such as variety stores or drugstores, where food is regularly sold, and shall also include establishments engaged primarily in selling unfortified or fortified wine or both, for consumption off the premises.

[2] G.S. §18b-1000(7): Retail business. - An establishment engaged in any retail business, regardless of whether food is sold on the premises.

SENATE BILL 877:
Worker's Comp. for National/State Guard

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Kerr
Date:	April 20, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 877 clarifies when members of the N. C. National Guard and the N.C. State Guard are employees subject to the Workers' Compensation Act.***

CURRENT LAW: The North Carolina Workers' Compensation Act provides for the compensation for personal injury or death by accident arising out of and in the course of an individual's employment. For purposes of determining who is covered by the act, specific terms are defined – including 'employee'. The term currently includes members of the North Carolina national guard – except when called into the service of the United States, and members of the North Carolina state guard. Members of both organizations are entitled for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty under orders of the Governor.

BILL ANALYSIS: Senate Bill 877 amends the definition of 'employee' under the North Carolina Worker's Compensation Act to include members of the North Carolina national guard and members of the North Carolina state guard *while on State active duty under orders of the Governor.*

EFFECTIVE DATE: The act is effective when it becomes law.

S921:
Amend Rule 55

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Sen. Miller
Date:	April 19, 1999	**Summary by:**	Ed Rossi
Version:	1st Ed.		Committee Co-Counsel

SUMMARY: Senate bill 921 amends Rule 55(b) of the Rules of Civil Procedure. It allows the court to enter a default judgement without a hearing when the motion for a default judgment specifically notifies the other party that the court will decide the motion without a hearing unless the other party files a written response stating the grounds for opposing the motion within 30 days of service of the motion, and the other party fails to respond within the time.

CURRENT LAW: Rule 55(b)(1) allows the clerk of court to enter a default judgment upon an affidavit or verified pleading when the claim is for a sum certain, the defendant has defaulted, and no appearance has been made by the defendant. Once a party has made an appearance, a default judgment can only be entered by the court under Rule 55(b)(2).[1]

ANALYSIS: This bill would allow a court to enter a default judgment without the necessity of hearing, provided the moving party specifically notified the other party that the court will decide the motion without a hearing.

BACKGROUND: This bill incorporates one of the recommendations of the Civil Procedure Study Commission. Last year, this provision was part of Senate bill 1277which passed the Senate but got stalled in the House.

[1] North Carolina Civil Procedure 2nd Ed. § 55-4

SB 921

BILL ANALYSIS

Committee:
Date:
Version:

Introduced by:
Summary by: Committee Counsel

SUMMARY: Senate bill 921 amends Rule 55(b) of the Rules of Civil Procedure to allow allow the court to enter a default judgement without a hearing when the motion for a default judgment specifically notifies the other party that the court will decide the motion without a hearing unless the other party files a written response stating the grounds for opposing the motion within 30 days of service of the motion, and the other party fails to respond within the time.

CURRENT LAW:

BILL ANALYSIS:

BACKGROUND:

SENATE BILL 992:
Worker's Comp. for Prisoners

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Ballance
Date:	April 20, 1999	**Summary by:**	Brenda J. Carter
Version:	Proposed Committee Substitute S992-CSLD-1		Committee Co-Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 992 would allow prisoners who suffer death or total and permanent disability to receive benefits under the Workers' Compensation Act based on the minimum wage.***

CURRENT LAW: G.S. 97-13 provides that any prisoner who suffers accidental injury or death arising out of assigned employment may recover benefits under the Workers' Compensation Act if the inmate dies or if the injury results in a disability which continues after the date of the inmate's discharge from prison. Application must be made within 12 months from the date of the inmate's release, and the maximum compensation to any prisoner or to the next of kin of a deceased prisoner is $30.00 per week. The period of compensation relates to the date of the inmate's release rather than the date of the accident; if a person is recommitted to prison upon conviction of an offense committed after the workers' compensation award, the payments are terminated.

BILL ANALYSIS: Inmates who are contracted for work on public service projects by local or State agencies and those involved in the maintenance and housekeeping of the prison system are paid in an amount not exceeding one dollar ($1.00) per day; prisoners employed in prison enterprises are compensated up to three dollars ($3.00) per day.

Senate Bill 992 would provide that workers' compensation benefits be paid to a prisoner who suffers accidental injury arising out of and in the course of the employment to which the prisoner had been assigned that results in death or total and permanent disability, and that such benefits be based on the minimum wage. In general, when a worker has been rendered totally disabled as a result of an injury by accident the worker is entitled to 66 2/3 of his or her average weekly wages as long as the total disability continues. Death benefits are payable when the death results proximately from a compensable injury or occupational disease and within 6 years thereafter, or within two years of the final determination of disability, whichever is later; compensation payments will be paid for a period of 400 weeks from the date of the death of the employee.

EFFECTIVE DATE: The bill is effective when it becomes law and applies to awards for compensation entered on or after that date.

SENATE BILL 1018:
Marriage Licenses and Study

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Dalton
Date:	April 20, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 1018 provides an alternative procedure for an applicant for a marriage license who does not have a social security number and is ineligible to obtain one. The bill also authorizes the Legislative Research Commission to study the state's marriage laws and make a final report to the 2001 General Assembly.***

CURRENT LAW: G. S. 51-8 requires, among other things, that each applicant for a marriage license provide on the application the applicant's social security number. The register of deeds is not authorized to issue a marriage license unless all of the requirements of the statute are met.

BILL ANALYSIS: Senate Bill 1018 provides that an applicant for a marriage license who does not have a social security number and is ineligible to receive one is required to present a sworn statement to that effect. Upon presentation of the statement, the register of deeds will issue the license, provided all other requirements are met. The statement is to be retained with the register's copy of the license.

The bill also authorizes the Legislative Research Commission (LRC) to study the state's marriage laws. The study may include the responsibilities of the register of deeds, the issuance of marriage licenses to minors, persons authorized to give consent to the marriage of underage applicants, persons who may perform the marriage ceremony, the duration and geographical range of a marriage license, penalties for performing a marriage without a valid license. The LRC may file an interim report in the 2000 Session, and must make a final report to the 2001 General Assembly.

EFFECTIVE DATE: The act is effective when it becomes law.

SENATE BILL 1019:
Limited Entry by Surveyor

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Dalton
Date:	April 20, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: Senate Bill 1019 provides that licensed professional land surveyors may enter a person's land for the purpose of performing land surveys.

CURRENT LAW: Chapter 89C sets out the law regarding engineering and land surveying. Article 22B of Chapter 14 of the General Statutes sets out the offenses of 1st and 2nd degree trespass. First degree trespass is a Class 2 misdemeanor which occurs when a person, without authorization, enters or remains in a building of another or on the premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders. Second degree trespass is a Class 3 misdemeanor which occurs when a person, without authorization, enters or remains on the premises of another when the premises are posted or after he has been notified not to enter or remain there by the owner or other person in charge.

BILL ANALYSIS: Senate Bill 1019 amends the statutes on engineering and land surveying to provide that licensed professional land surveyors may enter onto the lands of others and carry with them their customary equipment for the sole purpose of performing customary and necessary acts which are required to perform surveys of land.

The bill provides that the duty owed by a landowner to a licensed professional surveyor is the duty owed trespassers. The liability of an owner of land to another for injury caused by a condition kept upon the owner's land generally depends upon the status of the person injured – invitee, licensee, or trespasser. In general, North Carolina courts have held that the only duty a landowner owes to an adult trespasser is to refrain from wantonly or willfully injuring him, to refrain from setting a trap for him, and to exercise ordinary care to avoid injury to the trespasser after the trespasser's position of peril is discovered. Senate Bill 1019 amends the trespassing statutes to provide that entry on another's land in compliance with the professional land surveying statute does not constitute criminal trespass.

EFFECTIVE DATE: The act becomes effective October 1, 1999.

S 1060:
Division of Trusts

BILL ANALYSIS

Committee: Senate JII
Date: April 20, 1999
Version: 1st. Ed.

Introduced by: Sen. Hagan
Summary by: Ed Rossi
Committee Co-Counsel

SUMMARY: Senate bill 1060 gives trustees additional powers to divide trusts so that additional trusts are created. These new powers include:

- *The power to create separate identical trusts out additions or contributions.*
- *The power to divide trusts in to non-identical when:*
    1. *The newly created trusts are not inconsistent with the terms of the governing instrument; and*
    2. *The new trusts provide for the same succession of interests as the original trust when considered in the aggregate.*
- *The power to fund any new trusts created under this subsection of law by one of the following methods:*
    1. *Pro rata distribution.*
    2. *Fair market value at the date of funding.*
    3. *A" manner fairly reflecting the net appreciation or depreciation of the trust measured from the valuation date to the date of funding.*
- *The power to divide funds and properties of any trust that for federal generation skipping transfer tax is treated as separate trusts into 2 or more separate trusts that reflect the tax treatment provided that:*
    1. *I.R.S. regulations permit the severance.*
    2. *The newly created trusts are not inconsistent with the governing instrument.*
- *The power to divide funds or properties that constitute a testamentary trust as well as any trust that are included in the gross estate of the grantor for tax purposes into separate trusts provided that:*
    1. *In the aggregate, the new trust provides for the same succession of interests as the original trust.*
    2. *I.R.S. regulations permit the severance.*

SENATE BILL 1126:
Repeal Penal Bond Exception

BILL ANALYSIS

Committee: Senate Judiciary II
Date: April 20, 1999
Version: 1st Edition

Introduced by: Senator Horton
Summary by: Brenda J. Carter
Committee Co-Counsel

SUMMARY: ***Senate Bill 1126 repeals the exception for penal bonds in the law that governs the interest on awards in breach of contract actions.***

CURRENT LAW: G.S. 24-5 provides that in an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach until the judgment is satisfied.

BILL ANALYSIS: As defined in Black's law dictionary, a penal bond is a promise to pay a named sum of money, the penalty, in the event of nonperformance, with a condition underwritten that if a stipulated thing is done or forborne, the obligation is void. The penalty is the sum of money which the obligor of a bond undertakes to pay in the event of his omitting to perform or carry out the terms imposed upon him by the terms of the bond; a penalty is a sum inserted in a contract, not as a measure of compensation for its breach, but rather as punishment for default, or by way of security for actual damages which might be sustained by reason of nonperformance. Repeal of the exception will allow award of interest on amounts due under a penal bond from the date of the breach.

EFFECTIVE DATE: The bill would become effective October 1, 1999 and apply to actions filed on or after that date.

VISITOR REGISTRATION SHEET

8#2 — April 20, 99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Steven Levitas	Broxon, Pierce
Kent Barnhardt	Ewon, Benhardt, Walker
Ann S. Fulton	ABC Commission
Marvin R. Waters	ABC Commission
Bernard Allen	SDG
Pamela Weaver Best	AOC
Katherine Davis	Electric Cities
Bill Swoon	NCSH
[illegible]	NCFPC
[illegible]	NCRMA
[illegible]	NCRMA
Bonnie Quinn	PBA
Kim Hibbard	NCLM
FROD TAYLOR	WRAL-TV
DENNIS PATTERSON	AP
FRAN PRESTO	NCRMA

VISITOR REGISTRATION SHEET

D #2
Name of Committee

April 20, 99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
JOANNE MIDGETTE	NC PBA.
BILL ALEXANDER	NC PBA
Jerry Myers	Smith Debnam, Raleigh, NC
Jon Williams	CCPS
Adam Searcy	NCHAC
John McMillan	MFSC
Amy Fullbright	Hunton & Williams
JAE RUBENT	CJPC
Jim Blackburn	Ass'n County Commissioners
[illegible]	NCAOC
Scott Idol	NCAJC
Lynn Bonner	N&O

VISITOR REGISTRATION SHEET

#2 — April 20, 99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	GP
Steven Levitas	Brooks, Pierce
Katherine Davis	Electricities of NC
Lynn Boner	NAO
Carl Wilms	NCMBA
[signature]	[signature]
Andy Romanet	N.C.L.M.
David Knight	NC Sierra Club, NC Wildlife Fed

SENATE JUDICIARY II COMMITTEE

APRIL 21, 1999

ROOM 1027

SB 455	Divide Superior Court 19B	Senator Lee
SB 851	H.H./Pender Judicial Districts	Senator Jordan
SB 929	Abatement of Nuisances	Senator Reeves
SB 956	Threats Against Minor Children	Senator Dalton
SB 1003	Gifts by Guardians	Senator Kinnaird
SB 1142	Designate Comm. of Indian Affairs	Senator B. Martin

Adjournment

SENATE JUDICIARY II COMMITTEE

APRIL 21, 1999

MINUTES

The Senate Judiciary II Committee met on Wednesday, April 21, 1999 at 3:00 p.m. in room 1027 of the Legislative Building. Twelve members were present, including Senator Brad Miller, who presided.

Action was taken on the following bills:

SB 956, Threats Against Minor Children, was explained by Senator Dalton. Senator Moore moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

SB 1142, Designate Comm. of Indian Affairs, was explained by Senator Bill Martin. Senator Martin moved to adopt a proposed committee substitute. The motion carried unanimously. Greg Richardson, NC Commission for Indian Affairs, spoke in favor of the bill. Senator Martin moved to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 455, Divide Superior Court 19B, was explained by Senator Lee. Senator Kerr moved a favorable report of the bill. The motion carried unanimously. **Favorable report.** The bill was referred to Appropriations/Base Budget.

SB 929, Abatement of Nuisances, was explained by Senator Reeves. Jon Williams, with NC Department of Crime Control and Public Safety, was recognized to summarize certain provisions of the bill. Also speaking to the bill was Rodney Johnson, ALE. Senator Miller announced that SB 929 would be carried over to another meeting.

The meeting adjourned at 3:55 p.m.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 455

Short Title: Divide Superior Court 19B. (Public)

Sponsors: Senators Lee; and Kinnaird.

Referred to: Judiciary II.

March 22, 1999

A BILL TO BE ENTITLED

AN ACT TO DIVIDE SUPERIOR COURT DISTRICT 19B INTO A SET OF DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
	3A	Pitt	2
	3B	Carteret, Craven, Pamlico	2

	4A	Duplin, Jones, Sampson	1
	4B	Onslow	1
	5	New Hanover, Pender	3
	6A	Halifax	1
	6B	Bertie, Hertford, Northampton	1
	7A	Nash	1
	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
	8A	Lenoir and Greene	1
	8B	Wayne	1
Second	9	Franklin, Granville, Vance, Warren	2
	9A	Person, Caswell	1
	10A	(part of Wake, see subsection (b))	2
	10B	(part of Wake, see subsection (b))	2
	10C	(part of Wake, see subsection (b))	1
	10D	(part of Wake, see subsection (b))	1
	11A	Harnett, Lee	1
	11B	Johnston	1
	12A	(part of Cumberland, see subsection (b))	1
	12B	(part of Cumberland, see subsection (b))	1
	12C	(part of Cumberland, see subsection (b))	2
	13	Bladen, Brunswick, Columbus	2
	14A	(part of Durham, see subsection (b))	1
	14B	(part of Durham, see subsection (b))	3
	15A	Alamance	2

	15B	Orange, Chatham	1
	16A	Scotland, Hoke	1
	16B	Robeson	2
Third	17A	Rockingham	2
	17B	Stokes, Surry	2
	18A	(part of Guilford, see subsection (b))	1
	18B	(part of Guilford, see subsection (b))	1
	18C	(part of Guilford, see subsection (b))	1
	18D	(part of Guilford, see subsection (b))	1
	18E	(part of Guilford, see subsection (b))	1
	19A	Cabarrus	1
	~~19B~~ 19B1	part of Montgomery, part of Moore, part of Randolph (see subsection b)	~~2~~ 1
	19B2	part of Montgomery, part of Moore, part of Randolph (see subsection b)	1
	19C	Rowan	1
	20A	Anson, Richmond	1
	20B	Stanly, Union	2
	21A	(part of Forsyth, see subsection (b))	1
	21B	(part of Forsyth, see subsection (b))	1
	21C	(part of Forsyth, see subsection (b))	1
	21D	(part of Forsyth, see subsection (b))	1
	22	Alexander, Davidson, Davie, Iredell	2
	23	Alleghany, Ashe, Wilkes, Yadkin	1
Fourth	24	Avery, Madison, Mitchell, Watauga, Yancey	1
	25A	Burke, Caldwell	2

25B	Catawba	2
26A	(part of Mecklenburg, see subsection (b))	2
26B	(part of Mecklenburg, see subsection (b))	2
26C	(part of Mecklenburg, see subsection (b))	2
27A	Gaston	2
27B	Cleveland, Lincoln	2
28	Buncombe	2
29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
30A	Cherokee, Clay, Graham, Macon, Swain	1
30B	Haywood, Jackson	1"

Section 2. G.S. 7A-41(b) is amended by adding two new subdivisions to read:

"(23) Superior Court District 19B1 consists of all of Montgomery County except for Star Precinct, the following precincts of Moore County: #8 West End, #9 Eastwood, #11 Vass, #12 Little River, #14 Taylortown, #17 South Southern Pines, #19 North Southern Pines; #20 West Aberdeen, #21 East Aberdeen, #22 Pinedene, #23 Pinebluff, and the remainder of Randolph County not in Superior Court District 19B2. It has one judge.

(24) Superior Court District 19B2 consists of Star Precinct in Montgomery County, the remainder of Moore County not in Superior Court District 19B1, and the following precincts of Randolph County: Archdale I, Archdale II, Archdale III, Brower, Coleridge, Franklinville, Grant, Level Cross, Liberty, New Market North, New Market South, Pleasant Grove, Prospect, Providence, Ramseur, Richland, Staley, Trinity East, and Trinity West. It has one judge."

Section 3. G.S. 7A-41(c) is amended by adding a new subdivision to read:

"(7) The names and boundaries of precincts in Montgomery, Moore, and Randolph Counties are those in existence on March 15, 1999."

Section 4. Section 1(b) of Chapter 589 of the 1995 Session Laws is codified at the end of G.S. 7A-41(d)(39), and G.S. 7A-41(d)(39) as so modified reads as rewritten:

"(39) In the ~~nineteenth-B~~ nineteenth-B1 superior court district, Russell G. Walker, Jr., serves a term expiring December 31, 1990. No election shall be held in 1998 for the full term of the seat now occupied by Russell G. Walker, Jr., and the holder of that seat shall serve until a successor is elected in 2000 and qualifies. The succeeding term shall begin January 1, 2001. The superior court judgeship held on June 12, 1996, in Superior Court District 20A by a resident of Moore County (James M. Webb) is allocated to Superior Court District ~~19B.~~ 19B2. The term of that judge expires December 31, 2000. The judge's successor shall be elected in the 2000 general election."

Section 5. This act becomes effective January 1, 2001, and applies to the 2000 election.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

SENATE BILL 851*

Short Title: N.H./Pender Judicial Districts. (Public)

Sponsors: Senators Jordan; and Ballantine.

Referred to: Judiciary II.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO DIVIDE SUPERIOR COURT DISTRICT 5 INTO A SET OF DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
	3A	Pitt	2
	3B	Carteret, Craven, Pamlico	2

	4A	Duplin, Jones, Sampson	1
	4B	Onslow	1
	~~5~~ 5A	(part of New Hanover, part of Pender see subsection (b))	~~3~~ 1
	5B	(part of New Hanover, part of Pender see subsection (b))	1
	5C	(part of New Hanover see subsection (b))	1
	6A	Halifax	1
	6B	Bertie, Hertford, Northampton	1
	7A	Nash	1
	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
	8A	Lenoir and Greene	1
	8B	Wayne	1
Second	9	Franklin, Granville, Vance, Warren	2
	9A	Person, Caswell	1
	10A	(part of Wake, see subsection (b))	2
	10B	(part of Wake, see subsection (b))	2
	10C	(part of Wake, see subsection (b))	1
	10D	(part of Wake, see subsection (b))	1
	11A	Harnett, Lee	1
	11B	Johnston	1
	12A	(part of Cumberland, see subsection (b))	1
	12B	(part of Cumberland, see subsection (b))	1
	12C	(part of Cumberland, see subsection (b))	2
	13	Bladen, Brunswick,	2

		Columbus	
	14A	(part of Durham, see subsection (b))	1
	14B	(part of Durham, see subsection (b))	3
	15A	Alamance	2
	15B	Orange, Chatham	1
	16A	Scotland, Hoke	1
	16B	Robeson	2
Third	17A	Rockingham	2
	17B	Stokes, Surry	2
	18A	(part of Guilford, see subsection (b))	1
	18B	(part of Guilford, see subsection (b))	1
	18C	(part of Guilford, see subsection (b))	1
	18D	(part of Guilford, see subsection (b))	1
	18E	(part of Guilford, see subsection (b))	1
	19A	Cabarrus	1
	19B	Montgomery, Moore, Randolph	2
	19C	Rowan	1
	20A	Anson, Richmond	1
	20B	Stanly, Union	2
	21A	(part of Forsyth, see subsection (b))	1
	21B	(part of Forsyth, see subsection (b))	1
	21C	(part of Forsyth, see subsection (b))	1
	21D	(part of Forsyth, see subsection (b))	1
	22	Alexander, Davidson, Davie, Iredell	2
	23	Alleghany, Ashe, Wilkes, Yadkin	1
Fourth	24	Avery, Madison, Mitchell, Watauga, Yancey	1

25A	Burke, Caldwell	2
25B	Catawba	2
26A	(part of Mecklenburg, see subsection (b))	2
26B	(part of Mecklenburg, see subsection (b))	2
26C	(part of Mecklenburg, see subsection (b))	2
27A	Gaston	2
27B	Cleveland, Lincoln	2
28	Buncombe	2
29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
30A	Cherokee, Clay, Graham, Macon, Swain	1
30B	Haywood, Jackson	1"

Section 2. G.S. 7A-41(b) is amended by adding three new subdivisions to read:

"(23) Superior Court District 5A consists of the New Hanover County precincts of Cape Fear #1, Cape Fear #2, Harnett #1, Harnett #4, Harnett #6, Wilmington #1, Wilmington #2, Wilmington #3, Wilmington #4, Wilmington #6, Wilmington #7, Wilmington #8, Wilmington #9, Wilmington #10, Wilmington #15, Wilmington #19, and the part of Harnett #7 that consists of the part of Block Group 6 of 1990 Census Tract 0116.02 containing Blocks 601B, 602B, 603, 611, 612, 613, 614, 615, 616, 617, 618, 619; and the Pender County precincts of Canetuck, Caswell, Columbia, Grady, Upper Holly, and Upper Union. It has one judge.

(24) Superior Court District 5B consists of the New Hanover County precincts of Cape Fear #3, Harnett #2, Harnett #5, the part of Harnett #7 that is not in Superior Court District 5A, Harnett #8, Wrightsville Beach, Wilmington #11, Wilmington #12, Wilmington #13, Wilmington #22, Wilmington #24, and the part of Harnett #3 that consists of the part of Block Group 1 of 1990 Census Tract 0119.01 containing Blocks 102, 105, 106A, 106B, 107A, 107B, 107C, 107D, and 108, the part of Block Group 1 of 1990 Census Tract 0119.02 containing Blocks 103, 104, and 114, and the part of Block Group 1 of 1990 Census Tract 0120.01 containing Blocks 101A, 101B, 101C, 101D, 102A, 102B, 103, 104, 105A, 105B, 115A, and 115B; and the following precincts of

Pender County: North Burgaw, South Burgaw, Middle Holly, Long Creek, Penderlea, Lower Union, Rocky Point, Lower Topsail, Upper Topsail, Scotts Hill, and Surf City. It has one judge.

(25) Superior Court District 5C consists of the part of New Hanover County that is not in Superior Court Districts 5A or 5B. It has one judge."

Section 3. G.S. 7A-41(c) is amended by adding a new subdivision to read:

"(7) The names and boundaries of precincts in New Hanover and Pender Counties are those in existence on May 1, 1999."

Section 4. This act becomes effective January 1, 2003, and applies to the 2002 election.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 929

Short Title: Abatement of Nuisances. (Public)

Sponsors: Senator Reeves.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE ABATEMENT OF NUISANCES STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 19-1(a) reads as rewritten:

"(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance."

Section 2. G.S. 19-1.1 reads as rewritten:

"**§ 19-1.1. Definitions.**

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19- 1, the following definitions shall apply:

(1) 'Assignation' means making an appointment or engagement for prostitution or solicitation for acts of prostitution or any act in furtherance of the appointment, engagement, or solicitation.

(2) 'Breach of the peace' means any act that disturbs the public tranquility and order including, but not limited to, homicide, assault, affray, communicating threats, stalking, loud obscene or abusive language, unlawful possession of dangerous or deadly weapons, and discharging firearms.

(3) 'Knowledge' or 'knowledge of such nuisance' means having knowledge of the contents and character of the patently offensive

sexual conduct which appears in the lewd matter, or knowledge of the acts of ~~lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution which occur on the premises.~~ lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge.

~~(2)~~ (4) 'Lewd matter' is synonymous with 'obscene matter' and means any matter:

a. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

b. Which depicts patently offensive representations of:

1. Ultimate sexual acts, normal or perverted, actual or simulated;
2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;
3. Masochism or sadism; or
4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

~~(3)~~ (5) 'Lewdness' is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.

~~(4)~~ (6) 'Matter' means a motion picture film or a publication or both.

~~(5)~~ (7) 'Motion picture film' shall include any:

a. Film or plate negative;
b. Film or plate positive;
c. Film designed to be projected on a screen for exhibition;
d. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;
e. Video ~~tape~~ tape, compact disc, digital video disc or any other medium used to electronically reproduce images on a screen.

~~(6)~~ (8) 'Person' means any individual, partnership, firm, association, corporation, or other legal entity.

~~(7)~~ (9) 'Place' includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground ~~itself, but excluding a private dwelling place not used for a profit.~~ itself.

(10) 'Prostitution' means offering in any manner or receiving of the body in return for a fee, for acts of vaginal intercourse, anal intercourse, fellatio, cunnilingus, masturbation, or physical contact with a person's genitals, pubic area, buttocks or breasts, or other acts of sexual conduct offered or received for pay and sexual gratification.

(11) 'Preserving the status quo' as used in G.S. 19-2.3 means returning conditions to the last actual, peaceable, lawful, and nonconstested status which preceded the pending controversy and not allow the nuisance to continue.

~~(8)~~(12) 'Publication' shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

~~(9)~~ (13) ~~'Sale'~~ 'Sale of obscene or lewd matter' means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter.

~~(10)~~ (14) 'Sale' as the term relates to proscribed acts other than sale of obscene or lewd matter shall have the same meaning as the term is defined in Chapter 18B and Chapter 90 of the General Statutes prohibiting the illegal sale of alcoholic beverages and controlled substances respectively.

(15) 'Used for profit' shall mean any use of real or personal property to produce income in any manner, including, but not limited to, any commercial or business activities, or selling, leasing, or otherwise providing goods and services for profit."

Section 3. G.S. 19-1.2 reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this Article;
(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in trade;
(5) Any and every lewd publication possessed at a place which is a nuisance under this Article;
(6) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur."

Section 4. G.S. 19-1.3 reads as rewritten:

"**§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.**

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;
(2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;
(3) All money or other valuable ~~consideration~~ consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding."

Section 5. Chapter 19 of the General Statutes is amended by adding a new section to read:

"**§ 19-1.6. Cessation of nuisance does not preclude action.**

The cessation of nuisance activities does not preclude an action for abatement of a nuisance based on its past operation."

Section 6. G.S. 19-2. Repealed.

Section 7. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against ~~the~~ any public official or public ~~entity for the official action.~~ entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter.

The provisions of this Chapter to abate a public nuisance shall not be applied against the State or any of its political subdivisions."

Section 8. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of

the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said Rule 4, delivery and posting. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

Section 9. G.S. 19-2.5 reads as rewritten:

"**§ 19-2.5. Hearing on the preliminary injunction; issuance.**

If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court, the court shall issue a preliminary injunction restraining the defendant and any other person from continuing the nuisance and effectually enjoining its use thereafter for the purpose of conducting any such nuisance. The court may in its discretion order the closure of the property pending trial on the merits."

Section 10. G.S. 19-3(b) reads as rewritten:

"(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, breaches of the peace, the illegal possession or sale of alcoholic beverages, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance."

Section 11. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance

under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

~~The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.~~"

Section 12. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the ~~illegal possession or sale of narcotic drugs as defined in G.S. 90-87(17),~~ manufacture, possession with intent to sale, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, or two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, the real property

on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the ~~plaintiff prior to the action~~ plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person

satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the ~~sale and additional monies, if necessary.~~ sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

Section 13. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 956

Short Title: Threats Against Minor Children. (Public)

Sponsors: Senator Dalton.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CLASS 2 MISDEMEANOR TO USE IN TELEPHONIC COMMUNICATIONS WITH ANOTHER PERSON ANY WORDS OR LANGUAGE THREATENING THAT PERSON'S MINOR CHILD, AND TO MAKE IT A CLASS 1 MISDEMEANOR TO WILLFULLY THREATEN PHYSICAL INJURY TO THE MINOR CHILD OF ANOTHER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-196(a) reads as rewritten:

"(a) It shall be unlawful for any person:

(1) To use in telephonic communications any words or language of a profane, vulgar, lewd, lascivious or indecent character, nature or connotation;

(2) To use in telephonic communications any words or language threatening to inflict bodily harm to any person <u>or to that person's minor child or other dependent</u> or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person;

(3) To telephone another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing any person at the called number;

(4) To make a telephone call and fail to hang up or disengage the connection with the intent to disrupt the service of another;

(5) To telephone another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct or criminal conduct of the person telephoned or of any member of his family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass;

(6) To knowingly permit any telephone under his control to be used for any purpose prohibited by this section."

Section 2. G.S. 14-277.1(a) reads as rewritten:

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

(1) He willfully threatens to physically injure the person or <u>that person's minor child or other dependent or willfully threatens to</u> damage the property of another;

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1003

Short Title: Gifts by Guardians. (Public)

Sponsors: Senators Kinnaird; Horton, Miller, and Soles.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES REGULATING THE ABILITY OF GUARDIANS TO MAKE GIFTS FROM INCOMPETENT WARDS' ESTATES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 35A-1335 reads as rewritten:

"**§ 35A-1335. Gifts authorized with approval of judge of superior court.**

With the approval of the resident judge of the superior court of the district in which the guardian ~~he~~ was appointed, upon a duly verified petition the guardian ~~or trustee~~ of a person judicially declared to be incompetent may, from the income of the incompetent, make gifts to the State of North Carolina, its agencies, counties or municipalities, or to the United States or its agencies or instrumentalities, or for religious, charitable, literary, scientific, historical, medical or educational ~~purposes.~~ purposes, or to individuals. References in this Article to the "guardian" include any Trustee appointed by the court under prior law as fiduciary for the incompetent ward's estate."

Section 2. G.S. 35A-1336 reads as rewritten:

"**§ 35A-1336. Prerequisites to approval by ~~judge.~~ judge of gifts for governmental or charitable purposes.**

The judge shall not approve ~~such~~ gifts from income for governmental or charitable purposes unless it appears to ~~his~~ the judge's satisfaction that all of the following apply:

(1) After ~~the~~ making ~~of such~~ the gifts and the payment of federal and State income taxes, the remaining income of the incompetent will

be reasonable and adequate to provide for the support, maintenance, comfort and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and ~~such~~ those dependents in the manner to which the incompetent and ~~such~~ those dependents are accustomed and in keeping with their station in ~~life (and in no event less than twice the average, for the five calendar years preceding the calendar year of such gifts, of expenditures for the incompetent's support, maintenance, comfort and welfare);~~ life.

(2) Each donee is a donee to which a competent donor could make a gift, without limit as to amount, without incurring federal or State gift tax ~~liability;~~ liability.

(3) Each donee is a donee qualified to receive tax deductible gifts under federal and State income tax ~~laws;~~ laws.

(4) The aggregate of ~~such~~ the gifts does not exceed the percentage of income fixed by federal law as the maximum deduction allowable for ~~such~~ the gifts in computing federal income tax liability.

Section 3. Chapter 35A of the General Statutes is amended by adding a new section to read:

"**§ 35A-1336.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from income to individuals unless it appears to the judge's satisfaction that all three of the following requirements are met:

(1) After making the gifts and paying federal and State income taxes, the remaining income of the incompetent will be reasonable and adequate to provide for the support, maintenance, comfort, and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and those dependents in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life;

(2) The judge determines that either:

a. Both of the following apply:

1. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming a revocable trust created by the incompetent as beneficiary.

2. Each donee is entitled to one or more specific legacies, bequests, devises, or distributions of specific amounts of money, income, or property under the paper-writing or the revocable trust or both or is a residuary legatee, devisee, or beneficiary designated in the paper-writing or revocable trust or both.

b. That so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent and each donee is a person who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of the approval of the gifts.

c. The donee is the spouse, parent, descendent of the incompetent, or descendant of the incompetent's parent and the amount of the gift does not exceed the federal annual gift tax exclusion.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death."

Section 4. G.S. 35A-1340 reads as rewritten:

"§ 35A-1340. Gifts authorized with approval of judge of superior court.

With the approval of the resident judge of the superior court of the district in which the guardian ~~or trustee~~ was appointed upon a duly verified petition, the guardian ~~or trustee~~ of a person judicially declared to be incompetent may, from the principal of the incompetent's estate, make gifts to the State of North Carolina, its agencies, counties or municipalities, or the United States or its agencies or instrumentalities, or for religious, charitable, literary, scientific, historical, medical or educational ~~purposes.~~ purposes, or to individuals. The incompetent's estate shall consist of all assets owned by the incompetent, including nonprobate assets. For purposes of this Article, nonprobate assets are those which would not be distributable in accordance with the incompetent's valid probated will or the provisions of Chapter 29 at the incompetent's death. The incompetent's nonprobate estate would include nonprobate assets only. References in this Article to the "guardian" include any Trustee appointed by the court under prior law as fiduciary for the incompetent ward's estate."

Section 5. G.S. 35A-1341 reads as rewritten:

"§ 35A-1341. Prerequisites to approval by ~~judge.~~ judge of gifts for governmental or charitable purposes.

The judge shall not approve ~~such~~ any gifts from principal for governmental or charitable purposes unless it appears to ~~his~~ the judge's satisfaction ~~that:~~ all of the following requirements are met:

(1) The making of ~~such~~ the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income for the support, maintenance, comfort and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and ~~such~~ these dependents in the manner to which the incompetent

and ~~such~~ those dependents are accustomed and in keeping with their station in ~~life;~~ life.

(2) Each donee is a donee to which a competent donor could make a gift, without limit as to amount, without incurring federal or State gift tax ~~liability;~~ liability.

(3) Each donee is a donee qualified to receive tax deductible gifts under federal and State income tax ~~laws;~~ laws.

(4) The making of ~~such~~ the gifts will not jeopardize the rights of any creditor of the ~~incompetent; and~~ incompetent.

(5) It is improbable that the incompetent will recover competency during his or her ~~lifetime;~~ lifetime.

(6) Either:

a. All of the following apply:

1. The incompetent, prior to being declared incompetent, executed a ~~paper-writing;~~ paper-writing with the formalities required by the laws of North Carolina for the execution of a valid ~~will;~~ will, including a paper-writing naming a revocable trust created by the incompetent beneficiary.

2. Specific legacies, ~~bequests or devises~~ bequests, devises, or non-discretionary distributions of specific amounts of money, income or property included in ~~such~~ the paper-writing or revocable trust or both, will not be jeopardized by making ~~such gifts;~~ the gifts.

3. All residuary ~~legatees and~~ legatees, devisees and beneficiaries designated in ~~such~~ the ~~paper-writing,~~ paper-writing or revocable trust or both, who would take under the ~~paper-writing~~ paper-writing or revocable trust or both, if the incompetent died contemporaneously with the signing of the order of approval of ~~such~~ the gifts and ~~such paper-writing~~ the paper-writing was probated as the incompetent's will and the spouse, if any, of ~~such~~ the incompetent have been given at least 10 days' written notice that approval for ~~such~~ the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian ~~or trustee~~ was appointed, within the 10-day ~~period;~~ period.

b. Both of the following apply:

1. That so far as is known the incompetent has not prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent; and

2. All persons who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for ~~such~~ the gifts will be sought and that objection may be filed with the clerk of the superior court, of the county in which the guardian ~~or trustee~~ was appointed, within the 10-day period.

(7) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset if the incompetent died contemporaneously with the signing of the order of approval have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed within the 10-day period. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341(6)a.3. and (6)b.2."

Section 6. Chapter 35A of the General Statutes is amended by adding a new section to read:

"**§ 35A-1341.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from principal to individuals unless it appears to the judge's satisfaction that all of the following requirements have been met:

(1) Making the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income for the support, maintenance, comfort, and welfare of the incompetent in order to maintain the incompetent and any dependents legally entitled to support from the incompetent in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life.

(2) The making of the gifts will not jeopardize the rights of any existing creditor of the incompetent.

(3) It is improbable that the incompetent will recover competency during his or her lifetime.

(4) The judge determines that either:

a. All of the following apply:

1. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming a revocable trust created by the incompetent as beneficiary.

2. Each donee is entitled to one or more specific legacies, bequests, devises, or distributions of specific amounts of money, income, or property under either

the paper-writing or revocable trust or both or is a residuary legatee, devisee, or beneficiary designated in the paper-writing or revocable trust or both.

3. The making of the gifts will not jeopardize any specific legacy, bequest, devise, or distribution of specific amounts of money, income, or property.

b. That so far as is known the incompetent has not prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent and each donee is a person who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval of the gifts.

c. The donee is a person who would share in the incompetent's nonprobate estate, if the incompetent died contemporaneously with the signing of the order of approval.

d. The donee is the spouse, parent, descendant of the incompetent, or descendant of the incompetent's parent and the amount of the gift does not exceed the federal annual gift tax exclusion.

(5) If the incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming a revocable trust created by the incompetent as beneficiary; then all residuary legatees, devisees, and beneficiaries designated in the paper-writing or revocable trust or both, who would take under the paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of the gifts and the paper-writing was probated as the incompetent's will, the spouse, if any, of the incompetent and all persons identified in G.S. 35A-1341.1(7) have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed, within the 10-day period.

(6) If so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, all persons who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of the superior court of the county in which the guardian was appointed, within the 10-day period.

(7) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset if the incompetent died contemporaneously with the signing of the order of approval have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior of the county in which the guardian was appointed within the 10-day period. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341.1(5) and (6) above.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death.

Section 7. G.S. 35A-1342 reads as rewritten:

"**§ 35A-1342. Who deemed specific and residuary legatees and devisees of incompetent under § 35A-1341.**

For purposes of G.S. 35A-1341(6)a and 35A-1341.1(4) and (5), ~~of this Article,~~ if ~~such paper-writing~~ the paper-writing provides for the residuary estate to be placed in trust for a term of years, or if the paper-writing names a revocable trust created by the incompetent as beneficiary, and the trust or trusts include dispositive provisions which provide that assets continue in trust for a term of years with stated amounts of income payable to designated beneficiaries during the term and stated amounts payable to designated beneficiaries upon termination of the ~~trust, such~~ trust or trusts, the designated beneficiaries shall be deemed to be specific ~~legatees and devisees~~ legatees, devisees, and beneficiaries and those taking the remaining income of the trust or trusts and, at the end of the term, the remaining principal shall be deemed to be residuary ~~legatees and devisees~~ legatees, devisees, and beneficiaries who would take under the ~~paper-writing~~ paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of ~~such~~ the gifts. In no case shall any prospective executor or trustee be considered either a specific or residuary ~~legatee and devisee~~ legatee, devisee, or beneficiary on the sole basis of prospective service as executor or trustee."

Section 8. G.S. 35A-1343 reads as rewritten:

"**§ 35A-1343. Notice to minors and incompetents under ~~§ 35A-1341.~~ § 35A-1341 and § 35A-1341.1.**

If any person, to whom notice must be given under the provisions of G.S. ~~35A-1341(6)~~ 35A-1341 and G.S. 35A-1341.1 ~~of this Article,~~ is a minor or is incompetent, or is an unborn or unascertained beneficiary, then the notice shall be given to his duly appointed guardian or other duly appointed representative: Provided, that if a ~~minor or incompetent~~ minor, incompetent, unborn, or unascertained beneficiary has no ~~such~~ guardian or ~~representative~~ representative, then

a guardian **ad litem** shall be appointed by the judge and ~~such~~ the guardian **ad litem** shall be given the notice herein required."

Section 9. G.S. 35A-1251 reads as rewritten:

"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

(1) To take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5).

(2) To receive assets due the ward from any source.

(3) To maintain any appropriate action or proceeding to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor of or against the ward.

(4) To complete performance of contracts entered into by the ward that continue as obligations of the ward or his estate, or to refuse to complete ~~such~~ the contracts, as the guardian determines to be in the ward's best interests, taking into account any cause of action that might be maintained against the ward for failure to complete ~~such~~ the contract.

(5) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in ~~such~~ a condition that it is of no benefit or value to the ward or his estate.

(5a) To renounce any interest in property as provided in Chapter 31B of the General Statutes, or as otherwise allowed by law.

(6) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward.

(7) To insure the ward's assets against damage or loss, at the expense of the ward's estate.

(8) To pay the ward's debts and obligations that were incurred prior to the date of adjudication of incompetence or appointment of a guardian when the debt or obligation was incurred for necessary living expenses or taxes; or when the debt or obligation involves a specific lien on real or personal property, if the ward has an equity in the property on which there is a specific lien; or when the guardian is convinced that payment of the debt or obligation is in the best interest of the ward or his estate.

(9) To renew the ward's obligations for the payment of money. The guardian's execution of any obligation for the payment of money pursuant to this subsection shall not be held or construed to be binding on the guardian personally.

(10) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.

(11) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(12) To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal.

(13) To pay from the ward's estate necessary expenses of administering the ward's estate.

(14) To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian.

(15) To continue any business or venture or farming operation in which the ward was engaged, where ~~such~~ that continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in ~~such~~ the business.

(16) To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(17) a. Without a court order to lease any of the ward's real estate for a term of not more than three years, or to sell, lease or exchange any of the ward's personal property including securities, provided that the aggregate value of all items of the ward's tangible personal property sold without court order over the duration of the estate shall not exceed one thousand five hundred dollars ($1,500). When any item of the ward's tangible personal property has a value which when increased by the value of all other tangible personal property previously sold in the estate without a court order would exceed one thousand five hundred dollars ($1,500), a guardian may sell the item only as provided in subdivision (17)b.

b. A guardian who is required by subdivision (17)a to do so shall, and any other guardian who so desires may, by motion in the cause, request the court to issue him an order to lease any of the ward's real estate or to sell any item or items of the ward's personal property. Notice of the motion and of the date, time and place of a hearing thereon shall be served, as provided in G.S. 1A-1, Rule 5, Rules of Civil Procedure, upon all parties of record and upon ~~such~~ any other persons ~~as~~ the clerk may direct, and the court may issue the order after conducting a hearing and upon ~~such~~ any conditions ~~as~~ that the court may require; provided that:

1. A sale, lease, or exchange under this subdivision may not be subject to Article 29A of Chapter 1 of the General Statutes unless the order so requires; and
2. The power granted in this subdivision shall not affect the power of the guardian to petition the court for prior approval of expenditures from estate principal under subdivision (12) of this section.

(18) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed or trust, or other lien securing ~~such~~ the bond, note or other obligation, and to bid in the property at ~~such~~ a foreclosure sale, or to acquire the property deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(19) To borrow money for ~~such~~ any periods of time and upon ~~such~~ the terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber ~~such~~ that portion of the ward's estate as may be required to secure ~~such~~ the loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter is controlling.

(20) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

(21) To expend estate income for the support, maintenance, and education of the ward's minor children, spouse, and dependents, and to petition the court for prior approval of expenditures from estate principal for these purposes; provided, the clerk, in the original order appointing the guardian or a subsequent order, may require that the expenditures from estate income also be approved in advance. In determining whether and in what amount to make or approve these expenditures, the guardian or clerk shall take into

account the ward's legal obligations to his minor children, spouse, and dependents; the sufficiency of the ward's estate to meet the ward's needs; the needs and resources of the ward's minor children, spouse, and dependents; and the ward's conduct or expressed wishes, prior to becoming incompetent, in regard to the support of these persons.

(22) To transfer to the spouse of the ward those amounts authorized for transfer to the spouse pursuant to 42 United States Code § 1396r-5.

(23) To create a trust for the benefit of the ward pursuant to 42 United States Code § 1396p(d)(4), provided that all amounts remaining in the trust upon the death of the ward, other than those amounts which must be paid to a state government, are to be paid to the estate of the ward.

(24) To petition the court for prior approval of transfers of assets of the ward to a revocable trust executed by the ward prior to the ward being declared incompetent, provided that the ward executed a paper-writing with all the formalities required by the laws of North Carolina for the execution of a valid will prior to the ward being declared incompetent and that will directs that the assets that are being transferred to the trust are to be distributed to the trust at the ward's death or the revocable trust has the same dispositive provisions as the ward's will or provides that the assets in the trust are to be distributed to the ward's estate upon the death of the ward. The guardian may at any time withdraw any assets (or the proceeds of the sale of any assets) transferred by the guardian to the trust upon 30 days' written notice to the trustee of the trust; provided, however, no assets which have been distributed or otherwise disposed of by the trustee (before the notice is received by the trustee) in accordance with the terms of the trust can be so withdrawn."

Section 10. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1142

Short Title: Designate Comm. of Indian Affairs. (Public)

Sponsors: Senator Martin of Guilford.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA COMMISSION OF INDIAN AFFAIRS AS THE DESIGNATED AGENCY TO IMPLEMENT OR OVERSEE CERTAIN PROGRAMS BENEFITING THE STATE'S INDIAN POPULATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-406 reads as rewritten:

"**§ 143B-406. North Carolina State Commission of Indian Affairs -- duties; use of funds.**

(a) It shall be the duty of the Commission to study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs; to investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs; to confer with appropriate officials of local, State and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina; to cooperate with and secure the assistance of the local, State and federal governments or any agencies thereof in formulating any such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal government to the end that the State Commission of Indian Affairs secure the full benefit of such programs; to review all proposed or pending State legislation and amendments to existing State legislation affecting Indians in North Carolina; to conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the Commission; to study the existing status of recognition of all Indian groups, tribes

and communities presently existing in the State of North Carolina; to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups; to provide for official State recognition by the Commission of such groups; and to initiate procedures for their recognition by the federal government.

(b) The Commission is the designated agency for the implementation, administration, or oversight of certain State and federal programs. State agencies or departments charged with the implementation, administration, or oversight of State or federal programs that benefit the Indian population in North Carolina as part of a larger class shall consult with the Commission on all matters related to those programs that affect the Indian population."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1142-PCSSD-001
PROPOSED COMMITTEE SUBSTITUTE
Senate Bill No. 1142
THIS IS A DRAFT 21-APR-99 13:06:01
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Designate Comm. of Indian Affairs. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CONSULTATION WITH THE NORTH CAROLINA COMMISSION OF INDIAN AFFAIRS ON MATTERS AFFECTING THE STATE'S INDIAN POPULATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-406 reads as rewritten:

"**§ 143B-406. North Carolina State Commission of Indian Affairs -- duties; use of funds.**

(a) It shall be the duty of the Commission to study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs; to investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs; to confer with appropriate officials of local, State and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina; to cooperate with and secure the assistance of the local, State and federal governments or any agencies thereof in formulating any

such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal government to the end that the State Commission of Indian Affairs secure the full benefit of such programs; to review all proposed or pending State legislation and amendments to existing State legislation affecting Indians in North Carolina; to conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the Commission; to study the existing status of recognition of all Indian groups, tribes and communities presently existing in the State of North Carolina; to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups; to provide for official State recognition by the Commission of such groups; and to initiate procedures for their recognition by the federal government.

(b) State agencies or departments charged with the implementation, administration, or oversight of State or federal programs that benefit the indian population in North Carolina, expressly or as part of a larger class, shall consult with the Commission on all matters related to those programs that affect the Indian population."

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

S929:
Abatement of Nuisances

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Sen. Reeves
Date:	April 21, 1999	**Summary by:**	Ed Rossi
Version:	1st. Ed		Committee Counsel

SUMMARY: Senate bill 929, "...amends GS 19-1.1(3) to provide that "knowledge" or "knowledge of such nuisance" means, with regard to nuisances involving assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages or controlled substances, or repeated acts that create and constitute a breach of the peace, evidence that defendant knew, or by exercise of due diligence should have known, of the acts or conduct. Amends GS 19-1.1 to define "breach of the peace" as act that disturbs public tranquility and order including, but not limited to, homicide, assault, affray, communicating threats, stalking, loud obscene or abusive language, unlawful possession of dangerous or deadly weapons, and discharging firearms. Amends GS 19-1.1 to define "prostitution" as offering in any manner or receiving in return for fee, for acts of vaginal intercourse, anal intercourse, fellatio, cunnilingus, masturbation, or physical contact with person's genitals, pubic area, buttocks, or breasts, or other acts of sexual conduct offered or received for pay and sexual gratification. Amends GS 19-1.3(3) to include vehicles and conveyances as personal property declared as nuisances as set out in subsection. Adds new GS 19-1.6 to provide that cessation of nuisance activities does not preclude action for abatement of nuisance based on its past operation. Amends GS 19-2.1 to provide that on request of Att'y General, district attorney, county or municipality, including sheriff or chief of police, Alcohol Law Enforcement Div'n of Dep't of Crime Control and Public Safety or other law enforcement agency may investigate alleged public nuisances and make recommendations concerning actions to abate public nuisances. Amends GS 19-2.5 to provide that court may order closure of property pending trial on merits."[1]

[1] Institute of Government Bill Summary

SENATE BILL 956:
THREATS AGAINST CHILDREN

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Dalton
Date:	April 21, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 956 makes it unlawful to make threats against a person by threatening harm to that person's minor child or dependant.***

CURRENT LAW: Under G. S. 14-196, it is unlawful to use in telephonic communications any words or language threatening to inflict bodily harm to any person; violation of the statute is a Class 2 misdemeanor. Under G. S. 14-277.1, it is unlawful to willfully threaten to physically injure a person orally, in writing, or by any other means when the threat is made in a manner and under curcumstances which would cause a reasonable person to believe that the threat is likely to be carried out; violation of the statute is a Class 1 misdemeanor.

BILL ANALYSIS: Senate Bill 956 amends statutes regarding communication of threats to encompass threats against a person's minor child or dependent.

S1142:
Designate Comm. of Indian Affairs

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Sen. Martin
Date:	April 21, 1999	**Summary by:**	Ed Rossi
Version:	S1142-PCSSD-001		Committee Co-Counsel

SUMMARY: ***Senate bill 1142 requires all state agencies and departments charged with implementing, administrating, or overseeing State or federal programs that benefit the Indian population (either expressly or as part of a larger group) to consult with the North Carolina State Commission of Indian Affairs.***

CURRENT LAW: The North Carolina Commission of Indian Affairs is housed in the Department of Administration. Its purpose is to deal fairly and effectively with Indian affairs and focus federal and State resources on meaningful programs that benefit the Indian community.

S 929: Abatement of Nuisances

This package of changes updates Chapter 19 and makes it more effective in combating public nuisances including alcohol, drugs, prostitution and pornography. The Alcohol Law Enforcement Division of Crime Control and Public Safety has an active Nuisance Abatement Team that uses Chapter 19 in communities statewide to reclaim streets and neighborhoods from criminal activity. The Team's emphasis is on alcohol and drug abuse and accompanying violent crimes.

Issue in existing statute	*Change*
Definition refers only to "narcotic drugs"	Change to "controlled substances"
Does not define "breach of the peace" although statute permits enjoining such breaches	Defines "breach of the peace"
Definition requires proof of defendant's knowledge that property used for nuisance	Codifies caselaw that includes constructive knowledge
Limited definition of "motion pictures"	Add videodiscs, CDs
Definition prohibits action against a private dwelling as a nuisance unless activity is for profit	Deletes restriction
"Sale" definition not consistent with other statutes	Define by reference to alcohol and controlled substance statutes
Definitions needed	For assignation, prostitution, etc.
Personal property subject to forfeit limited to money and movable contents	Add vehicles (statute already permits enjoining vehicles used for nuisance)
Vague whether ceasing nuisance activity ends action	State that it does not end action
Role of state law enforcement vague	Authorize DA to request ALE investigation
Immunity vague	Immunity extends to employees and agents
Status of government property vague	Exempt state and its political subdivisions
Inventory provisions which restrain use of property by ex parte order should exclude private dwellings	Excludes private dwellings unless used for profit
Statute requires officer serving restraining order to inventory property contents, but does not state he has authority to enter	State authority to enter
Statute allows court to enjoin nuisance pending trial, unclear whether court may close entirely	Give court express discretion to close property (some judges do already)
No authority to file lis pendens to provide record notice to innocent buyer of action	Authorize filing lis pendens
Property owner must forfeit property if warned of nuisance prior to suit, but not clear whether that applies if one agency warns and another sues	State that forfeiture triggered by notice of nuisance by any agency if that agency could have brought action itself

A.L.E.'s Nuisance Abatement Team at a glance:

- *Started work in November 1994*
- *5 sworn officers and one support person*
- *Based in Tarboro, Durham and Greensboro*
- *Acts only by invitation from local governments*
- *Has investigated 237 referrals, has 40 investigations pending*
- *Has enjoined/terminated nuisances at 81 sites*
- *Has never lost a case in court*

JH 11

VISITOR REGISTRATION SHEET

April 21, 1999

Name of Committee

Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Greg Richardson	N.C. Commission of Indian Affairs
Jon Williams	CCPS
[illegible]	ALE
Paul Dalton	Grass Roots North Carolina
Ben Miles	Grass Roots North Carolina
Melissa Bishop-Murphy	Pfizer, Inc
Bruce Thomson	Parker Poe Adams & Bernstein
Jeff Gray	Fraternal Order of Police
Mike Concannon	Grass Roots North Carolina
Martie Hipple	Grass Roots North Carolina
Mary Carmichael	Mecklenburg County
Eric Rudolph	Cherokee County
Chris MARKS	AOC
Jeanne Bonds	AOC
Mike Bywater	
Amy Fullbright	Hunton & Williams
Jim Drennan	Inst. of Gov't
Cam Cover	BPMKL
Walter Price	Charlotte Chamber
Steve Woodson	NC Farm Bureau

SENATE JUDICIARY II COMMITTEE

APRIL 22, 1999

ROOM 1124

SB 334	No Death Penalty/Mentally Retarded	Senator Balance
SB 558	Standardize Law Enf. Bill Discipline	Senator Miller
SB 994	Amend Bail Bond Laws	Senator Odom
SB 995	Police Peer Counselor Privilege	Senator Odom
SB 1060	Division of Trusts	Senator Hagan
SB 1074	Year 2000 Consumer Protection Act	Senator Reeves

Adjournment

SENATE JUDICIARY II COMMITTEE

APRIL 22, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, April 22, 1999 at 9:30 a.m. in room 1124 of the Legislative Building. Fifteen members were present, including Senator Brad Miller, who presided.

Senator Reeves was recognized to explain SB 1074, Year 2000 Consumer Protection Act. Senator Kinnaird moved to amend the bill on page 2, line 16, by adding at the end of that line: "This section shall not apply any claims for personal injury or wrongful death," and on page 2, line 39, by deleting "July 1, 2000" and by substituting "October 1, 2000." The motion carried unanimously. Speaking from the public in support of the bill was Alan Miles, with the NC Credit Union League. Senator Forrester moved to roll the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 1060, Division of Trusts, was explained by Senator Hagan. Senator Hagan moved to adopt a proposed committee substitute. The motion carried unanimously. Jean Adams, with Womble, Carlyle, Sandridge & Rice, was called on to further explain the bill. Senator Hagan moved to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 558, Standardize Law Enf. Bill Discipline, was explained by Senator Miller. Senator Miller moved to adopt a proposed committee substitute. The motion carried unanimously. Speaking from the public in support of the bill were: Jeff Fluck, NC PBA President, Bill Alexander, Lobbyist for PBA, and John Midyette, Executive Director , PBA. Speaking in opposition to the bill were: Tom Lawson, Chief of Police, Garner, NC, Billy Smith, NC Sheriff Assoc., Frank Palombo, Chief of Police, New Bern, and Andy Romaneau, League of Municipalities. Senator Kerr moved to refer SB 558 to a subcommittee for further study. Senator Balance moved a substitute motion for a favorable report as to the committee substitute, and subsequently withdrew the motion. The motion to move the bill to a subcommittee carried.

Senator Balance was recognized to begin discussions of SB 334, No Death Penalty/Mentally Retarded. The meeting adjourned with the understanding that SB 334 would be considered at the next meeting.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Monday, April 26, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

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

S.B. **1060** Division of Trusts.

Draft Number:	PCSA635
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Thursday, April 22, 1999

SENATOR MILLER,
submits the following with recommendations as to passage:

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

S.B. **812** Alcoholic Beverage Sales.

Draft Number:	PCS1721
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1142** Designate Comm. of Indian Affairs.

Draft Number:	PCS2749
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Thursday, April 22, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **455** Divide Superior Court 19B.
- Sequential Referral: Appropriations/Base Budget
- Recommended Referral: None

S.B. **956** Threats Against Minor Children.
- Sequential Referral: None
- Recommended Referral: None

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

S.B. **877** Workers' Comp. for National/State Guard.
- Draft Number: PCS3786
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: No

S.B. **992** Workers' Comp. for Prisoners.
- Draft Number: PCS6660
- Sequential Referral: Appropriations/Base Budget
- Recommended Referral: None
- Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 334

Short Title: No Death Penalty/Mentally Retarded. (Public)

Sponsors: Senators Ballance; Carpenter, Dannelly, Kinnaird, Lucas, Martin of Guilford, Miller, Odom, Purcell, Shaw of Cumberland, Soles, and Weinstein.

Referred to: Judiciary II.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH.

The General Assembly of North Carolina enacts:

Section 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Mentally retarded defendants; death sentence prohibited.**

(a) The following definitions apply in this section:

(1) Mentally retarded. -- Significantly subaverage intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18.

(2) Significantly subaverage intellectual functioning. -- An intelligence quotient of 70 or below on an individually administered standardized intelligence quotient text.

(b) Notwithstanding any provision of law to the contrary, no defendant who is mentally retarded shall be sentenced to death.

(c) Upon motion of the defendant prior to trial, the court shall conduct a hearing to determine whether the defendant is mentally retarded. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. If the court determines the defendant is mentally

retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) The provisions of this section do not preclude the sentencing of a mentally retarded offender to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 558

Short Title: Standardize Law Enf. Bill Discipline. (Public)

Sponsors: Senators Miller; Carter, Clodfelter, Gulley, Horton, Kinnaird, Lucas, Metcalf, and Odom.

Referred to: Judiciary II.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 17F.

"Investigation and Discipline of Law Enforcement Officers.

"**§ 17F-1. Definitions.**

For purposes of this act:

(1) 'Employing agency' means any State agency or department, municipality, or political subdivision of the State that employs law enforcement officers.

(2) 'Law enforcement officer' means all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C and 17E of the General Statutes.

(3) 'Officer' means law enforcement officer.

"**§ 17F-2. Discharge, suspension, or demotion for just cause only.**

No law enforcement officer shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

"**§ 17F-3. Minimum procedures.**

If an employing agency considers matters that could reasonably lead to the dismissal, demotion, suspension, or transfer for punitive reasons of, or any disciplinary action against, a law enforcement officer, each employing agency shall establish minimum procedures to ensure that any officer is afforded due process of law prior to the imposition of any disciplinary action against the officer. These procedures shall include, as a minimum, the right to a hearing before a fair and impartial board or hearing officer, the right to be represented at the officer's expense, the right to examine any witnesses testifying against the officer, the right to call witnesses and present evidence, and the right to have all meetings recorded.

"**§ 17F-4. Certain established procedures validated.**

Employing agencies using an established civil service system, agency review board, civilian complaint board, or personnel board that meets the minimum standards set forth in G.S. 17F-3 or otherwise provides due process need not develop the procedures required by G.S. 17F-3 so long as the established system remains in place.

"**§ 17F-5. Permissible suspensions.**

Nothing in this Chapter precludes the immediate suspension with pay of any law enforcement officer if the employing agency considers the officer's continued presence on the job to be a substantial and immediate threat to the welfare of the agency or the public, nor shall anything in this Chapter preclude the suspension of an officer for refusing to obey a direct order issued in conformance with the employing agency's written and disseminated rules and regulations. In such a case, the officer shall be afforded the rights provided for in G.S. 17E-3, except that an officer's request to be heard by a complaint review board shall be made subsequent to the imposition of the suspension."

Section 2. This act becomes effective October 1, 1999, and applies to investigations and disciplinary proceedings commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

SENATE BILL 994

Short Title: Amend Bail Bond Laws. (Public)

Sponsors: Senators Odom and Ballantine.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A TEMPORARY LICENSE AS A PROFESSIONAL BONDSMAN OR SURETY BONDSMAN, TO CREATE THREE NEW CRIMINAL OFFENSES OF BAIL-JUMPING, TO INCREASE THE AMOUNT OF THE SECURITY DEPOSIT THAT A BONDSMAN MUST POST WITH THE COMMISSIONER OF INSURANCE, AND TO AMEND CERTAIN LAWS REGARDING PRETRIAL RELEASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-71-1 is amended by adding a new subdivision to read:

"(12) 'Temporary licensee' means a person employed by a professional bondsman, surety bondsman, or insurer and licensed in accordance with G.S. 58-71-41."

Section 2. G.S. 58-71-25 reads as rewritten:

"**§ 58-71-25. Procedure for surrender; exoneration of obligors; refund of deposit.**

The person desiring to make a surrender of the defendant shall ~~procure a certified copy of the undertakings and~~ deliver ~~them together with~~ the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.

~~Upon the presentation of certified copy of the undertakings and the certificate of the official, the~~ The court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the

person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded."

Section 3. Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-71-41. Temporary license as surety agent or professional bondsman.**

(a) Authority to Issue Temporary License. -- The Commissioner may issue a temporary license as a surety bondsman or a runner in accordance with this section. A temporary license may be issued under this section only to a natural person. The Commissioner shall not issue a second or subsequent temporary license under this section to any individual whose temporary license in this State has expired.

(b) Application Generally. -- The applicant shall apply for a license on forms prepared and supplied by the Commissioner, and the Commissioner may propound any reasonable interrogatories to an applicant for a license under this section relating to the applicant's qualifications, residence, prospective place of business, and any other matters which, in the opinion of the Commissioner, are deemed necessary in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

(c) Denial of Application and Reapplication for Temporary License. -- A person whose application under this section is denied may reapply, but the Commissioner may not consider more than one application submitted by the same person within any one-year period.

(d) Picture Identification Card Required; Surrender of Identification Card Upon Termination of Temporary License. -- When a temporary license is issued under this section, the Commissioner shall issue a picture identification card, of design, size, and content approved by the Commissioner, to the temporary licensee. Each temporary licensee must carry this card at all times when working in the scope of the temporary licensee's employment. A temporary licensee whose temporary license is terminated must surrender the identification card to the Commissioner within 10 working days of the termination.

(e) Qualifications for Temporary License. -- An applicant for a temporary license must meet all of the following qualifications:

(1) Be 18 years of age or older.

(2) Be a resident of this State.

(3) Be a person of high character and approved integrity.

(4) Is not under indictment or information for and has no prior conviction, guilty plea, or plea of no contest for a felony or a crime involving moral turpitude.

(5) Has not been in any manner disqualified under the laws of this State or any other state to engage in the bail bond business.

(6) Has completed all educational requirements under G.S. 58-71-71 and licensure examination.

(f) Supporting Information Required to Accompany Application. -- In addition to the other requirements of this section, an applicant for a temporary license must provide all of the following with the applicant's application:

(1) Documentation that affirmatively shows that the applicant is employed at the time of application, and that at all times throughout the existence of the temporary license, the applicant shall be employed by only one licensed and appointed supervising professional bondsman, surety bondsman, or authorized insurer, who supervises the work of the applicant and is responsible for the licensee's conduct in the bail bond business.

(2) A certificate of employment that states the judicial district of the employer and the adjacent judicial districts to which the applicant's bail writing will be limited.

(3) A report as to the applicant's integrity and moral character on a form prescribed by the Commissioner and executed by the employer.

(4) Statements regarding the character of the applicant by at least three reputable citizens who are residents of the same counties in which the applicant proposes to engage as a temporary licensee.

(5) A complete set of the applicant's fingerprints certified by an authorized law enforcement officer and a recent credential-sized, full-face photograph of the applicant. The Commissioner shall not issue a temporary license under this section until the Commissioner has received a report from the State Bureau of Investigation and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history based on the applicant's fingerprints.

(g) Fees. -- The Commissioner shall not issue a license under this section until all applicable license fees as prescribed in G. S. 58-71-55 are paid.

(h) Terms of Temporary Licenses. -- A temporary license issued under this section shall be effective for a period of one year from the date of issuance, subject to earlier termination at the request of the employer or upon suspension or revocation by the Commissioner. An individual licensed under this section shall not perform any functions for which a professional bondsman's license or a surety bondsman's license is required after expiration of the temporary license unless the individual is licensed under this Article as a runner or a surety bondsman.

(i) Authority of Temporary Licensee. -- Except as provided in subsection (j) of this section, a temporary licensee has the same authority as a professional bondsman or a surety bondsman. That authority includes presenting defendants in court, apprehending, arresting, and surrendering defendants to the proper authorities, keeping defendants under necessary surveillance, executing or signing bonds, handling collateral receipts, and delivering bonds to appropriate authorities.

(j) Limitations on Temporary Licensee. -- A temporary licensee can only write bail in the judicial district where the main office of the employer of the temporary licensee is located and any adjacent judicial district. A temporary licensee shall not operate an agency or branch agency separate from the location of the supervising professional bondsman, surety bondsman, or insurer by whom the temporary licensee is employed.

(k) Liability of Employer of Temporary Licensee. -- The employer of a temporary licensee is responsible for the bail bonding acts of the temporary licensee.

(l) Eligibility of Temporary Licensee to Be Licensed as a Runner or Surety Bondsman. -- After completing the term as a temporary licensee, an individual may file an application for and become eligible for a license as a runner or surety bondsman."

Section 4. G.S. 58-71-145 reads as rewritten:

"**§ 58-71-145. Financial responsibility of professional bondsmen.**

Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair market value of at least one-eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than ~~five~~ twenty-five thousand dollars ~~($5,000).~~ ($25,000)."

Section 5. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the

judicial official must then impose condition (4) in subsection (a) above instead of condition (1), (2), or ~~(3), and~~ (3). The judicial official must record ~~the reasons for so doing~~ in writing the reasons for imposing conditions (1), (2), (3), or (4) to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General

Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the ~~State before forfeiture is ordered under G.S. 15A-544(b); or~~ State; or

(4) Prayer for judgment has been continued indefinitely in the district ~~court.~~ court; or

(5) An appeal is made by the defendant from district court to superior court; or

(6) The court places the defendant in deferred prosecution.

(i) In accordance with G.S. 15A-543, if the principal fails to appear in court as required, the court shall issue an order for arrest for the failure to appear and shall set a secured bond at an amount of at least twice the amount of the previous bond.

(j) If the principal fails to appear in court twice on the same charge, the conditions for pretrial release shall be set by a judge.

(k) A person who has been charged with or convicted of the commission of a felony under the laws of this State and has been released on bail or on his or her own recognizance upon the condition that the person will subsequently appear at a specified time and place commits the offense of felony bail-jumping if, after actual notice to the person in open court or notice to the person by mailing to the person's last known address or otherwise being notified personally in writing by a court official or officer of the court, the person fails without sufficient excuse to appear at that time and place. A person convicted of the offense of felony bail-jumping is guilty of a Class H felony.

(l) Any person who has been charged with or convicted of the commission of a misdemeanor and has been released on bail or on his or her own recognizance upon the condition that the person will subsequently appear at a specified time and place commits the offense of misdemeanor bail-jumping if, after actual notice to the person in open court or notice to the person by mailing to the person's last known address or otherwise being notified personally in writing by a court official or officer of the court, the person fails without sufficient excuse to appear at that time and place. A person convicted of the offense shall be guilty of a Class 3 misdemeanor.

(m) Any person who has been charged with or convicted of any misdemeanor and has been released on bail or on his or her own recognizance upon the condition that the person will subsequently appear at a specified time and place and who, after actual notice to the person in open court or notice to the person by mailing to the person's last known address or otherwise being notified personally in writing by a court official or officer of the court, leaves the State to avoid appearing and fails without sufficient excuse to appear at that time and place commits the offense of out-of-state bail-jumping. A person convicted of the offense of out-of-state bail-jumping is guilty of a Class I felony."

Section 6. This act becomes effective December 1, 1999. Section 5 of this act applies to offenses committed on or after December 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 995

Short Title: Police Peer Counselor Privilege. (Public)

Sponsors: Senator Odom.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A TESTIMONIAL PRIVILEGE FOR POLICE PEER SUPPORT GROUP COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.9. Peer support group counselors.**

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

(1) Client officer. -- Any sworn law enforcement officer who is in need of and receives peer support counseling services offered by the officer's employing law enforcement agency.

(2) Immediate family. -- A spouse, child, stepchild, parent, or stepparent.

(3) Peer support group counselor. -- Any law enforcement officer or civilian employee of a law enforcement agency who:

a. Has received training to provide emotional and moral support and counseling to client officers and their immediate families; and

b. Was designated by the sheriff, police chief, or other head of a law enforcement agency to counsel a client officer.

(4) Privileged communication. -- Any communication made by a client officer, or a member of the client officer's immediate family, to a peer support group counselor while receiving counseling.

(b) No peer support group counselor shall, without the consent of the client officer or a member of the client officer's immediate family, disclose any privileged communication made by a client officer or a member of the client officer's immediate family while receiving counseling. No peer support group counselor may be compelled to testify about or disclose any privileged communication made by a client officer or a member of the client officer's immediate family.

(c) The privilege established by subsection (b) of this section shall not apply:

(1) If the peer support group counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support counseling services.

(2) As to testimony concerning an incident if the incident prompted the assignment of the peer support group counselor.

(3) To communications made while the peer support group counselor was not acting in his or her official capacity as a peer support group counselor.

(d) Notwithstanding the provisions of this section, the peer group counselor privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the peer counselor privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

Section 2. This act becomes effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1060

Short Title: Division of Trusts. (Public)

Sponsors: Senators Hagan; and Kinnaird.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TRUSTEES WITH ADDITIONAL AUTHORITY TO SEVER TRUSTS INTO SEPARATE TRUSTS CONSISTENT WITH THE BEST INTERESTS OF THE TRUST BENEFICIARIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-27(25a) reads as rewritten:

"(25a) Divide One Trust into Several Trusts and Make Distributions From Those Trusts. --

a. To divide the funds and properties constituting any trusts into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or

discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (i) the new trusts so created are not inconsistent with the terms of the governing instrument; and (ii) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

c. To fund the new trusts created pursuant to the authority granted under this subsection either (i) by pro rata allocation of the assets of the original trust; (ii) based upon the fair market value of the assets at the date of funding; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding."

Section 2. G.S. 36A-136(24) reads as rewritten:

"(24) To divide one trust into several trusts and make distributions from those trusts:

a. To divide the funds and properties constituting any trust into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts treated for purposes of the federal generation-skipping

transfer tax as separate trusts into two or more separate trusts to reflect that tax treatment, provided that (i) the separate trusts so created are not inconsistent with the terms of the governing instrument and that (ii) the severance is carried out in a manner permitted under the regulations promulgated under section 2654 of the Internal Revenue Code of 1986, as amended.

c. To divide the funds and properties constituting any testamentary trusts and any trusts included in the gross estate of the grantor of the trust for federal tax purposes into two or more separate trusts, provided that (i) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust and that (ii) the severance is carried out in a manner permitted under the regulations promulgated under section 2654 of the Internal Revenue Code of 1986, as amended.

d. To fund the new trusts created pursuant to the authority granted under this subsection either (i) by pro rata allocation of the assets of the original trust; (ii) based upon the fair market value of the assets at the date of funding; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding. In the case of a pecuniary amount set aside as a separate trust, the provisions of G.S. 37-21.1 shall apply."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1074

Short Title: Year 2000 Consumer Protection Act. (Public)

Sponsors: Senators Reeves; Ballantine, Clodfelter, Dalton, Foxx, Hartsell, Hoyle, and Wellons.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE BASED ON A YEAR 2000 PROBLEM.

The General Assembly of North Carolina enacts:

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

"ARTICLE 43E.

"Affirmative Defense Based on Year 2000 Failure.

"**§ 1-539.25. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Article:

(1) 'Electronic computing device' means any computer hardware or software, computer chip, embedded chip, process control equipment, or other information system that:

a. Is used to capture, store, manipulate, or process data; or

b. Controls, monitors, or assists in the operation of physical apparatus that is not primarily used as a computer but that relies on automation or digital technology to function, including, but not limited to, vehicles, vessels, buildings, structures, facilities, elevators, medical equipment, traffic signals, and factory machinery.

(2) 'Person' means any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society which may sue or be sued under a common name.

(3) 'Year 2000 problem' means disruptions in electronic communications or the functioning of electronically controlled equipment resulting or reasonably anticipated to result from erroneous data that is or may be supplied by electronic devices in 1999 or on or after January 1, 2000.

"§ 1-539.26. Right to affirmative defense based on year 2000 problem.

(a) A person has an affirmative defense to any claim or action brought against the person if the person establishes that the person's default, failure to pay, breach, omission, or other violation that is the basis of the claim against the person was caused by a year 2000 problem associated with an electronic computing device that is not owned, controlled, or operated by the person, and, if it were not for the year 2000 problem, the person would have been able to satisfy the obligations that are the basis of the claim.

(b) If a person establishes an affirmative defense as set forth in subsection (a) of this section, the court shall dismiss the claim without prejudice and the person or entity making the claim against the person shall not reassert the claim as to which the affirmative defense was asserted for a period of 60 days from the date on which the affirmative defense is granted by the court. Any statute of limitations applicable to the claim is tolled for 90 days upon the granting of the affirmative defense under this section.

(c) This section does not affect those transactions upon which a default has occurred before any disruption of financial or data transfer operations attributable to the year 2000 date change.

(d) The granting of the affirmative defense under this section does not impair, extinguish, discharge, satisfy, or otherwise affect the underlying obligation that is the basis of the claim against which the affirmative defense was asserted; except that the inability of a party to bring the claim based upon the obligation must be delayed as set forth in subsection (b) of this section.

(e) A credit reporting agency operating in this State shall not report any negative credit information resulting from the failure of an electronic computing device to process financial information and other information or the inability of the consumer to transact financial business and make payments due to the failure of an electronic computing device to compute, recognize, or timely process the year 2000 date change."

Section 2. This act is effective when it becomes law and shall apply to actions accruing on or after that date. The act expires July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S558-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 558
THIS IS A DRAFT 22-APR-99 09:15:18
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Standardize Law Enforcement Discipline. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 17F.

"Investigation and Discipline of Law Enforcement Officers.

"§ 17F-1. Definitions.

For purposes of this act:

(1) 'Employing agency' means any State agency or department, municipality, or political subdivision of the State that employs law enforcement officers.

(2) 'Law enforcement officer' means any officer with the powers of arrest as defined by law and required to be certified under Chapters 17C and 17E of the General Statutes, except for the following:

a. An officer employed by the employing agency for less than one year;
b. A state employee designated exempt by the employing agency;
c. The sheriff or deputy sheriff of any county;
d. The chief of police of any municipality.

(3) 'Officer' means law enforcement officer.

"§ 17F-2. Discharge, suspension, or demotion for just cause only.

No law enforcement officer shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

"§ 17F-3. Minimum procedures.

(a) Each employing agency shall establish minimum procedures to ensure that a law enforcement officer is afforded due process of law prior to the imposition of any disciplinary action against the officer. These procedures shall include, at a minimum, the following:

(1) An officer's right to a hearing before a fair and impartial board or hearing officer;
(2) An officer's right to representation at his or her own expense;
(3) An officer's right to examine any witnesses testifying against the officer;
(4) An officer's right to call witnesses and present evidence; and
(5) An officer's right to have all meetings recorded.

(b) The procedures established by an employing agency as required by subsection (a) of this section shall apply in all cases where an employing agency considers matters that could reasonably lead to any disciplinary action against a law enforcement officer, including dismissal, demotion, suspension, or transfer for disciplinary reasons.

"§ 17F-4. Certain established procedures validated.

(a) Employing agencies using a civil service system, agency review board, civilian complaint board, or personnel board established prior to October 1, 1999 shall not be required to develop new procedures under G.S. 17F-3 so long as the established system remains in place and meets the minimum

standards set forth in G.S. 17F-3 or otherwise provides due process.

(b) No employing agency shall reclassify the exemption status of any non-exempt officer solely to avoid affording the officer the rights provided for in this Chapter.

"**§ 17F-5. Pre-hearing suspensions.**

Nothing in this Chapter precludes the immediate suspension with pay of any law enforcement officer if the employing agency considers the officer's continued presence on the job to be detrimental to the welfare of the agency or the public, nor shall anything in this Chapter preclude the suspension of an officer for refusing to obey a direct order issued in conformance with the employing agency's written and disseminated rules and regulations. In these cases, the officer shall be afforded the rights provided for in G.S. 17E-3, except that an employing agency may respond to the officer's request for a hearing before a complaint review board subsequent to the imposition of the suspension."

Section 2. This act becomes effective October 1, 1999, and applies to investigations and disciplinary proceedings commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 812
Proposed Committee Substitute S812-PCS1721-SD

Short Title: Alcoholic Beverage Sales. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A FOOD OR RETAIL BUSINESS THAT HOLDS AN ABC PERMIT AND IS LOCATED IN AN URBAN REDEVELOPMENT AREA SHALL NOT HAVE ALCOHOLIC BEVERAGE SALES IN EXCESS OF FIFTY PERCENT OF THE BUSINESS'S TOTAL ANNUAL SALES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-309. Alcoholic beverage sales in Urban Redevelopment Areas.**

A food business as defined in G.S. 18B-1000(3), a retail business as defined in G.S. 18B-1000(7), or an eating establishment as defined in G.S. 18B-1000(2) that holds an ABC permit under this Chapter and is located in a part of a city that has been designated as an Urban Redevelopment Area under Article 22 of Chapter 160A of the General Statutes shall not have alcoholic beverage sales in excess of fifty percent (50%) of the business's total annual sales. Upon request of a city, the Commission shall investigate the total annual alcohol sales and total sales of a business as defined in this section. The Commission shall report the results of such an investigation to the city council, and the report shall contain only the percentage of annual alcohol sales in proportion to the business's total annual sales. A city may request an investigation of a particular business by the Commission only once in each calendar year. These audits may be conducted by the Commission only upon the request of the city council. Businesses covered by this section shall maintain full and accurate monthly records of their finances, separately indicating each of the following:

(1) Amounts expended by the business for the purchase of alcoholic beverages and the quantity of alcoholic beverages purchased;
(2) Amounts collected from the sale of alcoholic beverages sold; and
(3) Amounts collected from the sale of food, nonalcoholic beverages, and all other items sold by the business.

Records of purchases of alcoholic beverages and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises, and all records related to alcoholic beverages, including original invoices, shall be maintained on the premises for three years and shall be open for inspection and audit pursuant to G.S. 18B-502."

Section 2. G.S. 18B-904(e) reads as rewritten:

"(e) Business or Location No Longer Suitable. --

(1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).
(2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 877
Proposed Committee Substitute S877-PCS3786-RV

Short Title: Workers' Comp. for National/State Guard. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD AND NORTH CAROLINA STATE GUARD ARE EMPLOYEES SUBJECT TO THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2(2) reads as rewritten:

"(2) Employee. -- The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national ~~guard, except when called into the service of the United States,~~ guard while on State active duty

under orders of the Governor and members of the North Carolina State ~~guard, and members of these organizations shall be entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty~~ guard while on State active duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the

United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term employee shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article."

Section 2. This act is effective when it becomes law and applies to claims for injuries or deaths occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 992
Proposed Committee Substitute S992-PCS6660-RV

Short Title: Workers' Comp. for Prisoners. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRISONERS WHO SUFFER DEATH OR TOTAL AND PERMANENT DISABILITY TO RECEIVE COMPENSATION UNDER THE WORKERS' COMPENSATION ACT BASED ON THE MINIMUM WAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-13(c) reads as rewritten:

"**§ 97-13. Exceptions from provisions of Article.**

. . .

(c) Prisoners. -- This Article shall not apply to prisoners being worked by the State or any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the State Department of Correction ~~shall suffer~~ suffers accidental injury ~~or accidental death~~ arising out of and in the course of the employment to which he had been ~~assigned, if there be death or if the results of such injury continue until after the date of the lawful discharge of such prisoner to such an extent as to amount to a~~ assigned that results in death or permanent disability as defined in this Article, then ~~such discharged prisoner or~~ the dependents or next of kin of ~~such discharged~~ the deceased prisoner shall be entitled to compensation under G.S. 97-38 and the injured prisoner who is permanently disabled ~~may have the benefit of this Article by applying to the Industrial Commission as any other employee; provided, such application is made within 12 months from the date of the discharge; and provided further that the maximum compensation to any prisoner or to the dependents or next of kin of any deceased prisoner shall not exceed thirty dollars ($30.00) per week and the period of compensation shall relate to the date of his discharge rather than the~~

~~date of the accident. If any person who has been awarded compensation under the provisions of this subsection shall be recommitted to prison upon conviction of an offense committed subsequent to the award, such compensation shall immediately cease.~~ shall be entitled to compensation under G.S. 97-29. For purposes of calculating compensation under G.S. 97-29 and G.S. 97-38, the average weekly wage shall be based on an hourly wage equal to the minimum wage under G.S. 95-25.3. Any awards made under the terms of this subsection shall be paid by the State Department of Correction from the funds available for the operation of the Department of ~~Corrections.~~ Correction. The provisions of G.S. 97-10.1 and G.S. 97-10.2 shall apply to prisoners ~~and discharged prisoners~~ entitled to compensation under this subsection and to the State in the same manner as ~~said section applies~~ these sections apply to employees and employers."

Section 2. This act is effective when it becomes law and applies to awards for compensation entered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1060
Proposed Committee Substitute S1060-PCSA635-SD

Short Title: Division of Trusts. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TRUSTEES WITH ADDITIONAL AUTHORITY TO SEVER TRUSTS INTO SEPARATE TRUSTS CONSISTENT WITH THE BEST INTERESTS OF THE TRUST BENEFICIARIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-27(25a) reads as rewritten:

"(25a) Divide One Trust into Several Trusts and Make Distributions From Those Trusts. --

a. To divide the funds and properties constituting any trusts into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing

instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (i) the new trusts so created are not inconsistent with the terms of the governing instrument; and (ii) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

c. To fund the new trusts created pursuant to the authority granted under this subdivision either (i) by pro rata allocation of the assets of the original trust; (ii) based upon the fair market value of the assets at the date of funding; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding."

Section 2. G.S. 36A-136(24) reads as rewritten:

"(24) To divide one trust into several trusts and make distributions from those trusts in the following manner:

a. To divide the funds and properties constituting any trust into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (i) the new trusts so created are not inconsistent with the terms of the governing instrument, and (ii) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

Funding of the new trusts created pursuant to the authority granted under this subdivision must either (i) be carried out by pro rata allocation of the assets of the original trust; (ii) be based upon the fair market value of the assets at the date of funding; or (iii) be carried out in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1060-PCSSD-001
PROPOSED COMMITTEE SUBSTITUTE
Senate Bill No. 1060
THIS IS A DRAFT 21-APR-99 19:27:13
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Division of Trusts. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TRUSTEES WITH ADDITIONAL AUTHORITY TO SEVER TRUSTS INTO SEPARATE TRUSTS CONSISTENT WITH THE BEST INTERESTS OF THE TRUST BENEFICIARIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-27(25a) reads as rewritten:

"(25a) Divide One Trust into Several Trusts and Make Distributions From Those Trusts. --

a. To divide the funds and properties constituting any trusts into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines

to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (i) the new trusts so created are not inconsistent with the terms of the governing instrument; and (ii) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

c. To fund the new trusts created pursuant to the authority granted under this subsection either (i) by pro rata allocation of the assets of the original trust; (ii) based upon the fair market value of the assets at the date of funding; or (iii) in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding."

Section 2. G.S. 36A-136(24) reads as rewritten:

"(24) To divide one trust into several trusts and make distributions from those trusts in the following manner:

a. To Divide the funds and properties constituting any trust into two or more identical separate trusts that represent two or more fractional shares of the funds and properties being divided, or to hold any

addition or contribution to an existing trust as a separate, identical trust, and to make distributions of income and principal by a method other than pro rata from the separate trusts so created as the fiduciary determines to be in the best interests of the trust beneficiaries. In any case where ~~a single trust has been divided by the fiduciary into two separate trusts,~~ two separate, identical trusts are created pursuant to this sub-subdivision, one of which is fully exempt from the federal generation-skipping transfer tax and one of which is fully subject to that tax, the fiduciary may thereafter, to the extent possible consistent with the terms of the governing instrument, determine the value of any mandatory or discretionary distributions to trust beneficiaries on the basis of the combined value of both trusts, but may satisfy such distributions by a method other than pro rata from the separate trusts in a manner designed to minimize the current and potential generation-skipping transfer tax.

b. To divide the funds and properties constituting any trusts into two or more separate, nonidentical trusts if (1) the new trusts so created are not inconsistent with the terms of the governing instrument, and (2) the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust.

Funding of the new trusts created pursuant to the authority granted under this subdivision must either (1) be carried out by pro rata allocation of the assets of the original trust; (2) be based upon the fair market value of the assets at the date of funding; or (3) be carried out in a manner fairly reflecting the net appreciation or depreciation of the trust assets measured from the valuation date to the date of funding."

Section 3. 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. 1074 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Kinnaird
)
Sen.)

moves to amend the bill on page 2 line 16 by adding at the ~~end of~~ that line:

( ) WHICH CHANGES THE TITLE by "Section ~~Article~~ This shall not apply any claims for personal injury or wrongful death."

and on page 2, line 39 by deleting "July 1, 2000" and by substituting "October 1, 2000.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1142
Proposed Committee Substitute S1142-PCS2749-SD

Short Title: Designate Comm. of Indian Affairs. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CONSULTATION WITH THE NORTH CAROLINA COMMISSION OF INDIAN AFFAIRS ON MATTERS AFFECTING THE STATE'S INDIAN POPULATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-406 reads as rewritten:

"**§ 143B-406. North Carolina State Commission of Indian Affairs -- duties; use of funds.**

(a) It shall be the duty of the Commission to study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs; to investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs; to confer with appropriate officials of local, State and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina; to cooperate with and secure the assistance of the local, State and federal governments or any agencies thereof in formulating any such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal government to the end that the State Commission of Indian Affairs secure the full benefit of such programs; to review all proposed or pending State legislation and amendments to existing State legislation affecting Indians in North Carolina; to conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by

the Commission; to study the existing status of recognition of all Indian groups, tribes and communities presently existing in the State of North Carolina; to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups; to provide for official State recognition by the Commission of such groups; and to initiate procedures for their recognition by the federal government.

(b) State agencies or departments charged with the implementation, administration, or oversight of State or federal programs that benefit the Indian population in North Carolina, expressly or as part of a larger class, shall consult with the Commission on all matters related to those programs that affect the Indian population."

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

S995:
Police Peer Counselor Privilege

BILL ANALYSIS

Committee: Senate JII
Date: April 21, 1999
Version: 1st Ed.

Introduced by: Sen. Odom
Summary by: Ed Rossi
Committee Co-Counsel

SUMMARY: ***Senate bill 995 creates a new testimonial privilege for police peer group counselors. Under the provisions of this bill, police peer group counselors cannot be compelled to testify nor disclose any privileged communication made by client officer or her family, unless the communication relates to the abuse of a child or disabled adult.***

CURRENT LAW: There are currently eight professional testimonial privileges.[1] Licensed counselors and family therapists already enjoy testimonial privileges. However no testimonial privilege currently exists for peer group counselors.

Traditionally, the privilege belongs to the client. If the client waives the privilege the professional can be compelled to testify. See State v. Bryant, 5 N.C. App. 21 (1969) (A physician or surgeon may not refuse to testify; the privilege is that of the patient); Reserve Life Ins. Co. v. Davis Hosp., 36 F.R.D. 434 (W.D.N.C. 1965); G.S. § 8-53.2 (The privilege between clergymen and communicants does not apply where the communicant waives the privilege); G.S. § 8-53.4 (School counselor privilege does not apply where student waives privilege in open court). Moreover, with the exception of the clergymen-communicant privilege, in every instance where the General Assembly created a testimonial privilege, it also gave a court discretion to compel testimony when to do so would serve the interest of justice. See G.S. § § 8-53, 8-53.3, 8-53.4, 8-53.6, 8-53.7, 8-53.8, and 8-53.9.

BILL ANALYSIS: The testimonial privilege sought to be created by Senate bill 995 departs from the norm. The bill appears to give a member of a client officer's immediate family, even a child, the authority to consent to the disclosure of privileged communications that occurred between a peer group counselor and a client officer. It also appears to give a client officer the authority to consent to the disclosure of privileged communication that took place between a peer group counselor and a member of the client officer's immediate family.

In addition, the bill appears to depart from the norm by granting the privilege to the peer group counselor—not the clients. The bill provides the no peer group counselor may be compelled to testify but makes no provision for testimony where clients have waived their privilege. Thus, even if a client wanted a peer group counselor's testimony, it appears that the counselor could refuse to provide it.

[1] Physician-patient; clergymen-communicants; psychologist-client; school counselor; family therapist; social worker; counselor; and Optometrist-patient.

§ 126-35. Just cause; disciplinary actions for State employees.

(a) No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision. The State Personnel Commission may adopt, subject to the approval of the Governor, rules that define just cause.

(b) Notwithstanding any other provision of this Chapter, a reduction in pay or position which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this Article. Disciplinary actions, for the purpose of this Article, are those actions taken in accordance with the disciplinary procedures adopted by the State Personnel Commission and specifically based on unsatisfactory job performance, unacceptable personal conduct or a combination of the two.

(c) For the purposes of contested case hearings under Chapter 150B, an involuntary separation (such as a separation due to a reduction in force) shall be treated in the same fashion as if it were a disciplinary action. (1975, c. 667, s. 10; 1989 (Reg. Sess., 1990), c. 1025, s. 2; 1991, c. 65, s. 7; c. 354, s. 5; c. 722, s. 1.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 1025, which amended this section, in s. 5 provided: "That nothing in this Act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this Act and any funds allocated under this Act shall come from the performance pay previously appropriated."

Legal Periodicals. — For survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1980 administrative law, see 59 N.C.L. Rev. 1040 (1981).

CASE NOTES

Constitutional Implications. — For case discussing the propriety under U.S. Const., Amends. I and XIV, of adverse personnel actions affecting State employees in exempt positions following the change from the Hunt administration to the Martin administration, see Stott v. Martin, 725 F. Supp. 1365 (E.D.N.C. 1989), rev'd on other grounds, 916 F.2d 134 (4th Cir. 1990).

The purpose of This section is to provide the employee with a written statement of the reasons for his discharge so that the employee may effec-

S 1060:
Division of Trusts

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Sen. Hagan
Date:	April 20, 1999	**Summary by:**	Ed Rossi
Version:	1st. Ed.		Committee Co-Counsel

SUMMARY: Senate bill 1060 gives trustees additional powers to divide trusts so that additional trusts are created. These new powers include:

- *The power to create separate identical trusts out additions or contributions.*
- *The power to divide trusts in to non-identical when:*
    1. *The newly created trusts are not inconsistent with the terms of the governing instrument; and*
    2. *The new trusts provide for the same succession of interests as the original trust when considered in the aggregate.*
- *The power to fund any new trusts created under this subsection of law by one of the following methods:*
    1. *Pro rata distribution.*
    2. *Fair market value at the date of funding.*
    3. *A" manner fairly reflecting the net appreciation or depreciation of the trust measured from the valuation date to the date of funding.*
- *The power to divide funds and properties of any trust that for federal generation skipping transfer tax is treated as separate trusts into 2 or more separate trusts that reflect the tax treatment provided that:*
    1. *I.R.S. regulations permit the severance.*
    2. *The newly created trusts are not inconsistent with the governing instrument.*
- *The power to divide funds or properties that constitute a testamentary trust as well as any trust that are included in the gross estate of the grantor for tax purposes into separate trusts provided that:*
    1. *In the aggregate, the new trust provides for the same succession of interests as the original trust.*
    2. *I.R.S. regulations permit the severance.*

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

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Senate Bill 1060 - Division of Trusts

The Estate Planning Section of the North Carolina Bar Association routinely studies issues regarding trusts and trust administration and ***recommends passage*** of Senate Bill 1060 as a solution to a number of tax problems which a trustee can face.

G.S. 36A-136(24) grants to the trustee of any existing trust certain powers to sever the trust into identical separate trusts and to make distributions from the separate trusts by a method other than pro rata as the trustee determines to be in the beneficiaries' best interests. Where one of the two trusts is exempt from the federal generation-skipping transfer tax, the trustee may determine the value of future distributions from the trusts based upon their combined value, but may satisfy them from the exempt trust and the non-exempt trust in a manner designed to reduce current or potential taxation. Similar powers for any fiduciary may be incorporated by reference to G.S. 32-27(25a).

Since the enactment of G.S. 36A-136(24) and G.S. 32-27(25a), the Internal Revenue Service has issued new regulations under the Internal Revenue Code clarifying that the severance of trusts in other circumstances will be recognized for purposes of the federal generation-skipping transfer tax, and may produce tax benefits for the trust beneficiaries. In addition, there may be other situations where severance of a single trust into non-identical trusts having the same overall succession of interests may help to resolve conflicts among groups of beneficiaries having differing investment objectives and needs.

Senate Bill 1060 retains the existing rule relating to severing a single trust into identical trusts, but provides additional authority to sever trusts provided the new arrangement is not inconsistent with the terms of the governing instrument and does not change the succession of interests in the property. These powers are subject to rules designed to assure that the fiduciary exercises these powers in a manner that will fairly treat all trust beneficiaries and avoid tax pitfalls.

William G. Scoggin, Director of Governmental Affairs
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April 15, 1999

S 1074. YEAR 2000 CONSUMER PROTECTION ACT. *LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE BASED ON A YEAR 2000 PROBLEM.* Enacts new Art. 43E of GS Ch. 1 as title indicates. Person may assert affirmative defense to any claim or action brought against person if person's default was caused by a year 2000 problem associated with an electronic computing device that is not owned, controlled, or operated by that person and, but for the year 2000 problem, person would have been able to satisfy obligation that is basis of claim. Establishment of defense will result in dismissal of claim without prejudice. Claimant may not reassert claim for 60 days; statute of limitations is tolled for 90 days. Defense does not otherwise impair or defeat asserted claim. Prohibits credit reporting agency from reporting negative credit information resulting from failure of electronic computing device to process financial information or other information or the inability of consumer to transact financial business and make payments due to failure of electronic computing device to process year 2000 date change. Expires July 1, 2000.
Intro. by Reeves.
Ref. to Judiciary II GS 1

North Carolina Psychological Association

Senate Bill 334

What It Means To Be Mildly Mentally Retarded

Mild Mental Retardation Is A Very Substantial Impairment

- People with Mild Mental Retardation are in the lowest two (2) percent of the population in reasoning skills, judgment, knowledge and memory.
- An adult with an IQ of 60 to 70 has the approximate mental age and maturity of a 9 or 10 year old (4^{th} or 5^{th} grade level).

Why Use An IQ Criterion of 70 or Below?

- The criterion of an IQ of 70 or below is the nearly universal professional standard for mental retardation.
- The standard of 70 or below is used by the American Psychiatric Association, the American Association on Mental Retardation, and all NC state agencies including the Department *of* Public Instruction.

Does Senate Bill 334 Rely on a Single Score to Determine Mental Retardation?

- No. An adaptive behavior assessment (assessment of life skills) is also required. Psychologists have individualized standardized tests that measure adaptive behavior.
- Further, the judge is not bound by an IQ score and may use any information and testing as evidence in the determination.
- Finally, the state may order their own testing in cases where mental retardation is claimed by the defendant.

How can 'significant' impairment in adaptive functioning be determined objectively?

- Psychologists have individualized standardized tests that measure adaptive behavior and result in specific scores.

(over)

1004 Dresser Court, Suite 106
Raleigh, North Carolina 27609
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Phone 919 • 872 • 1005

What if a defendant tries to fake mental retardation on an IQ test?

- Qualified psychologists can detect faking. There are batteries of tests which are able to detect faking mental retardation. These batteries have been tested on prison populations.
- The defendant must also show evidence of mental retardation before the age of 18 in order to qualify as mentally retarded.
- In every case, the state can have their own expert administer a test.

Why is a competency test not an adequate safeguard?

- People with mental retardation have a basic understanding of right vs. wrong. What they lack is an appreciation of the significance of the moral wrongfulness of a crime. They are also unable to reason through the likely consequences of their actions.
- When asked to explain why it would be wrong to commit murder, they are likely to give superficial responses such as: "I like everybody"; "My parents tell me it's wrong"; or even illogical ones such as: "I wouldn't want them (the victim) to be mad at me."

The Arc of North Carolina

Working with and for People with Mental Retardation and other Developmental Disabilities

Answers to Frequently Asked Questions About the Mental Retardation and the No Death Penalty Bill

Q: Isn't it unlikely that a person with mental retardation would ever be executed?

A: At least 34 people diagnosed as having mental retardation have been executed in the United States since the death penalty was reinstated in 1976.

Q: Have any other states exempted offenders with mental retardation from the death penalty?

A: Eleven states and the federal government now exempt offenders with mental retardation. The Georgia legislature changed the law after Jerome Bowden, an offender with the IQ of 56, was executed in 1986.

Q: Will this bill end the use of the death penalty?

A: No. Changing the law for offenders with mental retardation will have very little impact on the overall use of the death penalty. If this bill is passed, experts estimate that it will affect only 1-2% of prisoners. Since the bill is not retroactive, none of those currently on death row will be exempt.

Q: What is mental retardation?

A: Mental retardation is a lifelong disability not a disease. Individuals with mental retardation score below 70 on IQ tests, or lower than 97% of the general population. In addition, all ability areas are affected and the condition exists from birth or early childhood.

Q: Aren't individuals with mental retardation easy to recognize?

A: Most people with mental retardation have normal physical appearance.

Q: Can an offender cheat on a test to escape the death penalty?

A: No. The IQ test is only one measure of mental retardation. Adaptive deficits must also be present from birth or childhood.

Q: Why doesn't an offender with metal retardation deserve the death penalty?

A: As Rep. Charles Cromer said during the 1989 session, people with mental retardation "don't possess the capability or the evilness that would cause them to deserve the death penalty."

Q: How would offenders with mental retardation be punished?

A: Offenders with mental retardation who are found ineligible for the death penalty would not go free. They would be sentenced to life without possibility of parole.

State Headquarters
16 Rowan Street, Suite 204 ~ P.O. Box 20545
Raleigh, NC 27619
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Formerly the Association for Retarded Citizens/North Carolina, Inc.

Organizations Supporting Senate Bill 334 – No Death Penalty/ Mentally Retarded

The ARC of NC

NC Governor's Advocacy Council for Persons with Disabilities

Academy of Trial Lawyers

National Association of Social Workers – NC Chapter

American Bar Association (supports this provision nationwide)

NC Psychological Association

NC Council of Churches

NC Civil Liberties Union

Carolina Justice Policy Center

Amnesty International

VISITOR REGISTRATION SHEET

##

April 2, 99

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
MALIKA Reed	NC PBA
R. THOMAS BReedlove	Vance Co. — Sheriff's Assoc.
Catherine Evans	ElectriCities
George Reed	NC Council of Churches
	PBA
Bill Alexander	NC PBA
Roy Cole	PBA
[illegible]	NC PBA
Mike McGuinness	NC PBA
Sheriff Worth Hill	Durham
Sheriff WE Billy Smith	Lenoir
Sheriff Jim Pendergraph	Mecklenburg Co.
CHIEF FRANK PALOMBO	NEW BERN POLICE DEPT.
Chief Greg Harrington	WAKE FOREST Police Dept
CHIEF THOMAS M. MOSS	GARNER POLICE DEPARTMENT
James Andrews	NC State AFL-CIO
Richard Westbrook	UTU
PAUL Stock	NC BANKERS ASSN
Alan Wiles	Bailey & Dixon LLP
Joanna Winnell	NCSBA
Ann Case	NCLMA
Jeff Aldridge	PBA
[illegible]	Fraternal Order of Police

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Jon Williams	CCPS
Peg Dorer	Conference of D.As
Lori Laver	Mecklenburg County Sheriffs Office
Donna Maggard	NC Sheriffs' Assoc.
Phillip Redmond	Iredell Co. Sheriff
Jean Adams	Womble Carlyle Sandridge & Rice PLLC
Pamela Best	AOC
Lee Rubsam	CPPC
Deborah Greenblatt	Carolina Legal Assistance
Sally Cameron	NC Psychological
Andrew Short	NC Psychological
Mary Ann Talley	NC Academy of Trial Lawyers

SENATE JUDICIARY II COMMITTEE

APRIL 26, 1999

ROOM 414

SB 334	No Death Penalty/Mentally Retarded	Senator Balance
SB 359	Enhance Child Welfare Services	Senator Phillips
SB 851	N.H./Pender Judicial Districts	Senator Jordan
SB 867	Real Estate Licensure Law Changes	Senator Gulley
SB 920	Update Cont. Substance Schedules	Senator Forrester
SB 955	Proper Trial Division/Counsel Fees	Senator Dalton
SB 995	Police Peer Counselor Privilege	Senator Odom
SB 1096	No Guns at School Law/School Employees	Senator Garrou

Adjournment

SENATE JUDICIARY II COMMITTEE

APRIL 26, 1999

MINUTES

The Senate Judiciary II Committee met on April 26, 1999 at 10:00 a.m. in room 414 of the Legislative Office Building. Twelve members were present, including Senator Brad Miller, who presided.

SB 867, Real Estate Licensure Law Changes, was explained by Senator Gulley. Senator Odom moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Odom moved to amend the bill on page 3, line 16, by inserting after the word "of": "one or more of the following." The motion carried unanimously. Senator Hagan moved to amend the bill on page 5, line 27 by deleting the phrase "Wake County or." The motion carried unanimously. Senator Odom moved to engross the amendments and the proposed committee substitute into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Jordan was recognized to explain SB 851, N.H./Pender Judicial Districts. Senator Lee moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

SB 334, No Death Penalty/Mentally Retarded, was explained by Senator Ballance. Speaking from the public in support of the bill were: Dr. Andrew Short, NC Psychological Association, Deborah Greenblatt, Attorney, and David Howard, ARC of NC. Colon Willoughby, Wake County District Attorney, and Bill Ferrell, from the NC Department of Justice, spoke in opposition to the bill. Senator Miller announced that the bill would be displaced.

Senator Odom explained SB 995, Police Peer Counselor Privilege. Jeff Grey, with the Fraternal Order of Police voiced his support of the bill. Senator Odom moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Dalton moved to give the proposed committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Dalton was recognized to explain SB 955, Proper Trial Division/Counsel Fees. Alan Miles, American Insurance Association, spoke in opposition to the bill. Senator Horton moved a favorable report. The motion carried. **Favorable report.**

SB 920, Update Cont. Substance Schedules, was explained by Senator Forrester. Senator Forrester moved to amend the bill. The motion carried unanimously. Senator

Kerr moved to engross the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 334

Short Title: No Death Penalty/Mentally Retarded. (Public)

Sponsors: Senators Ballance; Carpenter, Dannelly, Kinnaird, Lucas, Martin of Guilford, Miller, Odom, Purcell, Shaw of Cumberland, Soles, and Weinstein.

Referred to: Judiciary II.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH.

The General Assembly of North Carolina enacts:

Section 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-2004. Mentally retarded defendants; death sentence prohibited.**

(a) The following definitions apply in this section:

(1) Mentally retarded. -- Significantly subaverage intellectual functioning, existing concurrently with impairment in adaptive functioning, and manifested before the age of 18.

(2) Significantly subaverage intellectual functioning. -- An intelligence quotient of 70 or below on an individually administered standardized intelligence quotient text.

(b) Notwithstanding any provision of law to the contrary, no defendant who is mentally retarded shall be sentenced to death.

(c) Upon motion of the defendant prior to trial, the court shall conduct a hearing to determine whether the defendant is mentally retarded. The defendant has the burden of production and persuasion to demonstrate mental retardation by a preponderance of the evidence. If the court determines the defendant is mentally

retarded, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

(e) The provisions of this section do not preclude the sentencing of a mentally retarded offender to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 359

Short Title: Enhance Child Welfare Services. (Public)

Sponsors: Senators Phillips; Foxx, Garrou, Hagan, Harris, Kinnaird, Lucas, Martin of Guilford, Miller, Weinstein, and Wellons.

Referred to: Judiciary II.

March 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED, NEGLECTED, OR DEPENDENT JUVENILES IN THE CUSTODY OR AUTHORITY OF THE COUNTY DEPARTMENTS OF SOCIAL SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-101(3), as enacted in Section 6 of S.L. 1998-202, reads as rewritten:

"(3) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, ~~or~~ any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational ~~facility.~~ facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the

juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only."

Section 2. G.S. 7B-302, as enacted by Section 6 of S.L. 1998-202 and as amended by Section 19 of S.L. 1998-229, reads as rewritten:

"(b) When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is received, the director of the department of social services shall immediately ascertain if other juveniles ~~remain~~ live in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection. When a report of a juvenile's death as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such as a residential child care facility or residential educational facility is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the facility subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles in order to determine whether they require protective services or whether immediate removal of those juveniles from the facility is necessary for their protection."

Section 3. G.S. 108A-49 reads as rewritten:

"**§ 108A-49. Foster care and adoption assistance payments.**

(a) Benefits in the form of foster care assistance shall be granted in accordance with the rules of the Social Services Commission to any dependent child who would have been eligible to receive Aid to Families with Dependent Children (as that program was in effect on June 1, 1995), but for his or her removal from the home of a specified relative for placement in a foster care facility; provided, that the child's placement and care is the responsibility of a county department of social services. A county department of social services shall pay, at a minimum, the monthly graduated foster care assistance payments for eligible children as set by the General Assembly. A county department of social services may make foster care assistance payments in excess of the monthly graduated rates set by the General Assembly.

(b) Adoption assistance payments for certain adoptive children shall be granted in accordance with the rules of the Social Services Commission to adoptive parents who adopt a child eligible to receive foster care maintenance payments or supplemental security income benefits; provided, that the child cannot be returned to his or her parents; and provided, that the child has special needs which create a financial barrier to adoption. A county department of social services shall pay, at a minimum, the monthly graduated adoption assistance payments for eligible children as set by the General Assembly. A county department of social services may make adoption assistance payments in excess of the monthly graduated rates set by the General Assembly.

(c) The Department is authorized to use available federal payments to states under Title IV-E of the Social Security Act for foster care and adoption assistance payments."

Section 4. G.S. 143B-150.20, as enacted by Section 12.22 of S.L. 1998-212 and as amended by Section 13(oo) of S.L. 1998-202, reads as rewritten:

"**§ 143B-150.20. State Child Fatality Review Team; establishment; purpose; powers; duties.**

There is established in the Department of Health and Human Services, Division of Social Services, a State Child Fatality Review Team to conduct in-depth reviews of any child fatalities which have occurred involving children and families involved with local departments of social services child protective services in the 12 months preceding the fatality. Steps in this in-depth review shall include interviews with any individuals determined to have pertinent information as well as examination of any written materials containing pertinent information.

The purpose of these reviews shall be to implement a team approach to identifying factors which may have contributed to conditions leading to the fatality and to develop recommendations for improving coordination between local and State entities which might have avoided the threat of injury or fatality and to identify appropriate remedies. The Division of Social Services shall make public the findings and recommendations developed for each fatality reviewed relating to improving coordination between local and State entities. <u>These findings shall not be introduced into evidence in any legal or administrative proceeding.</u> The State Child Fatality Review Team shall consult with the appropriate district attorney in accordance with G.S. 7B-2902(d) prior to the public release of the findings and recommendations.

The State Child Fatality Review Team shall include representatives of the local departments of social services and the Division of Social Services, a member of the local Community Child Protection Team, a member of the local child fatality prevention team, a representative from local law enforcement, a prevention specialist, and a medical professional.

The State Child Fatality Review Team shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this subsection, including police investigative data, medical examiner investigative data, health records, mental health records, and social services records. The State Child Fatality Review Team may receive a copy of any reviewed materials necessary to the conduct of the fatality review. Any member of the State Child Fatality Review Team may share, only in an official meeting of the State Child Fatality Review Team, any information available to that member that the State Child Fatality Review Team needs to carry out its duties.

Meetings of the State Child Fatality Review Team are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. However, the State Child Fatality Review Team may hold periodic public meetings to discuss, in a general manner not revealing confidential information about children and families, the findings of their reviews and their recommendations for preventive actions. Minutes of all public meetings, excluding those of closed sessions, shall be kept in compliance

with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any executive session shall be sealed from public inspection.

All otherwise confidential information and records acquired by the State Child Fatality Review Team, in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings except pursuant to an order of the court; and may only be disclosed as necessary to carry out the purposes of the State Child Fatality Review Team. In addition, all otherwise confidential information and records created by the State Child Fatality Review Team in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the State Child Fatality Review Team. No member of the State Child Fatality Review Team, nor any person who attends a meeting of the State Child Fatality Review Team, may testify in any proceeding about what transpired at the meeting, about information presented at the meeting, or about opinions formed by the person as a result of the meetings. This subsection shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

Each member of the State Child Fatality Review Team and invited participant shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality."

Section 5. Chapter 7B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 39.

"Interstate Compact on Adoption and Medical Assistance.

"**§ 7B-3900. Legislative findings and purposes.**

(a) Finding adoptive families for children, for whom state assistance is desirable pursuant to G.S. 108A-49 and G.S. 108A-50, and assuring the protection of the interests of the children affected during the entire assistance period require special measures when the adoptive parents move to another state or are residents of another state. Additionally, the provision of medical and other necessary services for children receiving State assistance encounters special difficulties when the provision of services takes place in another state.

(b) In recognition of the need for special measures, the General Assembly authorizes the Secretary of the Department of Health and Human Services to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the Department of Health and Human Services and to provide procedures for interstate adoption assistance payments, including payments for medical services.

"**§ 7B-3901. Definitions.**

Unless the context requires otherwise, as used in this Article:

(1) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the

Commonwealth of the Northern Mariana Islands, or any territory or possession subject to the jurisdiction of the United States.

(2) 'Adoption assistance state' means the state that is a signatory to an adoption assistance agreement in a particular case.

(3) 'Residence state' means the state where the child is living.

"§ 7B-3902. Compacts authorized.

The Secretary of the Department of Health and Human Services may develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this State with other states to implement this Article. When entered into, and for so long as it remains in force, such a compact shall have the full force and effect of law.

"§ 7B-3903. Content of compacts.

(a) A compact under this Article shall contain all of the following provisions:

(1) A provision making it available for joinder by all states.

(2) A provision for withdrawal from the compact upon written notice to the parties, with a period of at least one year between the date of the notice and effective date of the withdrawal.

(3) A requirement that the protections afforded by or under the compact continue in force for the duration of the adoption assistance and apply to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the state in which they are resident and have their principal place of abode.

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance and that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state child welfare agency providing the adoption assistance.

(5) Any other provisions appropriate to implement the proper administration of the compact.

(b) A compact entered into under this Article may contain any of the following provisions:

(1) Provisions establishing procedures and entitlement to medical and other necessary social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the expense thereof.

(2) Any other provisions appropriate or incidental to the proper administration of the compact.

"§ 7B-3904. Medical assistance.

(a) A child with special needs who is a resident of this State who is the subject of an adoption assistance agreement with another state shall be accepted as being entitled to receive medical assistance certification from this State upon the filing in the department of social services of the county in which the child resides a certified copy of the adoption assistance agreement obtained from the adoption assistance state.

(b) The Division of Medical Assistance shall consider the holder of a medical assistance certification under this section to be entitled to the same medical benefits under the laws of this State as any other holder of a medical assistance certification and shall process and make payment on claims on account of that holder in the same manner and under the same conditions and procedures that apply to other recipients of medical assistance.

(c) The provisions of this section apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this State under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this State.

"**§ 7B-3905. Federal participation.**

The Department of Health and Human Services, in connection with the administration of this Article and any compact entered into pursuant to this Article, shall include the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Titles IV (E) and XIX of the Social Security Act and any other applicable federal laws. The Department shall apply for and administer all relevant federal aid in accordance with law.

"**§ 7B-3906. Compact administrator.**

The Secretary of the Department of Health and Human Services may appoint a Compact Administrator who shall be the general coordinator of activities under this Compact in this State and who, acting jointly with like officers of other party states, may promulgate rules to carry out more effectively the terms and provisions of this Compact."

Section 6. Section 5 of this act becomes effective October 1, 1999. The remainder of this act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 851*

Short Title: N.H./Pender Judicial Districts. (Public)

Sponsors: Senators Jordan; and Ballantine.

Referred to: Judiciary II.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO DIVIDE SUPERIOR COURT DISTRICT 5 INTO A SET OF DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
	3A	Pitt	2
	3B	Carteret, Craven, Pamlico	2

	4A	Duplin, Jones, Sampson	1
	4B	Onslow	1
	~~5~~ 5A	(part of New Hanover, part of Pender see subsection (b))	~~3~~ 1
	5B	(part of New Hanover, part of Pender see subsection (b))	1
	5C	(part of New Hanover see subsection (b))	1
	6A	Halifax	1
	6B	Bertie, Hertford, Northampton	1
	7A	Nash	1
	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
	8A	Lenoir and Greene	1
	8B	Wayne	1
Second	9	Franklin, Granville, Vance, Warren	2
	9A	Person, Caswell	1
	10A	(part of Wake, see subsection (b))	2
	10B	(part of Wake, see subsection (b))	2
	10C	(part of Wake, see subsection (b))	1
	10D	(part of Wake, see subsection (b))	1
	11A	Harnett, Lee	1
	11B	Johnston	1
	12A	(part of Cumberland, see subsection (b))	1
	12B	(part of Cumberland, see subsection (b))	1
	12C	(part of Cumberland, see subsection (b))	2
	13	Bladen, Brunswick,	2

		Columbus	
	14A	(part of Durham, see subsection (b))	1
	14B	(part of Durham, see subsection (b))	3
	15A	Alamance	2
	15B	Orange, Chatham	1
	16A	Scotland, Hoke	1
	16B	Robeson	2
Third	17A	Rockingham	2
	17B	Stokes, Surry	2
	18A	(part of Guilford, see subsection (b))	1
	18B	(part of Guilford, see subsection (b))	1
	18C	(part of Guilford, see subsection (b))	1
	18D	(part of Guilford, see subsection (b))	1
	18E	(part of Guilford, see subsection (b))	1
	19A	Cabarrus	1
	19B	Montgomery, Moore, Randolph	2
	19C	Rowan	1
	20A	Anson, Richmond	1
	20B	Stanly, Union	2
	21A	(part of Forsyth, see subsection (b))	1
	21B	(part of Forsyth, see subsection (b))	1
	21C	(part of Forsyth, see subsection (b))	1
	21D	(part of Forsyth, see subsection (b))	1
	22	Alexander, Davidson, Davie, Iredell	2
	23	Alleghany, Ashe, Wilkes, Yadkin	1
Fourth	24	Avery, Madison, Mitchell, Watauga, Yancey	1

	25A	Burke, Caldwell	2
	25B	Catawba	2
	26A	(part of Mecklenburg, see subsection (b))	2
	26B	(part of Mecklenburg, see subsection (b))	2
	26C	(part of Mecklenburg, see subsection (b))	2
	27A	Gaston	2
	27B	Cleveland, Lincoln	2
	28	Buncombe	2
	29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
	30A	Cherokee, Clay, Graham, Macon, Swain	1
	30B	Haywood, Jackson	1"

Section 2. G.S. 7A-41(b) is amended by adding three new subdivisions to read:

"(23) Superior Court District 5A consists of the New Hanover County precincts of Cape Fear #1, Cape Fear #2, Harnett #1, Harnett #4, Harnett #6, Wilmington #1, Wilmington #2, Wilmington #3, Wilmington #4, Wilmington #6, Wilmington #7, Wilmington #8, Wilmington #9, Wilmington #10, Wilmington #15, Wilmington #19, and the part of Harnett #7 that consists of the part of Block Group 6 of 1990 Census Tract 0116.02 containing Blocks 601B, 602B, 603, 611, 612, 613, 614, 615, 616, 617, 618, 619; and the Pender County precincts of Canetuck, Caswell, Columbia, Grady, Upper Holly, and Upper Union. It has one judge.

(24) Superior Court District 5B consists of the New Hanover County precincts of Cape Fear #3, Harnett #2, Harnett #5, the part of Harnett #7 that is not in Superior Court District 5A, Harnett #8, Wrightsville Beach, Wilmington #11, Wilmington #12, Wilmington #13, Wilmington #22, Wilmington #24, and the part of Harnett #3 that consists of the part of Block Group 1 of 1990 Census Tract 0119.01 containing Blocks 102, 105, 106A, 106B, 107A, 107B, 107C, 107D, and 108, the part of Block Group 1 of 1990 Census Tract 0119.02 containing Blocks 103, 104, and 114, and the part of Block Group 1 of 1990 Census Tract 0120.01 containing Blocks 101A, 101B, 101C, 101D, 102A, 102B, 103, 104, 105A, 105B, 115A, and 115B; and the following precincts of

Pender County: North Burgaw, South Burgaw, Middle Holly, Long Creek, Penderlea, Lower Union, Rocky Point, Lower Topsail, Upper Topsail, Scotts Hill, and Surf City. It has one judge.

(25) Superior Court District 5C consists of the part of New Hanover County that is not in Superior Court Districts 5A or 5B. It has one judge."

Section 3. G.S. 7A-41(c) is amended by adding a new subdivision to read:

"(7) The names and boundaries of precincts in New Hanover and Pender Counties are those in existence on May 1, 1999."

Section 4. This act becomes effective January 1, 2003, and applies to the 2002 election.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 867

Short Title: Real Estate Licensure Law Changes. (Public)

Sponsors: Senator Gulley.

Referred to: Judiciary II.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN PROVISIONS OF THE REAL ESTATE LICENSE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate brokers and real estate salesmen.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate broker or real estate salesman, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate salesman or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker or salesman in this State."

Section 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a1) The term broker-in-charge within the meaning of this Chapter shall mean a real estate broker who has been designated as the broker having responsibility for the supervision of real estate salesmen engaged in real estate brokerage at a particular real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule."

Section 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate salesman within the meaning of this Chapter shall mean and include any person who under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker."

Section 4. G.S. 93A-3(d) reads as rewritten:

"(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b)."

Section 5. G.S. 93A-4A is amended by adding a new subsection to read:

"(a1) In addition to the requirements of subsection (a) of this section, the Commission may require real estate brokers-in-charge to complete a special course of study, not to exceed six classroom hours every three years, in subjects prescribed by the Commission."

Section 6. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission shall have power to take disciplinary action. Upon its own ~~motion,~~ initiative, or on the ~~verified~~ complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission shall have power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material ~~fact;~~ fact.

(2) Making any false promises of a character likely to influence, persuade, or ~~induce;~~ induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, salesmen, advertising or ~~otherwise;~~ otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he ~~acts;~~ acts.

(5) Accepting a commission or valuable consideration as a real estate salesman for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his

broker-in-charge or licensed broker by whom he is ~~employed;~~ employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he is engaged or associated, without the express knowledge and consent of the broker with whom he is ~~associated;~~ associated.

(7) Failing, within a reasonable time, to account for or to remit any moneys coming into his possession which belong to ~~others;~~ others.

(8) Being unworthy or incompetent to act as a real estate broker or salesman in a manner as to endanger the interest of the ~~public;~~ public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this ~~Chapter;~~ Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest ~~dealing;~~ dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of ~~law;~~ law.

(12) Commingling the money or other property of his principals with his own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him as a real estate ~~broker~~ licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest ~~accrued;~~ accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the ~~seller;~~ seller.

(14) Failing ~~as a broker~~, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was ~~disbursed;~~ ~~or~~ disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

Section 7. Article 1 of Chapter 93A of the General Statutes is amended by adding a new section to read:

"**§ 93A-6.1. Commission may subpoena witnesses, records, documents, or other materials.**

The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for inspection. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in Wake County or any county where a hearing before the Commission is pending for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court. The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution."

Section 8. G.S. 93A-17(a) reads as rewritten:

"(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate broker or salesman licensed under this Chapter shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or salesman in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than ~~one thousand five hundred dollars ($1,500)~~ three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or salesman on grounds of conversion of trust funds arising out of a transaction

which occurred when such broker or salesman was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service."

Section 9. G.S. 93A-19(a) reads as rewritten:

"(a) Whenever the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend such action on behalf of the fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may defend such action on his own behalf and shall have recourse to all appropriate means of defense, including the examination of witnesses. ~~Within 30 days after service of the application, counsel~~ Counsel for the Commission and the judgment debtor may file responses ~~thereto~~ to the application, setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person or persons having knowledge of the facts and may be made on the basis that the application or the judgment referred to therein do not form a basis for meritorious recovery within the purview of G.S. 93A-17, that the applicant has not complied with the provisions of this Article, or that the liability of the fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing. If the applicant or judgment debtor fails to appear at the hearing after receiving notice of the hearing, the applicant or judgment debtor shall waive his or her rights unless the absence is excused by the Commission."

Section 10. G.S. 93A-20 reads as rewritten:

"**§ 93A-20. Order directing payment out of fund; compromise of claims.**

Applications for payment from the Real Estate Recovery Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds the claim should be paid from the fund, the Commission shall enter an order requiring payment from the fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor. If a claim appears to be otherwise meritorious, the Commission may waive procedural defects in the application for payment."

Section 11. G.S. 93A-21 reads as rewritten:

"**§ 93A-21. Limitations; pro rata distribution; attorney fees.**

(a) Payments from the Real Estate Recovery Fund shall be subject to the following limitations:

(1) The right to recovery under this Article shall be forever barred unless application is made within one year after termination of all proceedings including appeals, in connection with the judgment;

(2) The fund shall not be liable for more than ~~ten~~ twenty-five thousand dollars ~~($10,000)~~ ($25,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction; and

(3) The liability of the fund shall not exceed in the aggregate ~~ten~~ twenty-five thousand dollars ~~($10,000)~~ ($25,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate ~~twenty~~ fifty thousand dollars ~~($20,000)~~ ($50,000) for any one licensee.

(4) The fund shall not be liable for payment of any judgment awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action or other similar awards.

(b) If the maximum liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in such manner as the ~~Commission~~ Commission, in its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission may require all claimants and prospective claimants to be joined in one proceeding to the end that the respective rights of all such claimants to the Real Estate Recovery Fund may be equitably resolved. A person who files an application for payment after the maximum liability of the fund for the licensee or transaction has been exhausted shall not be entitled to payment and may not seek judicial review of the Commission's award of payment to any party except upon a showing that the Commission abused its discretion.

(c) In the event an aggrieved person is entitled to payment from the fund in an amount of one thousand five hundred dollars ($1,500) or less, the Commission may allow such person to recover from the fund reasonable attorney's fees incurred in effecting such recovery. Reimbursement for attorney's fees shall be limited to those fees incurred in effecting recovery from the fund and shall not include any fee incurred in obtaining judgment against the licensee."

Section 12. G.S. 93A-36(a) reads as rewritten:

"(a) Before the Commission shall issue a license the applicant shall execute a bond in the sum of five thousand dollars ($5,000), payable to the State of North Carolina, signed by a solvent guaranty company authorized to do business in the State of North Carolina, and conditioned that the principal in said bond will carry out and comply with each and every contract or agreement, written or verbal, made and entered into by the applicant's school acting by and through its officers and agents with any student who desires to enter such school and to take any courses offered therein and that said principal will refund to such students all amounts collected in tuition and fees in case of failure on the part of the party obtaining a license from the Commission to open and operate a private real estate school or to provide the instruction agreed to or contracted for. Such bond shall be required for each school ~~or branch thereof~~ for which a license is required and shall be first approved by the Commission and then filed with the clerk of superior court of the county in which the school is located, to be recorded by such clerk in a book provided for that purpose. A separate bond shall not be required for each branch of a licensed school."

Section 13. G.S. 93A-41(2) reads as rewritten:

"(2) 'Developer' means any person or entity which creates a time share or a time share project or program, purchases a time share for purpose of resale, or is engaged in the business of selling its own time shares and shall include any person or entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling time shares for the ~~developer;~~ developer, but a person who purchases a time share for his or her occupancy, use, and enjoyment shall not be deemed a developer;"

Section 14. G.S. 93A-41(9) reads as rewritten:

"(9) 'Time share' means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership, ~~or~~ vacation ~~bond;~~ bond, or a plan or system where the right to use is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use;"

Section 15. G.S. 93A-52(d) reads as rewritten:

"(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer

shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a late filing fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

Section 16. This act shall have no effect on any cases pending in the courts in this State.

Section 17. This act becomes effective August 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 920

Short Title: Update Cont. Substance Schedules. (Public)

Sponsors: Senator Forrester.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT TO ACCURATELY REFLECT THE CURRENT SCHEDULING OF CONTROLLED SUBSTANCES, AS SCHEDULED BY THE DRUG ENFORCEMENT ADMINISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-89 reads as rewritten:

"**§ 90-89. Schedule I controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(1) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Acetyl-alpha-methylfentanyl (N[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).

b. Acetylmethadol.

c. Repealed by Session Laws 1987, c. 412, s. 2.

d. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
e. Allylprodine.
f. Alphacetylmethadol.
g. Alphameprodine.
h. Alphamethadol.
i. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).
j. Benzethidine.
k. Betacetylmethadol.
l. Beta-hydroxfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
m. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
n. Betameprodine.
o. Betamethadol.
p. Betaprodine.
q. Clonitazene.
r. Dextromoramide.
s. Diampromide.
t. Diethylthiambutene.
u. Difenoxin.
v. Dimenoxadol.
w. Dimepheptanol.
x. Dimethylthiambutene.
y. Dioxaphetyl butyrate.
z. Dipipanone.
aa. Ethylmethylthiambutene.
bb. Etonitazene.
cc. Etoxeridine.
dd. Furethidine.
ee. Hydroxypethidine.
ff. Ketobemidone.
gg. Levomoramide.
hh. Levophenacylmorphan.
ii. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
jj. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-Piperidyl]-N-Phenylpropanamide).
kk. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)-ethyl-4-piperidinyl]-N-phenylpropanamide).
ll. Morpheridine.
mm. Noracymethadol.
nn. Norlevorphanol.

oo. Normethadone.
pp. Norpipanone.
qq. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide.
rr. Phenadoxone.
ss. Phenampromide.
tt. 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
uu. Phenomorphan.
vv. Phenoperidine.
ww. Piritramide.
xx. Proheptazine.
yy. Properidine.
zz. Propiram.
aaa. Racemoramide.
bbb. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide.
ccc. Tilidine.
ddd. Trimeperidine.

(2) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Acetorphine.
b. Acetyldihydrocodeine.
c. Benzylmorphine.
d. Codeine methylbromide.
e. Codeine-N-Oxide.
f. Cyprenorphine.
g. Desomorphine.
h. Dihydromorphine.
i. Etorphine (except hydrochloride salt).
j. Heroin.
k. Hydromorphinol.
l. Methyldesorphine.
m. Methyldihydromorphine.
n. Morphine methylbromide.
o. Morphine methylsulfonate.
p. Morphine-N-Oxide.
q. Myrophine.
r. Nicocodeine.
s. Nicomorphine.
t. Normorphine.
u. Pholcodine.

v. Thebacon.
w. Drotebanol.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. 3, 4-methylenedioxyamphetamine.
b. 5-methoxy-3, 4-methylenedioxyamphetamine.
c. 3, 4-Methylenedioxymethamphetamine (MDMA).
d. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA).
e. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA).
f. 3, 4, 5-trimethoxyamphetamine.
g. Alpha-ethyltryptamine. Some trade or other names: etryptamine, Monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.
h. Bufotenine.
i. Diethyltryptamine.
j. Dimethyltryptamine.
k. 4-methyl-2, 5-dimethoxyamphetamine.
l. Ibogaine.
m. Lysergic acid diethylamide.
n. Mescaline.
o. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
p. N-ethyl-3-piperidyl benzilate.
q. N-methyl-3-piperidyl benzilate.
r. Psilocybin.
s. Psilocin.
t. 2, 5-dimethoxyamphetamine.
u. 2, 5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
v. 4-bromo-2, 5-dimethoxyamphetamine.
w. 4-methoxyamphetamine.

x. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

y. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

z. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

aa. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.

bb. Parahexyl.

cc. 4-Bromo-2, 5-Dimethoxyphenethylamine.

(4) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:

a. Mecloqualone.

b. Methaqualone.

(5) Stimulants. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Aminorex. Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenly-2-oxazolamine.

b. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

c. Fenethylline.

d. Methcathinone. Some trade or other names: 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylproprion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432.

e. (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine] (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).

f. N,N-dimethylamphetamine. Some other names: N,N,alpha-trimethylbenzeneethaneamine; N,N,alpha-trimethylphenethylamine.

g. N-ethylamphetamine."

Section 2. G.S. 90-90 reads as rewritten:

"**§ 90-90. Schedule II controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

(1) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, ~~thebaine-derived butorphanol,~~ nalbuphine, dextrorphan, naloxone, naltrexone and nalmefene, and their respective salts, but including the following:

1. Raw opium.
2. Opium extracts.
3. Opium fluid extracts.
4. Powdered opium.
5. Granulated opium.
6. Tincture of opium.
7. Codeine.
8. Ethylmorphine.
9. Etorphine hydrochloride.
10. Hydrocodone.
11. Hydromorphone.
12. Metopon.
13. Morphine.
14. Oxycodone.
15. Oxymorphone.
16. Thebaine.

b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.
d. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

a. Alfentanil.
b. Alphaprodine.
c. Anileridine.
d. Bezitramide.
e. Carfentanil.
f. Dihydrocodeine.
g. Diphenoxylate.
h. Fentanyl.
i. Isomethadone.
j. Levo-alphacetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
k. Levomethorphan.
l. Levorphanol.
m. Metazocine.
n. Methadone.
o. Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
p. Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
q. Pethidine.
r. Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenylpiperidine.
s. Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate.
t Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

u. Phenazocine.
v. Piminodine.
w. Racemethorphan.
x. Racemorphan.
y. Remifentanil.
z. Sufentanil.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:
a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
b. Phenmetrazine and its salts.
c. Methamphetamine, including its salts, isomers, and salts of isomers.
d. Methylphenidate.
e. Phenylacetone. Some trade or other names: Phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically exempted by the Commission or listed in another schedule:
a. Amobarbital
b. Glutethimide
c. Repealed by Session Laws 1983, c. 695, s. 2.
d. Pentobarbital
e. Phencyclidine
f. Phencyclidine immediate precursors:
a. 1'-Phenylcyclohexylamine
b. 1-Piperidinocyclohexanecarbonitrile (PCC)
g. Secobarbital.

(5) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
a. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names:(6aR-trans)-

6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d] pyra n-1-o1, or (-)-delta-9-(trans)-tetrahydrocannabinol].

b. Nabilone [Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one]."

Section 3. G.S. 90-92(a) reads as rewritten:

"(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule III of this Article; currently accepted medical use in the United States; and limited physical or pyschological dependence relative to the substances listed in Schedule III of this Article. The following controlled substances are included in this schedule:

(1) Depressants. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Alprazolam.
b. Barbital.
c. Bromazepam.
d. Camazepam.
e. Chloral betaine.
f. Chloral hydrate.
g. Chlordiazepoxide.
h. Clobazam.
i. Clonazepam.
j. Clorazepate.
k. Clotiazepam.
l. Cloxazolam.
m. Delorazepam.
n. Diazepam.
o. Estazolam.
p. Ethchlorvynol.
q. Ethinamate.
r. Ethyl loflazepate.
s. Fludiazepam.
t. Flunitrazepam.
u. Flurazepam.
v. Gamma Hydroxybutyric Acid.
w. Halazepam.

x. Haloxazolam.
y. Ketazolam.
z. Loprazolam.
aa. Lorazepam.
bb. Lormetazepam.
cc. Mebutamate.
dd. Medazepam.
ee. Meprobamate.
ff. Methohexital.
gg. Methylphenobarbital (mephobarbital).
hh. Midazolam.
ii. Nimetazepam.
jj. Nitrazepam.
kk. Nordiazepam.
ll. Oxazepam.
mm. Oxazolam.
nn. Paraldehyde.
oo. Petrichloral.
pp. Phenobarbital.
qq. Pinazepam.
rr. Prazepam.
ss. Quazepam.
tt. Temazepam.
uu. Tetrazepam.
vv. Triazolam.
ww. Zolpidem.

(2) Any material, compound, mixture, or preparation which contains any of the following substances, including its salts, or isomers and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:
a. Fenfluramine.
b. Pentazocine.

(3) Stimulants. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
a. Diethylpropion.
b. Mazindol.
c. Pemoline (including organometallic complexes and chelates thereof).
d. Phentermine.

e. Cathine.
f. Fencamfamin.
g. Fenproporex.
h. Mefenorex.
i. Sibutramine.

(4) Other Substances. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

a. Dextropropoxyphene (Alpha-(plus)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).
b. Pipradrol.
c. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).
d. Butorphanol.

(5) Narcotic Drugs. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
b. Buprenorphine."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 955

Short Title: Proper Trial Division/Counsel Fees. (Public)

Sponsors: Senators Dalton; Clodfelter, Horton, and Martin of Guilford.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO RAISE THE AMOUNT IN CONTROVERSY THAT DETERMINES THE PROPER DIVISION FOR TRIAL OF CIVIL ACTIONS AND TO ALLOW COUNSEL FEES AS PART OF COSTS IN CERTAIN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-243 reads as rewritten:

"**§ 7A-243. Proper division for trial of civil actions generally determined by amount in controversy.**

Except as otherwise provided in this Article, the district court division is the proper division for the trial of all civil actions in which the amount in controversy is ~~ten thousand dollars ($10,000)~~ twenty thousand dollars ($20,000) or less; and the superior court division is the proper division for the trial of all civil actions in which the amount in controversy exceeds ~~ten thousand dollars ($10,000).~~ twenty thousand dollars ($20,000).

For purposes of determining the amount in controversy, the following rules apply whether the relief prayed is monetary or nonmonetary, or both, and with respect to claims asserted by complaint, counterclaim, cross-complaint or third-party complaint:

(1) The amount in controversy is computed without regard to interest and costs.

(2) Where monetary relief is prayed, the amount prayed for is in controversy unless the pleading in question shows to a legal certainty that the amount claimed cannot be recovered under the applicable measure of damages. The value of any property seized in attachment, claim and delivery, or other ancillary proceeding, is

not in controversy and is not considered in determining the amount in controversy.

(3) Where no monetary relief is sought, but the relief sought would establish, enforce, or avoid an obligation, right or title, the value of the obligation, right, or title is in controversy. Where the owner or legal possessor of property seeks recovery of property on which a lien is asserted pursuant to G.S. 44A-4(a) the amount in controversy is that portion of the asserted lien which is disputed. The judge may require by rule or order that parties make a good faith estimate of the value of any nonmonetary relief sought.

(4) a. Except as provided in subparagraph c of this subdivision, where a single party asserts two or more properly joined claims, the claims are aggregated in computing the amount in controversy.

b. Except as provided in subparagraph c, where there are two or more parties properly joined in an action and their interests are aligned, their claims are aggregated in computing the amount in controversy.

c. No claims are aggregated which are mutually exclusive and in the alternative, or which are successive, in the sense that satisfaction of one claim will bar recovery upon the other.

d. Where there are two or more claims not subject to aggregation the highest claim is the amount in controversy.

(5) Where the value of the relief to a claimant differs from the cost thereof to an opposing party, the higher amount is used in determining the amount in controversy."

Section 2. G.S. 6-21.1 reads as rewritten:

"**§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.**

~~In~~ When the proper division for trial is district court in any personal injury or property damage suit, or suit against an insurance company under a policy issued by the defendant insurance company and in which the insured or beneficiary is the plaintiff, upon a finding by the court that there was an unwarranted refusal by the defendant insurance company to pay the claim ~~which~~ that constitutes the basis of ~~such~~ the suit, instituted in a court of record, ~~where the judgment for recovery of damages is ten thousand dollars ($10,000) or less,~~ the presiding judge may, in ~~his~~ the judge's discretion, allow a reasonable attorney fee to the ~~duly licensed~~ attorney representing the litigant obtaining a judgment for damages in ~~said~~ the suit, ~~said~~ the attorney's fee to be taxed as a part of the court costs."

Section 3. This act becomes effective October 1, 1999, and applies to civil actions commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 995

Short Title: Police Peer Counselor Privilege. (Public)

Sponsors: Senator Odom.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A TESTIMONIAL PRIVILEGE FOR POLICE PEER SUPPORT GROUP COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"**§ 8-53.9. Peer support group counselors.**

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

(1) Client officer. -- Any sworn law enforcement officer who is in need of and receives peer support counseling services offered by the officer's employing law enforcement agency.

(2) Immediate family. -- A spouse, child, stepchild, parent, or stepparent.

(3) Peer support group counselor. -- Any law enforcement officer or civilian employee of a law enforcement agency who:

a. Has received training to provide emotional and moral support and counseling to client officers and their immediate families; and

b. Was designated by the sheriff, police chief, or other head of a law enforcement agency to counsel a client officer.

(4) Privileged communication. -- Any communication made by a client officer, or a member of the client officer's immediate family, to a peer support group counselor while receiving counseling.

(b) No peer support group counselor shall, without the consent of the client officer or a member of the client officer's immediate family, disclose any privileged communication made by a client officer or a member of the client officer's immediate family while receiving counseling. No peer support group counselor may be compelled to testify about or disclose any privileged communication made by a client officer or a member of the client officer's immediate family.

(c) The privilege established by subsection (b) of this section shall not apply:

(1) If the peer support group counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support counseling services.

(2) As to testimony concerning an incident if the incident prompted the assignment of the peer support group counselor.

(3) To communications made while the peer support group counselor was not acting in his or her official capacity as a peer support group counselor.

(d) Notwithstanding the provisions of this section, the peer group counselor privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the peer counselor privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

Section 2. This act becomes effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1096

Short Title: No Guns at School Law/School Employees. (Public)

Sponsors: Senator Garrou.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY FOR A SCHOOL EMPLOYEE TO POSSESS A FIREARM ON EDUCATIONAL PROPERTY AND TO MAKE IT A FELONY FOR A STUDENT OR SCHOOL EMPLOYEE TO HAVE A FIREARM AT A CURRICULAR OR EXTRACURRICULAR ACTIVITY SPONSORED BY THE SCHOOL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. -- Any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education, school, community college, college, or university board of trustees, or directors for the administration of any public or private educational institution.

(1a) Employee. -- A person employed by a local board of education, public or private school, community college, college, or university, whether the person is an adult or a minor.

(2) Student. -- A person enrolled in a public or private school, ~~college~~ college, community college, or university, or a person who has been suspended or expelled within the last five years from a public or private school, ~~college~~ community college, college, or university, whether the person is an adult or a minor.

(3) Switchblade knife. -- A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. -- Any device enumerated in subsection (b) or (d) of this section.

(b) It shall be a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(d) It shall be a Class 1 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a Class 1 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property if:

(1) The person is not a student attending school on the educational ~~property;~~ property or an employee employed by the school working on the educational property; and

(1a) The person is not a student attending a curricular or extracurricular activity sponsored by the school at which the student is enrolled or an employee attending a curricular or extracurricular activity sponsored by the school at which the employee is employed; and

~~(2) The firearm is not concealed within the meaning of G.S. 14-269;~~

(3) The firearm is not ~~loaded and is in a locked container, a locked vehicle, or a locked firearm rack which is on a motor vehicle; and~~

loaded, is in a motor vehicle, and is in a locked container or a locked firearm rack.

~~(4) The person does not brandish, exhibit, or display the firearm in any careless, angry, or threatening manner.~~

(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(1a) A person exempted by the provisions of G.S. 14-269(b);

(2) Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or

(3) Home schools as defined in G.S. 115C-563(a)."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/26

S. B. No. 867 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE 867-PCSD-001

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 5, line 27

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the phrase "Wake County or"

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SIGNED Kay R Hagan

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/26/99

S. B. No. 867

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

COMMITTEE SUBSTITUTE S867 PCSSD-001

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 3, line 16

2 ( ) WHICH CHANGES THE TITLE

3 by inserting after the word "of":

4 _____

5 "one or more of the following"

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 867
PROPOSED COMMITTEE SUBSTITUTE
S867-PCSSD-001
26-APR-99 09:08:11

Short Title: Real Estate Licensure Law Changes. (Public)

Sponsors:

Referred to: Judiciary II.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN PROVISIONS OF THE REAL ESTATE LICENSE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-1 reads as rewritten:

"**§ 93A-1. License required of real estate brokers and real estate ~~salesmen.~~ salespersons.**

From and after July 1, 1957, it shall be unlawful for any person, partnership, corporation, limited liability company, association, or other business entity in this State to act as a real estate broker or real estate ~~salesman,~~ salesperson, or directly or indirectly to engage or assume to engage in the business of real estate broker or real estate ~~salesman~~ salesperson or to advertise or hold himself or herself or themselves out as engaging in or conducting such business without first obtaining a license issued by the North Carolina Real Estate Commission (hereinafter referred to as the Commission), under the provisions of this Chapter. A license shall be

obtained from the Commission even if the person, partnership, corporation, limited liability company, association, or business entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker or salesperson in this State."

Section 2. G.S. 93A-2 is amended by adding a new subsection to read:

"(a1) The term broker-in-charge within the meaning of this Chapter shall mean a real estate broker who has been designated as the broker having responsibility for the supervision of real estate salesperson engaged in real estate brokerage at a particular real estate office and for other administrative and supervisory duties as the Commission shall prescribe by rule."

Section 3. G.S. 93A-2(b) reads as rewritten:

"(b) The term real estate ~~salesman~~ salesperson within the meaning of this Chapter shall mean and include any person who under the supervision of a real estate broker designated as broker-in-charge of a real estate office, for a compensation or valuable consideration is associated with or engaged by or on behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker."

Section 4. G.S. 93A-3(d) reads as rewritten:

"(d) The Commission may employ an Executive Director and professional and clerical staff as may be necessary to carry out the provisions of this Chapter and to put into effect the rules and regulations that the Commission may promulgate. The Commission shall fix salaries and shall require employees to make good and sufficient surety bond for the faithful performance of their duties. The Commission may, when it deems it necessary or convenient, delegate to the Executive Director, legal counsel for the Commission, or other Commission staff, professional or clerical, the Commission's authority and duties under this Chapter, but the Commission may not delegate its authority to make rules or its duty to act as a hearing panel in accordance with the provisions of G.S. 150B-40(b)."

Section 5. G.S. 93A-4A is amended by adding a new subsection to read:

"(a1) In addition to the requirements of subsection (a) of this section, the Commission may require real estate brokers-in-charge

to complete a special course of study, not to exceed six classroom hours every three years, in subjects prescribed by the Commission."

Section 6. G.S. 93A-6(a) reads as rewritten:

"(a) The Commission shall have power to take disciplinary action. Upon its own ~~motion,~~ initiative, or on the ~~verified~~ complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission shall have power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(1) Making any willful or negligent misrepresentation or any willful or negligent omission of material ~~fact;~~ fact.

(2) Making any false promises of a character likely to influence, persuade, or ~~induce;~~ induce.

(3) Pursuing a course of misrepresentation or making of false promises through agents, ~~salesmen,~~ salespersons, advertising or ~~otherwise;~~ otherwise.

(4) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she ~~acts;~~ acts.

(5) Accepting a commission or valuable consideration as a real estate ~~salesman~~ salesperson for the performance of any of the acts specified in this Article or Article 4 of this Chapter, from any person except his or her broker-in-charge or licensed broker by whom he or she is ~~employed;~~ employed.

(6) Representing or attempting to represent a real estate broker other than the broker by whom he or she is engaged or associated, without the express knowledge and consent of the broker with whom he or she is ~~associated;~~ associated.

(7) Failing, within a reasonable time, to account for or to remit any moneys coming into his or her possession which belong to ~~others;~~ others.

(8) Being unworthy or incompetent to act as a real estate broker or ~~salesman~~ salesperson in a manner as to endanger the interest of the ~~public;~~ public.

(9) Paying a commission or valuable consideration to any person for acts or services performed in violation of this ~~Chapter;~~ Chapter.

(10) Any other conduct which constitutes improper, fraudulent or dishonest ~~dealing;~~ dealing.

(11) Performing or undertaking to perform any legal service, as set forth in G.S. 84-2.1, or any other acts constituting the practice of ~~law;~~ law.

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate ~~broker~~ licensee acting in that capacity, or an escrow agent, or the temporary custodian of the funds of others, in a real estate transaction; provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest ~~accrued;~~ accrued.

(13) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy and sell real estate to the buyer and to the ~~seller;~~ seller.

(14) Failing ~~as a broker~~, at the time the transaction is consummated, to deliver to the seller in every real estate transaction, a complete detailed closing statement showing all of the receipts and disbursements handled by him or her for the seller or failing to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was ~~disbursed; or~~ disbursed.

(15) Violating any rule or regulation promulgated by the Commission.

The Executive Director shall transmit a certified copy of all final orders of the Commission suspending or revoking licenses issued under this Chapter to the clerk of superior court of the county in which the licensee maintains his or her principal place of business. The clerk shall enter these orders upon the judgment docket of the county."

Section 7. Article 1 of Chapter 93A of the General Statutes is amended by adding a new section to read:

"**§ 93A-6.1. Commission may subpoena witnesses, records, documents, or other materials.**

The Commission, Executive Director, or other representative designated by the Commission may issue a subpoena for the appearance of witnesses deemed necessary to testify concerning any matter to be heard before or investigated by the Commission. The Commission may issue a subpoena ordering any person in possession of records, documents, or other materials, however maintained, that concern any matter to be heard before or investigated by the Commission to produce the records, documents, or other materials for inspection. Upon written request, the Commission shall revoke a subpoena if it finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence, the production of which is required, or if for any other reason in law the subpoena is invalid. If any person shall fail to fully and promptly comply with a subpoena issued under this section, the Commission may apply to any judge of the superior court resident in Wake County or any county where a hearing before the Commission is pending for an order compelling the person to show cause why he or she should not be held in contempt of the Commission and its processes. The court shall have the power to impose punishment for acts that would constitute direct or indirect contempt if the acts occurred in an action pending in superior court. The Commission shall be exempt from the requirements of Chapter 53B of the General Statutes with regard to subpoenas issued to compel the production of a licensee's trust account records held by any financial institution."

Section 8. G.S. 93A-17(a) reads as rewritten:

"(a) An aggrieved person who has suffered a direct monetary loss by reason of the conversion of trust funds by a real estate broker or ~~salesman~~ salesperson licensed under this Chapter shall be eligible to recover, subject to the limitations of this Article, the amount of trust funds converted and which is otherwise unrecoverable provided that:

(1) The act or acts of conversion which form the basis of the claim for recovery occurred on or after September 1, 1979;

(2) The aggrieved person has sued the real estate broker or ~~salesman~~ salesperson in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the claim against the Real Estate Recovery Fund is for an amount less than ~~one thousand five hundred dollars ($1,500)~~ three thousand dollars ($3,000), excluding attorneys fees, in which case the notice may be filed within 60 days after the termination of all judicial proceedings including appeals;

(3) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the real estate broker or ~~salesman~~ salesperson on grounds of conversion of trust funds arising out of a transaction which occurred when such broker or ~~salesman~~ salesperson was licensed and acting in a capacity for which a license is required; and

(4) Execution of the judgment has been attempted and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Real Estate Recovery Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion of trust funds. A copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of such service."

Section 9. G.S. 93A-19(a) reads as rewritten:

"(a) Whenever the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend such action on behalf of the fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may defend such action on his or her own behalf and shall have recourse to all appropriate means of defense, including the examination of witnesses. ~~Within 30 days after service of the application, counsel~~ Counsel for the Commission and the judgment debtor may file responses ~~thereto~~ to the application, setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person or persons having knowledge of the facts and may be made on the basis that the application or the judgment referred to therein do not form a basis for meritorious recovery within the purview of G.S. 93A-17, that the applicant has not complied with the provisions of this Article, or that the liability of the fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing. If the applicant or judgment debtor fails to appear at the hearing after receiving notice of the hearing, the applicant or judgment debtor shall waive his or her rights unless the absence is excused by the Commission."

Section 10. G.S. 93A-20 reads as rewritten:

"**§ 93A-20. Order directing payment out of fund; compromise of claims.**

Applications for payment from the Real Estate Recovery Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds the claim should be paid from the fund, the Commission shall enter an order requiring payment from the fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however,

the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor. If a claim appears to be otherwise meritorious, the Commission may waive procedural defects in the application for payment."

Section 11. G.S. 93A-21 reads as rewritten:

"**§ 93A-21. Limitations; pro rata distribution; attorney fees.**

(a) Payments from the Real Estate Recovery Fund shall be subject to the following limitations:

(1) The right to recovery under this Article shall be forever barred unless application is made within one year after termination of all proceedings including appeals, in connection with the judgment;

(2) The fund shall not be liable for more than ~~ten~~ twenty-five thousand dollars ~~($10,000)~~ ($25,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction; and

(3) The liability of the fund shall not exceed in the aggregate ~~ten~~ twenty-five thousand dollars ~~($10,000)~~ ($25,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate ~~twenty~~ fifty thousand dollars ~~($20,000)~~ ($50,000) for any one licensee.

(4) The fund shall not be liable for payment of any judgment awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action or other similar awards.

(b) If the maximum liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in such manner as the ~~Commission~~ Commission, in its discretion, deems equitable. Upon petition of counsel for the Commission, the Commission may require all claimants and prospective claimants to be joined in one proceeding to the end that the respective rights of all such claimants to the Real Estate Recovery Fund may be equitably resolved. A person who files an application for payment after

the maximum liability of the fund for the licensee or transaction has been exhausted shall not be entitled to payment and may not seek judicial review of the Commission's award of payment to any party except upon a showing that the Commission abused its discretion.

(c) In the event an aggrieved person is entitled to payment from the fund in an amount of one thousand five hundred dollars ($1,500) or less, the Commission may allow such person to recover from the fund reasonable attorney's fees incurred in effecting such recovery. Reimbursement for attorney's fees shall be limited to those fees incurred in effecting recovery from the fund and shall not include any fee incurred in obtaining judgment against the licensee."

Section 12. G.S. 93A-36(a) reads as rewritten:

"(a) Before the Commission shall issue a license the applicant shall execute a bond in the sum of five thousand dollars ($5,000), payable to the State of North Carolina, signed by a solvent guaranty company authorized to do business in the State of North Carolina, and conditioned that the principal in said bond will carry out and comply with each and every contract or agreement, written or verbal, made and entered into by the applicant's school acting by and through its officers and agents with any student who desires to enter such school and to take any courses offered therein and that said principal will refund to such students all amounts collected in tuition and fees in case of failure on the part of the party obtaining a license from the Commission to open and operate a private real estate school or to provide the instruction agreed to or contracted for. Such bond shall be required for each school ~~or branch thereof~~ for which a license is required and shall be first approved by the Commission and then filed with the clerk of superior court of the county in which the school is located, to be recorded by such clerk in a book provided for that purpose. A separate bond shall not be required for each branch of a licensed school."

Section 13. G.S. 93A-41(2) reads as rewritten:

"(2) 'Developer' means any person or entity which creates a time share or a time share project or program, purchases a time share for purpose of resale, or is engaged in the business of selling its own time shares and shall include any person or

entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling time shares for the ~~developer;~~ developer, but a person who purchases a time share for his or her occupancy, use, and enjoyment shall not be deemed a developer;"

Section 14. G.S. 93A-41(9) reads as rewritten:

"(9) 'Time share' means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership, ~~or~~ vacation ~~bond;~~ bond, or a plan or system where the right to use is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use;"

Section 15. G.S. 93A-52(d) reads as rewritten:

"(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed one thousand five hundred dollars ($1,500) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a late filing fee of fifty dollars ($50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon

payment of a fee of one dollar ($1.00) by the registrant developer. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable."

Section 16. This act shall have no effect on any cases pending in the courts in this State.

Section 17. This act becomes effective August 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 920

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

S920-ARV-001 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [YES]

Senator Odom

moves to amend the bill on page 1, line 5,
by inserting after the word "ADMINISTRATION" and before the period
the following:
"AND TO PROHIBIT TRAFFICKING IN METHYLENEDIOXYAMPHETAMINE (MDA) OR METHYLENEDIOXYMETHAMPHETAMINE (MDMA)";

and on page 11, line 22,
by rewriting that line to read:
"Section 4. G.S. 90-95(h) reads as rewritten:
'(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.
(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as 'trafficking in marijuana' and if the quantity of such substance involved:
a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

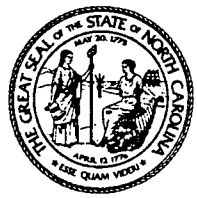
b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as 'trafficking in methaqualone' and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 920

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

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maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as 'trafficking in cocaine'

and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as 'trafficking in amphetamine' and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be

punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine shall be guilty of a felony which felony shall be known as 'trafficking in methamphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as 'trafficking in opium or heroin' and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
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AMENDMENT NO._____
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of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as 'trafficking in Lysergic Acid Diethylamide'. If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 920

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

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prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA), including its salts, isomers, and salts of isomers, or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as 'trafficking in MDA/MDMA.' If the quantity of the substance or mixture involved:

a. Is 100 or more tablets, capsules, or other dosage units, but less than 500 tablets, capsules, or other dosage units, or 28 grams or more, but less than 200 grams, the person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more tablets, capsules, or other dosage units, but less than 1,000 tablets, capsules, or other dosage units, or 200 grams or more, but less than 400 grams, the person

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 920

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

S920-ARV-001 Page 9 of __

shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams or more, the person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred fifty thousand dollars ($250,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 920

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

S920-ARV-001 Page 10 of __

Section 5. Sections 1 through 3 of this act are effective when the act becomes law. Section 4 of the act becomes effective December 1, 1999, and applies to offenses committed on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____


THE GREAT SEAL OF THE STATE OF NORTH CAROLINA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

S995-PCSSD-001
PROPOSED COMMITTEE SUBSTITUTE FOR
SENATE BILL 995

Short Title: Police Peer Counselor Privilege. (Public)

Sponsors:

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A TESTIMONIAL PRIVILEGE FOR POLICE PEER SUPPORT GROUP COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"§ 8-53.9. Peer support group counselors.

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

(1) Client law enforcement employee. -- Any law enforcement employee or a member of his or her immediate family who is in need of and receives peer support counseling services offered by the officer's employing law enforcement agency.

(2) Immediate family. -- A spouse, child, stepchild, parent, or stepparent.

(3) Peer support group counselor. -- Any law enforcement officer or civilian employee of a law enforcement agency who:

a. Has received training to provide emotional and moral support and counseling to client officers and their immediate families; and

b. Was designated by the sheriff, police chief, or other head of a law enforcement agency to counsel a client officer.

(4) Privileged communication. -- Any communication made by a client law enforcement employee or a member of the client law enforcement employee's immediate family, to a peer support group counselor while receiving counseling.

(b) No person who is authorized to be a Police Peer Support Group Counselor shall be required to disclose any information that he or she acquired in rendering Police Peer Support services, and which information was necessary to enable him or her to render Police Peer Support services. Information obtained by the police peer support group counselor shall be furnished only upon the authorization of the client or if deceased, the executor, administrator, or in the case of unadministrated estates, the next of kin. Any resident or presiding judge may, subject to G.S. 8-53.6, compel disclosure, necessary to the proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

(c) The privilege established by subsection (b) of this section shall not apply:

(1) If the peer support group counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support counseling services.

(2) To communications made while the peer support group counselor was not acting in his or her official capacity as a peer support group counselor.

(d) Notwithstanding the provisions of this section, the peer group counselor privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the peer counselor privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 44 of

Chapter 7A, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

Section 2. This act becomes effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

SENATE BILL 334:
No Death Penalty/Mentally Retarded

BILL ANALYSIS

Committee: Senate Judiciary II
Date: April 26, 1999
Version: 1st Edition

Introduced by: Senator Ballance
Summary by: Brenda J. Carter
Committee Co-Counsel

SUMMARY: Senate Bill 334 would provide that a mentally retarded person convicted of 1st degree murder shall not be put to death.

CURRENT LAW: The United States Supreme Court has ruled that there is no categorical prohibition against the execution of a defendant who is mentally retarded. Whether or not a defendant is allegedly mentally retarded may be a mitigating circumstance that the jury considers in determining the appropriate sentence. G.S. 15A-2000(f) sets out the mitigating circumstances which may be considered in sentencing a person for a capital felony.

(f) Mitigating Circumstances. - Mitigating circumstances which may be considered shall include, but not be limited to, the following:
(1) The defendant has no significant history of prior criminal activity.
(2) The capital felony was committed while the defendant was under the influence of mental or emotional disturbance.
(3) The victim was a voluntary participant in the defendant's homicidal conduct or consented to the homicidal act.
(4) The defendant was an accomplice in or accessory to the capital felony committed by another person and his participation was relatively minor.
(5) The defendant acted under duress or under the domination of another person.
(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired.
(7) The age of the defendant at the time of the crime.
(8) The defendant aided in the apprehension of another capital felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
(9) Any other circumstance arising from the evidence which the jury deems to have mitigating value.

BILL ANALYSIS: Senate Bill 334 amends the law on capital punishment to provide that no defendant who is mentally retarded may be sentenced to death. The bill defines "mentally retarded" as having significantly subaverage intellectual functioning existing concurrently with impairment in adaptive functioning, and manifested before the age of 18. "Significantly subaverage intellectual functioning" is defined as an intelligence quotient of 70 or below on an individually administered standardized intelligence quotient test. Upon motion of the defendant prior to trial, the court will conduct a hearing to determine whether the defendant is mentally retarded. The defendant has the burden of production and persuasion. If the court determines that the defendant is mentally retarded, the court must declare the case noncapital and the state will not be allowed to seek the death penalty against the defendant.

The bill would become effective December 1, 1999 and would be applicable to trials begun on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 334

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

S334-ARV-001

Page 1 of __

Date_____,1999

Comm. Sub. []
Amends Title []

Senator Ballance

1 moves to amend the bill on page 1, line 15,
2 by deleting the word "text" and substituting "test".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

S867:
Real Estate Law Changes

BILL ANALYSIS

Committee: Senate JII
Date: April 23, 1999
Version: S867-PCSSD-001

Introduced by: Sen. Gulley
Summary by: Ed Rossi
Committee Co-Counsel

SUMMARY: Senate Bill 867 does the following:

- *Requires real estate brokers and salespersons to obtain licenses even if they are licensed in another state or affiliated or associated with a licensee in the Sate.*
- *Allows the Commission to delegate its authority and duties, with the exception of rulemaking and adjudication, to its professional or clerical staff.*
- *Creates a new classification of broker i.e., broker-in-charge, and allows the Commission to require special continuing educational requirements for that classification.*
- *Allows the Commission to subpoena witnesses, records, and documents.*
- *Increases the maximum amount that can be recovered from the Real Estate Recovery Fund from $10,000 to $25,000 for any transaction or for any one licensee in a single calendar year.*
- *Caps the maximum that can be recovered from the Fund as the result of one licensee at $50,000.*

CURRENT LAW: Real estate brokers and salespersons are licensed under Chapter 93A of the General Statutes. This chapter creates a recovery fund that can be used consumers when they have secured a judgment against a licensee but are unable to obtain payment on the judgment. A one-time transfer to the fund from Real Estate License Commission created this fund. If the fund balance dips below $50,000, the Commission may assess licensees up to a $10.00 fee when they renew their licenses. Licensees are not eligible for reimbursement by the fund.

COMMITTEE SUBSTITUTE: The proposed committee substitute does not make any substantive changes to the bill. The only change it makes is to render the language in the bill gender neutral.

SENATE BILL 920:
Update Controlled Substance Schedules

BILL ANALYSIS

Committee: Senate Judiciary II
Date: April 26, 1999
Version: 1st Edition

Introduced by: Senator Forrester
Summary by: Brenda J. Carter
Committee Co-Counsel

SUMMARY: ***Senate Bill 920 updates the Controlled Substances Schedule in the North Carolina Controlled Substances Act.***

CURRENT LAW: 21 USC 812 establishes five schedules of controlled substances, known as schedules I, II, III, IV, and V. The schedules are updated and republished on an annual basis. The findings required for each of the schedules are as follows:

(1) Schedule I. - The drug or other substance has a high potential for abuse; The drug or other substance has no currently accepted medical use in treatment in the United States; There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) Schedule II. - The drug or other substance has a high potential for abuse; The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) Schedule III. - The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II; The drug or other substance has a currently accepted medical use in treatment in the United States; Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) Schedule IV. - The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III; The drug or other substance has a currently accepted medical use in treatment in the United States; Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) Schedule V. - The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV; The drug or other substance has a currently accepted medical use in treatment in the United States; Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

The act is effective when it becomes law.

S955:
Proper Trial Division/Counsel Fees

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Sen. Dalton
Date:	April 26, 1999	**Summary by:**	Ed Rossi
Version:	1st Ed.		Committee Co-Counsel

SUMMARY: Senate bill 955 allows the district court division to hear cases where the amount in controversy is $20,000 or less. That amount is currently set at $10,000.

The bill also deletes the $10,000 reference in G.S. § 6-21.1. That statute allows the district court to award reasonable attorney fees upon a find by the court that an insurer's refusal to pay a claim (that was the basis of the action) was unwarranted.

S995:
Police Peer Counselor Privilege

BILL ANALYSIS

Committee: Senate JII
Date: April 21, 1999
Version: 1st Ed.

Introduced by: Sen. Odom
Summary by: Ed Rossi
Committee Co-Counsel

SUMMARY: Senate bill 995 creates a new testimonial privilege for police peer group counselors. Under the provisions of this bill, police peer group counselors cannot be compelled to testify nor disclose any privileged communication made by client officer or her family, unless the communication relates to the abuse of a child or disabled adult.

CURRENT LAW: There are currently eight professional testimonial privileges.[1] Licensed counselors and family therapists already enjoy testimonial privileges. However no testimonial privilege currently exists for peer group counselors.

Traditionally, the privilege belongs to the client. If the client waives the privilege the professional can be compelled to testify. See State v. Bryant, 5 N.C. App. 21 (1969) (A physician or surgeon may not refuse to testify; the privilege is that of the patient); Reserve Life Ins. Co. v. Davis Hosp., 36 F.R.D. 434 (W.D.N.C. 1965); G.S. § 8-53.2 (The privilege between clergymen and communicants does not apply where the communicant waives the privilege); G.S. § 8-53.4 (School counselor privilege does not apply where student waives privilege in open court). Moreover, with the exception of the clergymen-communicant privilege, in every instance where the General Assembly created a testimonial privilege, it also gave a court discretion to compel testimony when to do so would serve the interest of justice. See G.S. § § 8-53, 8-53.3, 8-53.4, 8-53.6, 8-53.7, 8-53.8, and 8-53.9.

BILL ANALYSIS: The testimonial privilege sought to be created by Senate bill 995 departs from the norm. The bill appears to give a member of a client officer's immediate family, even a child, the authority to consent to the disclosure of privileged communications that occurred between a peer group counselor and a client officer. It also appears to give a client officer the authority to consent to the disclosure of privileged communication that took place between a peer group counselor and a member of the client officer's immediate family.

In addition, the bill appears to depart from the norm by granting the privilege to the peer group counselor—not the clients. The bill provides the no peer group counselor may be compelled to testify but makes no provision for testimony where clients have waived their privilege. Thus, even if a client wanted a peer group counselor's testimony, it appears that the counselor could refuse to provide it.

[1] Physician-patient; clergymen-communicants; psychologist-client; school counselor; family therapist; social worker; counselor; and Optometrist-patient.

North Carolina Psychological Association

Senate Bill 334

What It Means To Be Mildly Mentally Retarded

Mild Mental Retardation Is A Very Substantial Impairment

- People with Mild Mental Retardation are in the lowest two (2) percent of the population in reasoning skills, judgment, knowledge and memory.
- An adult with an IQ of 60 to 70 has the approximate mental age and maturity of a 9 or 10 year old (4th or 5th grade level).

Why Use An IQ Criterion of 70 or Below?

- The criterion of an IQ of 70 or below is the nearly universal professional standard for mental retardation.
- The standard of 70 or below is used by the American Psychiatric Association, the American Association on Mental Retardation, and all NC state agencies including the Department *of* Public Instruction.

Does Senate Bill 334 Rely on a Single Score to Determine Mental Retardation?

- No. An adaptive behavior assessment (assessment of life skills) is also required. Psychologists have individualized standardized tests that measure adaptive behavior.
- Further, the judge is not bound by an IQ score and may use any information and testing as evidence in the determination.
- Finally, the state may order their own testing in cases where mental retardation is claimed by the defendant.

How can 'significant' impairment in adaptive functioning be determined objectively?

- Psychologists have individualized standardized tests that measure adaptive behavior and result in specific scores.

(over)

1004 Dresser Court, Suite 106
Raleigh, North Carolina 27609
Fax 919 • 872 • 0805
Phone 919 • 872 • 1005

What if a defendant tries to fake mental retardation on an IQ test?

- Qualified psychologists can detect faking. There are batteries of tests which are able to detect faking mental retardation. These batteries have been tested on prison populations.

- The defendant must also show evidence of mental retardation before the age of 18 in order to qualify as mentally retarded.

- In every case, the state can have their own expert administer a test.

Why is a competency test not an adequate safeguard?

- People with mental retardation have a basic understanding of right vs. wrong. What they lack is an appreciation of the significance of the moral wrongfulness of a crime. They are also unable to reason through the likely consequences of their actions.

- When asked to explain why it would be wrong to commit murder, they are likely to give superficial responses such as: "I like everybody"; "My parents tell me it's wrong"; or even illogical ones such as: "I wouldn't want them (the victim) to be mad at me."

The Arc of North Carolina

Working with and for People with Mental Retardation and other Developmental Disabilities

Answers to Frequently Asked Questions About the Mental Retardation and the No Death Penalty Bill

Q: Isn't it unlikely that a person with mental retardation would ever be executed?

A: At least 34 people diagnosed as having mental retardation have been executed in the United States since the death penalty was reinstated in 1976.

Q: Have any other states exempted offenders with mental retardation from the death penalty?

A: Eleven states and the federal government now exempt offenders with mental retardation. The Georgia legislature changed the law after Jerome Bowden, an offender with the IQ of 56, was executed in 1986.

Q: Will this bill end the use of the death penalty?

A: No. Changing the law for offenders with mental retardation will have very little impact on the overall use of the death penalty. If this bill is passed, experts estimate that it will affect only 1-2% of prisoners. Since the bill is not retroactive, none of those currently on death row will be exempt.

Q: What is mental retardation?

A: Mental retardation is a lifelong disability not a disease. Individuals with mental retardation score below 70 on IQ tests, or lower than 97% of the general population. In addition, all ability areas are affected and the condition exists from birth or early childhood.

Q: Aren't individuals with mental retardation easy to recognize?

A: Most people with mental retardation have normal physical appearance.

Q: Can an offender cheat on a test to escape the death penalty?

A: No. The IQ test is only one measure of mental retardation. Adaptive deficits must also be present from birth or childhood.

Q: How would offenders with mental retardation be punished?

A: Offenders with mental retardation who are found ineligible for the death penalty would not go free. They would be sentenced to life without possibility of parole.

State Headquarters
16 Rowan Street, Suite 204 ~ P.O. Box 20545
Raleigh, NC 27619
919-782-4632 ~ 1-800-662-8706
Fax 919-782-4634

Formerly the Association for Retarded Citizens/North Carolina, Inc.

Post Test

From the colloquy between Detective Crawford and Billy Moore in S. v. Moore, I made a list of words that I thought would present comprehension problems for someone with mental retardation. I wrote the words out on a two sheets of ruled yellow paper and gave the sheets to someone I know who has mild mental retardation. This person has an IQ of 62 and can read and write. This person maintains a job in the mainstream economy and can converse with you about many topics (including ACC basketball) in a way such that you would not necessarily identify them as mentally retarded although you would know that they were not a highly educated person.

I asked this volunteer to copy each word on the same line next to where I wrote the word. My instructions were to then, underneath each word, tell what the word meant. If they did not know the meaning of the word, my instructions were to write "I don't know".

The attached sheets are copies of that person's responses. Res Ipsa Loquitur!

Deborah Greenblatt

renewed motion for the appointment of a psychiatrist to assist in the preparation of his defense. We agree.

Before denying defendant's renewed motion for the appointment of a psychiatrist, Judge Burroughs had conducted an extensive hearing on defendant's earlier motion to suppress his confession. At this hearing Gastonia Police Department Detective Fred Crawford recounted the two occasions on which he questioned defendant. The first was on the afternoon after the assault on G.G., 12 October 1986, when defendant admitted to being in G.G.'s neighborhood on the evening of the assault, but denied entering her home or attacking her. Detective Crawford declared that he advised defendant of his rights by reading from a standard form containing *Miranda* warnings and a waiver of *Miranda* rights. The defendant signed the form and agreed to have his photograph taken. Detective Crawford took defendant home.

Detective Crawford next questioned defendant on 15 October 1986. He went to defendant's residence and, pursuant to a warrant, arrested him for the first degree rape of G.G.. Detective Crawford took defendant to the police station and reminded him of his rights by reading from the same standard form used three days previously. The colloquy between Detective Crawford and defendant, which was read in its entirety at the suppression hearing, went as follows:

Detective Crawford: Mr. Moore, we previously went over your rights and I would like to go over them with you again. Answer yes or no if you understand. You understand that you have a right to remain silent?

Defendant: Yes, sir.

Detective Crawford: Anything you say can and will be used against you in court?

Defendant: Yes.

Detective Crawford: You have a right to talk to a lawyer for advice before I ask you any questions and have him with you during questioning?

Defendant: Yes.

Detective Crawford: If you cannot afford a lawyer, one will be appointed before any questioning if you wish?

Defendant: Yes, sir.

Detective Crawford: If you decide to answer questions now without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering any time until you talk to a lawyer.

Defendant: Yes.

Detective Crawford: Do you understand each of these rights that I have just explained to you?

Defendant: Yes, sir.

Detective Crawford: Do you each of these rights that I have just explained to you? (sic)

Defendant: Yes, sir.

Detective Crawford: Mr. Moore, you previously stated that you cannot read. I have got to read this paragraph and I am going to read it for you. (sic) If you understand that, answer yes. The paragraph states: "I have read a statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand what I am doing. No promises or threats have been made to me. No pressure or coercion of any kind has been used against me." Do you understand this paragraph?

Defendant: Yes.

Detective Crawford: Okay, with that paragraph in mind, are you still willing to talk to me and answer questions I might ask you, knowing that you have the right to have a lawyer with you?

Defendant: Yes.

Detective Crawford: Are you willing to talk with me without a lawyer present at this time knowing full well you have the right to have one at this time?

Defendant: Yes.

Detective Crawford: Is this your signature there?

Defendant: Yes.

Defendant then made a statement in which he admitted assaulting G.G. on her back porch.

APPOINTED Appointed

Candy's

You can get in trouble

PARAGRAPH's Paragraphs

Taking Pictures

MY RIGHTS My Rights

having a

good

job

PRESSURE Pressure

is

stressful

COERCION Coercion

Candy's

DO NOT KNOW

REMAIN Remain

Quit

ADVICE ADVICE

having good manners

THE RIGHT TO REMAIN SILENT

Do not make noise

USED AGAINST YOU IN COURT

I DON NOT know

VISITOR REGISTRATION SHEET

9 # 11
Name of Committee

April 26.99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dwight Spencer	Tarheel Political Serv, 913 Crawford Rd. Rock Mt. 27640
Bud Simmons	NC AOC
Jeanne Bonds	AOC
BILL SCOGGIN	NC BOR ASSOC
Allison Fleri	NC AOC
Lao Rubert	CCPC
Deborah Greenblatt	Carolina Legal Assoc
Mary Ann Talley	Attorney
Andrew Short	Psychologist, NC Psychological
Sally Cameron	NC Psychological Assoc
Crissy Porter	Bone and Associates
Joe Hunter	OAD
Jeff Gray	Fraternal Order of Police

SENATE JUDICIARY II COMMITTEE

APRIL 27, 1999

ROOM 1124

SB 232	Bo Thomas – Bicycle Safety Act	Sen. B. Martin
SB 522	"Quick Take" Notice of Appeal	Sen. Rucho
SB 582	Winston-Salem Pawnbrokers	Sen. Horton
SB 906	Underground Utility Damage Amend	Sen. Lee
SB 929	Abatement of Nuisances	Sen. Reeves
SB 984	Amendments 3	Sen. Miller
SB 999	Rt. To Keep & Bear Arms Protection Act	Sen. Odom
SB 1003	Gifts by Guardians	Sen. Kinnaird
SB 1096	No Guns at School Law/ School Employees	Sen. Garrou
SB 1113	Workers' Comp./Medical Provider Contact	Sen. Kerr

SENATE JUDICIARY II COMMITTEE

APRIL 27, 1999

MINUTES

The Senate Judiciary II Committee met on April 27, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Eleven members were present, including Senator Brad Miller, who presided.

SB 999, Rt. To Keep & Bear Arms Protection Act, was explained by Senator Odom. Senator Odom moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Miller recognized members of the public to speak to the bill. Speaking in support were Thomas Beatty and Jeff Rau, both from Grassroots North Carolina. Dick Taylor, North Carolina Academy of Trial Lawyers, Andy Romaneau, North Carolina League of Municipalities, and Ron Aycock, North Association of County Commissioners, spoke in opposition to the bill. Senator Odom moved to give the committee substitute a favorable report. The motion carried. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Kerr was recognized to explain SB 1113, Workers' Comp./Medical Provider Contact. His motion to adopt a proposed committee substitute was unanimously approved. Alan Miles, American Insurance Association, was called on to further explain the bill. Senator Moore moved to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 1096, No Guns at School Law/School Employees, was explained by Senator Garrou. Senator Hagan moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Miller adjourned the meeting until 3:00 p.m.

The Senate Judiciary II Committee reconvened April 27, 1999 at 3:00 p.m. in room 1124 of the Legislative Building. Eleven members were present. Senator Miller presided.

Senator Kinnaird was called on to explain SB 1003, Gifts by Guardians, and moved to adopt a proposed committee substitute. The motion carried unanimously. Bill

Scoggin with the NC Bar Association further explained the bill. Senator Ballance moved to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 232, Bo Thomas – Bicycle Safety Act, was explained by Senator Martin. Senator Miller moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Miller displaced the bill and adjourned the meeting.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Wednesday, April 28, 1999

SENATOR MILLER,
submits the following with recommendations as to passage:

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

S.B. **1003** Gifts by Guardians.

Draft Number:	PCS3805
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Wednesday, April 28, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

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

S.B. **867** Real Estate Licensure Law Changes.

Draft Number:	PCS1724
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **920** Update Cont. Substance Schedules.

Draft Number:	PCS2754
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1113** Workers' Comp./Medical Provider Contact.

Draft Number:	PCS3804
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Tuesday, April 27, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **851** N.H./Pender Judicial Districts.
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None

S.B. **955** Proper Trial Division/Counsel Fees.
Sequential Referral: None
Recommended Referral: None

S.B. **1096** No Guns at School Law/School Employees.
Sequential Referral: None
Recommended Referral: None

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

S.B. **995** Police Peer Counselor Privilege.
Draft Number: PCS4689
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **999** Rt. To Keep & Bear Arms Protection Act.
Draft Number: PCS3794
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1074** Year 2000 Consumer Protection Act.
Draft Number: PCSA136
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 232

Short Title: Bo Thomas--Bicycle Safety Act. (Public)

Sponsors: Senators Martin of Guilford, Purcell, Phillips, Cochrane, and Warren.

Referred to: Judiciary II.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE "BO THOMAS CHILD BICYCLE SAFETY ACT" TO REQUIRE THE USE OF CERTAIN SAFETY EQUIPMENT BY CHILDREN WHEN THEY ARE BICYCLE OPERATORS AND PASSENGERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Part 10B to Article 3 to read:

"Part 10B. Child Bicycle Safety Act.

"**§ 20-171.6. Short title.**

This Part shall be known and may be cited as the 'Bicycle Safety Act'.

"**§ 20-171.7. Definitions.**

As used in this Part, the following terms have the following meanings:

(1) 'Bicycle' means a human-powered vehicle with two wheels in tandem designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle designed to transport, by the action of pedaling, which has more than two wheels where the vehicle is used on a public roadway, public bicycle path, or other public right-of-way, but does not include a tricycle.

(2) 'Operator' means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(3) 'Other public right-of-way' means any right-of-way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or a local political subdivision thereof and is designed for use and used by vehicular and/or pedestrian traffic.

(4) 'Passenger' means a person who travels on a bicycle in any manner except as an operator.

(5) 'Protective bicycle helmet' means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation.

(6) 'Public bicycle path' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by bicycles and pedestrians.

(7) 'Public roadway' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by motor vehicles.

(8) 'Restraining seat' means a seat separate from the saddle seat of the operator of the bicycle that is fastened securely to the frame of the bicycle and is adequately equipped to restrain the passenger in such seat and protect such passenger from the moving parts of the bicycle.

(9) 'Tricycle' means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.

"**§ 20-171.8. Requirements for helmet and restraining seat use.**

With regard to any bicycle used on a public roadway, public bicycle path, or other public right-of-way:

(a) It shall be unlawful for any person under the age of 19 to operate or be a passenger on a bicycle unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit fastened securely upon the head with the straps of the helmet.

(b) It shall be unlawful for any person to be a passenger on a bicycle unless all of the following conditions are met:

(1) The person is able to maintain an erect, seated position on the bicycle;

(2) Except as provided in subdivision (3) of this subsection, the person is properly seated alone on a saddle seat (as on a tandem bicycle); and

(3) With respect to any person who weighs less than 40 pounds, or is less than 40 inches in height, the person can be and is properly seated in and adequately secured to a restraining seat.

(c) It shall be unlawful for any parent or legal guardian of a person below the age of 19 to knowingly permit such person to operate or be a passenger on a bicycle in violation of subsection (a) or (b) of this section.

(d) It shall be unlawful to rent or lease any bicycle to or for the use of any person under the age of 19 unless:

(1) The person is in possession of a protective bicycle helmet of good fit at the time of such rental or lease; or

(2) The rental or lease includes a protective bicycle helmet of good fit, and the person intends to wear the helmet, as required by subsection (a) of this section, at all times while operating or being a passenger on the bicycle.

(e) No negligence or liability shall be assessed on or imputed to any party on account of a violation of subsection (a), (b), or (c) of this section.

"**§ 20-171.9. Penalties.**

(a) Except as provided in subsection (b) of this section, any person violating any requirement set forth in G.S. 20-171.8 shall have committed an infraction as defined in G.S. 14-3.1 and may be ordered to pay a fine of up to ten dollars ($10.00). The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(b) In the case of a first conviction within a 12-month period of G.S. 20-171.8(a), (b), or (c), the court may waive the fine upon receipt of satisfactory proof that the person responsible for the infraction has purchased or otherwise obtained, as appropriate, a protective bicycle helmet or a restraining seat, and uses and intends to use it whenever required under G.S. 20-171.8.

"**§ 20-171.10. Effect on local standards.**

Nothing in this Part shall prohibit a unit of local government from adopting more stringent standards for bicycle safety by ordinance, including, but not limited to, making the provisions of this Part applicable to persons 19 years of age or older."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 522*

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors: Senators Rucho; Clodfelter, Dannelly, and Odom.

Referred to: Judiciary II.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF APPEAL RIGHTS IN THE COMPLAINTS COMMENCING THE ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-41 reads as rewritten:

"**§ 40A-41. Institution of action and deposit.**

A public condemnor listed in G.S. 40A-3(b) or (c) shall institute a civil action to condemn property by filing in the superior court of any county in which the land is located a complaint containing a declaration of taking declaring that property therein is thereby taken for the use of the condemnor.

The complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which the property is taken;

(2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification thereof;

(3) A statement of the property taken and a description of the area taken sufficient for the identification thereof;

(4) The names and addresses of those persons who the condemnor is informed and believes may be or, claim to be, owners of the property so far as the same can by reasonable diligence be ascertained, and if any such persons are infants, incompetents, inebriates or under any other disability, or their whereabouts or names unknown, it must be so stated;

(5) A statement of the sum of money estimated by the condemnor to be just compensation for the taking; and

(6) A statement as to whether the owner will be permitted to remove all or a specified portion of any timber, buildings, structures, permanent improvements, or fixtures situated on or affixed to the property.

(7) A statement as to such liens or other encumbrances as the condemnor is informed and believes are encumbrances upon the property and can by reasonable diligence be ascertained.

(8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(9) In the case of an action commenced to acquire property pursuant to G.S. 40A-42(a), allowing immediate vesting of property rights in the condemnor upon the making of a deposit in accordance with this section, a notice of the owner's rights including the right to answer and to commence an action for injunctive relief.

The filing of the complaint shall be accompanied by the deposit to the use of the owner of the sum of money estimated by the condemnor to be just compensation for the taking. Upon the filing of the complaint and the deposit of said sum, summons shall be issued to each owner of the property. The summons, together with a copy of the complaint and notice of the deposit shall be served upon the person named therein in the manner provided for the service of process under the provisions of G.S. 1A-1, Rule 4. The condemnor may amend the complaint and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in G.S. 40A-44 of this Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 582

Short Title: Winston-Salem Pawnbrokers. (Local)

Sponsors: Senators Horton; and Garrou.

Referred to: Judiciary II.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE LAW ENFORCEMENT EFFORTS TO RECOVER STOLEN PROPERTY BY AUTHORIZING THE CHIEF OF POLICE OF WINSTON-SALEM TO REQUIRE PAWNBROKERS TO MAKE PAWN TICKET RECORDS AVAILABLE IN ELECTRONIC FORMAT.

The General Assembly of North Carolina enacts:

Section 1. In addition to the record-inspection requirements of G.S. 91A-7(d), the chief of police of the municipality in which the pawnshop is located may require the correct copy of pawnshop records to be made available in an electronic database format specified by and acceptable to the chief of police.

Section 2. This act is enacted pursuant to the general police power.

Section 3. This act applies only to the City of Winston-Salem.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 906*

Short Title: Underground Utility Damage Amend. (Public)

Sponsors: Senator Lee.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNDERGROUND DAMAGE PREVENTION ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 87 of the General Statutes reads as rewritten:

"ARTICLE 8.

"Underground Damage Prevention.

"**§ 87-100. Short title.**

This Article shall be known as the "Underground Damage Prevention Act".

"**§ 87-101. Definitions.**

As used in this Article:

~~(1) "Association" means an association, sponsored by utility owners, that will provide for receipt of notification of excavation operations in a defined geographical area, and that will maintain the records of the notifications.~~

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground utility, penetration or destruction of protective coating, housing, or other protective device of an underground utility, and the partial or complete severance of an underground utility.

(2a) "Emergency" means a sudden or unexpected occurrence involving an imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential service.

(3) "Excavate" or "excavation" means an operation for the purpose of the movement or removal of earth, rock, or other materials in or on the ground by use of equipment operated by means of mechanical power and/or an operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of any tools, equipment, or discharge of explosives. This term includes road construction but does not include road maintenance activities within rights-of-way of a highway, including those maintenance activities defined by the rules and regulations of the North Carolina Department of Transportation.

(4) "Highway" has the meaning set out in G.S. 20-4.01 as the same shall be amended from time to time.

(4a) "Inclement weather" means an act of God that creates a weather condition that prevents the placement of temporary markings as required by G.S. 87-102.

(5) "Location of underground utilities" means a strip of land not wider than the width of the underground utility plus ~~two and one-half (2 1/2) feet~~ 18 inches on either side of the outside edge of the underground utility.

(5a) "Member" means a utility owner who is a member of the notification center established in G.S. 87-101.1.

(5b) "Notification center" means the notification center established in G.S. 87-101.1.

(6) "Person" means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, any subdivision or instrumentality of the State, and includes any officer, agent, trustee, receiver, assignee, lessee, or personal representative of any of the above entities.

(7) "Person financially responsible" means that person who ultimately receives the benefits of any completed excavation activities, including a person owning or leasing real property or holding an easement or interest in an easement.

(8) "Public spaces" means any area owned by the State or any of its political subdivisions or dedicated for public use.

(9) "Road construction" means the actual building of a new highway; or the paving, grading, widening, relocation, reconstruction, or other major improvement of a substantial portion of an existing highway.

(10) "Road maintenance" means preservation, including repairs and resurfacing of a highway, not amounting to road construction.

(11) "Street" has the meaning set out in G.S. 20-4.01 as the same shall be amended from time to time.

(12) "Underground utility" means any underground line, system or facility used for producing, storing, conveying, transmitting, or

distributing communication or telecommunication, electricity, gas, petroleum and petroleum products, coal slurry, hazardous liquids, water under pressure, steam, or sanitary sewage, but not including traffic signal control cables and vehicle detection cables of the North Carolina Department of Transportation.

(13) "Utility owner" means any person who owns or operates an underground utility.

(14) "Work day" means every day except Saturday, Sunday, national legal holidays and State legal holidays.

"**§ 87-101.1. Establishment of notification center.**

(a) Utility owners shall establish a single notification center to provide for the receipt of notification of excavation operations throughout the State and to maintain a database, provided by its members, that includes the geographic areas in which its members desire transmissions of notices of proposed excavations, and which has the capability to transmit notices of proposed excavations to its members by teletype, telecopy, electronic mail, facsimile, or telephone.

(b) The notification center shall be operated as a nonprofit corporation, and each utility owner shall be a member of that corporation by using and participating in the notification system. The membership of the corporation shall elect a board of directors, through which the notification center shall perform its duties. At least ten percent (10%) of the seats on the board of directors shall be held by units of local government.

(c) In order to fund the operation of the notification system, the notification center, through its board of directors, may assess each member an amount reflecting the cost of that member's participation in the system.

(d) The board of directors of the notification center shall provide the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives with an annual progress report on the operation of the notification system provided for in this Article by March 1 of each year.

"**§ 87-102. Notice required prior to excavation.**

(a) Except as provided in G.S. 87-106, before commencing any excavations in highways, public spaces or in private easements of a utility owner, a person planning to excavate shall notify ~~each utility owner having underground utilities located in the proposed area to be excavated,~~ the notification center either orally or in writing, not less than two nor more than 10 working days prior to starting, of his intent to excavate.

(b) The written or oral notice required in subsection (a) shall contain:

(1) The name, address, and telephone number of the person filing the notice;

(2) The name, address, and telephone number of the person doing the excavating;

(3) The anticipated starting date of the excavation;

(4) The anticipated duration of the excavation;

(5) The type of excavation to be conducted;

(6) The location of the proposed excavation; ~~and~~

(7) Whether or not explosives will be ~~used.~~ used; and

(8) Whether or not boring, drilling, tunneling, ramming, or punching will take place.

(c) If the notice required by this section is made by telephone, an adequate record shall be made ~~of the notification by the utility owners or the utility association and the person making the notification,~~ by the notification center to document compliance with this section.

(d) A notice shall be valid for 10 working days from the time of notification. Two working days before the end of the 10 working days, or at any time when the underground utility location markings on the ground become illegible or are destroyed, the excavator shall request a remarking of the underground utility locations. The utility owner shall remark the locations as soon as possible after such a request, but in any event the remarking shall be completed within 48 hours after the request to remark is received, barring inclement weather.

"**§ 87-103. Effect of permit on liability.**

A permit authorizing excavation operations and issued pursuant to law or ordinance shall not relieve a person of the responsibility of complying with this Article.

"**§ 87-104. Requirements of person doing excavation.**

(a) Except as provided in G.S. 87-106, no person may excavate in a highway, a public space, or a private easement of a utility owner without first having given the notice required in G.S. 87-102 to the utility owners.

(b) In addition to the notification requirements, each person excavating shall:

(1) Plan the excavation to avoid damage and to minimize interference with underground utilities in and near the construction area, to the best of his abilities;

(2) Maintain a clearance between an underground utility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of that cutting edge or point, as is reasonably required to avoid damage; ~~and~~

(2a) Take reasonable steps to protect any underground utility lines when excavating within 18 inches of either side of the outside edges of the marked location of a utility owner's underground facilities, as defined in G.S. 87-101(5). This protection shall include hand-digging, air-jetting, or vacuum excavation, or other means of safe excavation designed to avoid damage to the facility marked until that facility is exposed or is determined to be below the proposed excavation. If a proposed excavation lies adjacent or parallel to an existing facility and within or partially within the 18-inch area, the existing facility shall be exposed prior to beginning the excavation. Once the facility is exposed and the location markings are found to be correct, the excavation may proceed with mechanized equipment.

(3) Provide support for the underground utilities in or near the construction area, including backfill, as may be reasonably required by the utility owner for the protection of the underground utilities.

"~~§ 87-105. Requirements of the person financially responsible for the excavation.~~

~~The person financially responsible shall provide to the person responsible for doing the excavating, the names of all underground utility owners in the area of the proposed excavation. The names of the utility owners may be obtained from the County Register of Deeds or the Building Inspection Department of the political subdivision in which the excavating is taken place, if there is one.~~

"**§ 87-105.1. Requirements of notification center.**

(a) The notification center shall, upon receiving notice of the intent to excavate, notify all members whose underground lines are located in the area of the proposed excavation. The notification center shall also indicate the names of those utilities being notified to the person intending to excavate.

(b) If the notification required by this act is made by telephone, a voice recording of the notification shall be maintained by the notification center to document compliance with the notification requirement and those records shall be maintained for at least 48 months.

(c) The notification center shall provide statewide operations coverage and a single, nationally accessible toll-free telephone number to receive and record the information provided by excavators and to respond to information requests from excavators.

"**§ 87-106. ~~Exceptions.~~ Exemptions.**

The following excavations are exempted from the notification requirements of this Article:

(1) Tilling of soil for agricultural purposes;

(2) Excavation by a utility ~~owner, by the State or its subdivisions or agencies, or by anyone contracting with any of these entities to perform the excavation,~~ owner or road maintenance activities by the Department of Transportation described in G.S. 87-101(3) on or within an easement, right-of-way, or property owned or controlled by any of these entities, ~~where:~~

~~a. Only the facilities of the utility owner doing the excavating are permitted; or~~

~~b. All persons having an interest in the excavation and the underground utilities that may be damaged during the excavation have agreed in writing to provide the equivalent of the notification required by this Article among themselves; or~~

where only the facilities of the utility owner doing the excavating are permitted;

(3) The replacement of a pole as long as the replacement pole is within three feet of the original pole and within the line of existing poles. This exception shall not apply to poles at highway

intersections or at the crossings of highways and permanently marked transmission underground ~~utilities.~~ utilities; and

(4) In the case of an ~~emergency~~ emergency, ~~involving danger to life, health, or property requiring immediate correction, or in order to continue the operation of a major industrial plant, or in order to assure the continuity of utility services,~~ excavations immediately required to repair or maintain the needed service may be made, without using explosives, if notice is given to the ~~utility owner or association~~ notification center as soon as is reasonably possible; except that the prohibition against the use of explosives shall not apply to the North Carolina Department of Transportation. Performance of emergency excavation shall not relieve the excavator of liability for damages.

"§ 87-107. Duties of the utility owners.

(a) Every utility owner having underground utility lines, including units of local government, shall be a member of the notification center.

(b) Each utility owner, or his designated ~~representative including an association,~~ representative, notified of an intent to excavate shall, before the proposed start of excavating (unless another period is agreed to by the person conducting the excavation and the utility owner or their representatives), provide the following information to the person excavating to the extent such information is reflected by records in the possession of and reasonably available to the utility owner:

(1) The location ~~and description~~ of all of the underground utilities which may be damaged as a result of the excavation; and

~~(2) The location and description of all utility markers indicating the location of the underground utilities; and~~

(3) Any other information that would assist in locating and avoiding damage to the underground utilities, including providing temporary markings when necessary indicating the location of the underground utility in locations where permanent utility markers do not exist.

"§ 87-108. Absence of utility location.

Should any utility owner who has been given notice pursuant to G.S. 87-102 fail to respond to that notice as provided in G.S. 87-107, or fail to properly locate the underground utility, then the person excavating is free to proceed with the excavation. Neither the excavator nor the person financially responsible for the excavation will be liable to the nonresponding or improperly responding utility owner for damages to that utility owner's facilities if the person doing the excavating shall exercise due care to protect existing underground utilities when there is evidence of the existence of those underground utilities near the proposed excavation site.

"§ 87-109. Recording requirements for ~~associations.~~ the notification center.

~~An association~~ The notification center shall record with the Register of Deeds of each county in which participating utility owners own or operate underground utilities, a notarized document providing the telephone number and address of the

~~association,~~ notification center, a description of the geographical area served by the ~~association,~~ notification center, and a list of the names and addresses of the utility owners receiving these services from the ~~association.~~ notification center.

"§ 87-110. Recording requirements for utility owners.

(a) Each utility owner having underground utilities in North Carolina shall record a notarized document containing the name of the utility owner and the title, address, and telephone number of its representatives designated to receive the written or oral notice of intent to excavate, with the Register of Deeds of each county in which the utility owner owns or operates underground facilities. This document shall be executed by an officer of the utility owner or in the case of a governmental entity, the authorized official.

(b) Any change or modification of the information recorded by a utility owner, pursuant to subsection (a) of this section, shall be made by recording the corrected information with the Register of Deeds of each county to which the change or modification applies, in the manner required by subsection (a) of this section within five days of the change made to the utilities.

(c) For purposes of the recordings required by subsections (a) and (b) of this section, recordings by ~~an association~~ the notification center pursuant to G.S. 87-109 shall satisfy the recording requirements for each utility owner who is a member of the ~~association~~ notification center while that utility owner remains a member of the ~~association.~~ notification center.

(d) Upon receipt of the documents recorded pursuant to subsections (a), (b), or (c) of this section, the Register of Deeds shall place the documents in the Grantor's Index under the heading "Underground Utilities". The registration fee imposed by Chapter 161 of the General Statutes shall apply to these documents.

~~**"§ 87-111. Recorded information filed with inspection departments.**~~

~~A copy of any document or modification or change in the information in that document recorded pursuant to G.S. 87-109 or G.S. 87-110 shall be filed with any county or municipal inspection department having jurisdiction over any area where the underground utilities are located. Such inspection departments shall maintain these filings in alphabetical order in an accessible form.~~

"§ 87-112. Color-coding.

When the location of an underground utility is marked with ~~stakes~~ stakes, flags, or paint, or by other physical means, pursuant to this Article, the utility owner shall use temporary colored ~~markers~~ markings following the American Public Works Association Uniform Color Code for Utilities.

"§ 87-113. Notification required when damage done.

(a) The person doing an excavation that results in any known damage to an underground utility shall, immediately after the discovery of the damage, notify the utility owner of the location and nature of the damage and shall allow the utility owner reasonable time to repair the damage before completing the excavation in the immediate area of the damaged underground utility.

(b) The person responsible for conducting any excavation that results in damage to an underground utility where the damage may endanger life, health, or property

shall, immediately after the discovery of the damage, take action to protect the public and property, notify the utility owner, notify the police or fire departments, and take any other actions to minimize the hazards until the arrival of the utility owner's personnel, the police, or the fire department. The excavator shall delay any backfilling in the immediate area of the damaged underground utility until authorized by the utility owner unless it is necessary to prevent injury or property damage to others. Repair of any damage shall be performed by the utility owner or by qualified personnel authorized by the utility owner.

"**§ 87-114. Homeowners.**

This Article does not require utility notification before a property owner digs in any area on his own property with nonmechanized equipment nor prior to tilling the soil for agricultural, gardening or landscaping purposes. Mechanized equipment may be used, without utility notification, in any area on the owner's property with the exception of recorded underground utility easements which describes the location of the easement with specificity.

"**§ 87-115. Requests for survey locates and design locates.**

The information required for requests for facility locates in conjunction with survey or design activities shall be the same as specified in G.S. 87-102. The utility owners receiving requests for survey locate or design locate work shall respond to the request within 10 working days.

"**§ 87-116. Civil penalties.**

(a) A person who violates the provisions of G.S. 87-102(a), 87-104(b), or 87-107(a) is subject to a civil penalty as follows:

(1) Upon the first violation by that person, two hundred fifty dollars ($250.00);

(2) Upon the second violation occurring within the same 12-month period as the first violation, five hundred dollars ($500.00); and

(3) Upon the third violation occurring within the same 12-month period as the first violation, one thousand dollars ($1,000).

(b) An action under this section may be initiated by any person making a complaint in writing, verifying by oath and having reason to believe that a violation has occurred.

(c) Prosecution of violations shall be brought by the district attorney for the prosecutorial district in which the violation arose or in the county in which the defendant resides or in which the defendant's principal place of business is located.

(d) All civil penalties recovered under this section shall be paid into the General Fund.

(e) The civil penalties provided for in this section do not apply to the State of North Carolina or to units of local government.

"**§ 87-117. High-speed locate.**

If the utilities in conflict with a proposed excavation have been located in accordance with G.S. 87-102 and a change in plans is necessitated by unforeseen conditions, a request for a "high-speed locate" to be made within four hours can be made for the alternate contiguous location. The high-speed locate shall be paid for

by the person making the request at a price established by the notification center. Persons desiring to obtain high-speed locates shall register with the notification center in January of each year."

Section 2. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 929

Short Title: Abatement of Nuisances. (Public)

Sponsors: Senator Reeves.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE ABATEMENT OF NUISANCES STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 19-1(a) reads as rewritten:

"(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance."

Section 2. G.S. 19-1.1 reads as rewritten:

"**§ 19-1.1. Definitions.**

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19- 1, the following definitions shall apply:

(1) 'Assignation' means making an appointment or engagement for prostitution or solicitation for acts of prostitution or any act in furtherance of the appointment, engagement, or solicitation.

(2) 'Breach of the peace' means any act that disturbs the public tranquility and order including, but not limited to, homicide, assault, affray, communicating threats, stalking, loud obscene or abusive language, unlawful possession of dangerous or deadly weapons, and discharging firearms.

(3) 'Knowledge' or 'knowledge of such nuisance' means having knowledge of the contents and character of the patently offensive

sexual conduct which appears in the lewd matter, or knowledge of the acts of ~~lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution which occur on the premises.~~ lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge.

~~(2)~~ (4) 'Lewd matter' is synonymous with 'obscene matter' and means any matter:

a. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

b. Which depicts patently offensive representations of:

1. Ultimate sexual acts, normal or perverted, actual or simulated;
2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;
3. Masochism or sadism; or
4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

~~(3)~~ (5) 'Lewdness' is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.

~~(4)~~ (6) 'Matter' means a motion picture film or a publication or both.

~~(5)~~ (7) 'Motion picture film' shall include any:

a. Film or plate negative;
b. Film or plate positive;
c. Film designed to be projected on a screen for exhibition;
d. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;
e. Video ~~tape~~ tape, compact disc, digital video disc or any other medium used to electronically reproduce images on a screen.

~~(6)~~ (8) 'Person' means any individual, partnership, firm, association, corporation, or other legal entity.

~~(7)~~ (9) 'Place' includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground ~~itself, but excluding a private dwelling place not used for a profit.~~ itself.

(10) 'Prostitution' means offering in any manner or receiving of the body in return for a fee, for acts of vaginal intercourse, anal intercourse, fellatio, cunnilingus, masturbation, or physical contact with a person's genitals, pubic area, buttocks or breasts, or other acts of sexual conduct offered or received for pay and sexual gratification.

(11) 'Preserving the status quo' as used in G.S. 19-2.3 means returning conditions to the last actual, peaceable, lawful, and nonconstested status which preceded the pending controversy and not allow the nuisance to continue.

~~(8)~~(12) 'Publication' shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

~~(9)~~ (13) ~~'Sale'~~ 'Sale of obscene or lewd matter' means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter.

~~(10)~~ (14) 'Sale' as the term relates to proscribed acts other than sale of obscene or lewd matter shall have the same meaning as the term is defined in Chapter 18B and Chapter 90 of the General Statutes prohibiting the illegal sale of alcoholic beverages and controlled substances respectively.

(15) 'Used for profit' shall mean any use of real or personal property to produce income in any manner, including, but not limited to, any commercial or business activities, or selling, leasing, or otherwise providing goods and services for profit."

Section 3. G.S. 19-1.2 reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this Article;
(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in trade;
(5) Any and every lewd publication possessed at a place which is a nuisance under this Article;
(6) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur."

Section 4. G.S. 19-1.3 reads as rewritten:

"**§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.**

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;
(2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;
(3) All money or other valuable ~~consideration~~ consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding."

Section 5. Chapter 19 of the General Statutes is amended by adding a new section to read:

"**§ 19-1.6. Cessation of nuisance does not preclude action.**

The cessation of nuisance activities does not preclude an action for abatement of a nuisance based on its past operation."

Section 6. G.S. 19-2. Repealed.

Section 7. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against ~~the~~ any public official or public ~~entity for the official action.~~ entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter.

The provisions of this Chapter to abate a public nuisance shall not be applied against the State or any of its political subdivisions."

Section 8. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of

the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said Rule 4, delivery and posting. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

Section 9. G.S. 19-2.5 reads as rewritten:

"**§ 19-2.5. Hearing on the preliminary injunction; issuance.**

If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court, the court shall issue a preliminary injunction restraining the defendant and any other person from continuing the nuisance and effectually enjoining its use thereafter for the purpose of conducting any such nuisance. The court may in its discretion order the closure of the property pending trial on the merits."

Section 10. G.S. 19-3(b) reads as rewritten:

"(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, breaches of the peace, the illegal possession or sale of alcoholic beverages, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance."

Section 11. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance

under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

~~The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.~~"

Section 12. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the ~~illegal possession or sale of narcotic drugs as defined in G.S. 90-87(17),~~ manufacture, possession with intent to sale, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, or two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, the real property

on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the ~~plaintiff prior to the action~~ plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person

satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the ~~sale and additional monies, if necessary.~~ sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

Section 13. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 984

Short Title: Amendments 3. (Public)

Sponsors: Senator Miller.

Referred to: Rules and Operations of the Senate.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The law is amended.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 999*

Short Title: Rt. To Keep & Bear Arms Protection Act. (Public)

Sponsors: Senators Odom; Allran, Ballantine, Carpenter, Carrington, Cochrane, Dalton, East. Forrester, Foxx, Garwood, Harris, Hartsell, Horton, Hoyle, Jordan, Kerr, Lucas, Martin of Pitt, Metcalf, Moore, Phillips, Rand, Reeves, Rucho, Shaw of Cumberland, Shaw of Guilford, Warren, Weinstein, and Wellons.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ONLY THE STATE MAY BRING CERTAIN CIVIL ACTIONS AGAINST FIREARMS OR AMMUNITION MARKETERS, MANUFACTURERS, DISTRIBUTORS, DEALERS, SELLERS, OR TRADE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-409.40 reads as rewritten:

"**§ 14-409.40. Statewide uniformity of local regulation.**

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section. The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale or transfer that is the proximate cause of injuries arising from their unlawful use.

(b) Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of

firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.

(d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in declared states of emergency under Article 36A of this Chapter.

(g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Furthermore, no action against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, trade association representing or promoting any such marketer, manufacturer, distributor, dealer, or seller shall be brought by the Attorney General without the authorization of the General Assembly by adoption of a concurrent resolution. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit."

Section 2. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not

affect other provisions of the act that can be given effect without the invalid provision.

Section 3. This act is effective when it becomes law and applies to any action pending or filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1003

Short Title: Gifts by Guardians. (Public)

Sponsors: Senators Kinnaird; Horton, Miller, and Soles.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES REGULATING THE ABILITY OF GUARDIANS TO MAKE GIFTS FROM INCOMPETENT WARDS' ESTATES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 35A-1335 reads as rewritten:

"**§ 35A-1335. Gifts authorized with approval of judge of superior court.**

With the approval of the resident judge of the superior court of the district in which the guardian ~~he~~ was appointed, upon a duly verified petition the guardian ~~or trustee~~ of a person judicially declared to be incompetent may, from the income of the incompetent, make gifts to the State of North Carolina, its agencies, counties or municipalities, or to the United States or its agencies or instrumentalities, or for religious, charitable, literary, scientific, historical, medical or educational ~~purposes.~~ purposes, or to individuals. References in this Article to the "guardian" include any Trustee appointed by the court under prior law as fiduciary for the incompetent ward's estate."

Section 2. G.S. 35A-1336 reads as rewritten:

"**§ 35A-1336. Prerequisites to approval by ~~judge.~~ judge of gifts for governmental or charitable purposes.**

The judge shall not approve ~~such~~ gifts from income for governmental or charitable purposes unless it appears to ~~his~~ the judge's satisfaction that all of the following apply:

(1) After ~~the~~ making ~~of such~~ the gifts and the payment of federal and State income taxes, the remaining income of the incompetent will

be reasonable and adequate to provide for the support, maintenance, comfort and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and ~~such~~ those dependents in the manner to which the incompetent and ~~such~~ those dependents are accustomed and in keeping with their station in ~~life (and in no event less than twice the average, for the five calendar years preceding the calendar year of such gifts, of expenditures for the incompetent's support, maintenance, comfort and welfare);~~ life.

(2) Each donee is a donee to which a competent donor could make a gift, without limit as to amount, without incurring federal or State gift tax ~~liability;~~ liability.

(3) Each donee is a donee qualified to receive tax deductible gifts under federal and State income tax ~~laws;~~ laws.

(4) The aggregate of ~~such~~ the gifts does not exceed the percentage of income fixed by federal law as the maximum deduction allowable for ~~such~~ the gifts in computing federal income tax liability.

Section 3. Chapter 35A of the General Statutes is amended by adding a new section to read:

"**§ 35A-1336.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from income to individuals unless it appears to the judge's satisfaction that all three of the following requirements are met:

(1) After making the gifts and paying federal and State income taxes, the remaining income of the incompetent will be reasonable and adequate to provide for the support, maintenance, comfort, and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and those dependents in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life;

(2) The judge determines that either:

a. Both of the following apply:

1. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming a revocable trust created by the incompetent as beneficiary.

2. Each donee is entitled to one or more specific legacies, bequests, devises, or distributions of specific amounts of money, income, or property under the paper-writing or the revocable trust or both or is a residuary legatee, devisee, or beneficiary designated in the paper-writing or revocable trust or both.

b. That so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent and each donee is a person who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of the approval of the gifts.

c. The donee is the spouse, parent, descendent of the incompetent, or descendant of the incompetent's parent and the amount of the gift does not exceed the federal annual gift tax exclusion.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death."

Section 4. G.S. 35A-1340 reads as rewritten:

"**§ 35A-1340. Gifts authorized with approval of judge of superior court.**

With the approval of the resident judge of the superior court of the district in which the guardian ~~or trustee~~ was appointed upon a duly verified petition, the guardian ~~or trustee~~ of a person judicially declared to be incompetent may, from the principal of the incompetent's estate, make gifts to the State of North Carolina, its agencies, counties or municipalities, or the United States or its agencies or instrumentalities, or for religious, charitable, literary, scientific, historical, medical or educational ~~purposes.~~ purposes, or to individuals. The incompetent's estate shall consist of all assets owned by the incompetent, including nonprobate assets. For purposes of this Article, nonprobate assets are those which would not be distributable in accordance with the incompetent's valid probated will or the provisions of Chapter 29 at the incompetent's death. The incompetent's nonprobate estate would include nonprobate assets only. References in this Article to the "guardian" include any Trustee appointed by the court under prior law as fiduciary for the incompetent ward's estate."

Section 5. G.S. 35A-1341 reads as rewritten:

"**§ 35A-1341. Prerequisites to approval by ~~judge.~~ judge of gifts for governmental or charitable purposes.**

The judge shall not approve ~~such~~ any gifts from principal for governmental or charitable purposes unless it appears to ~~his~~ the judge's satisfaction ~~that:~~ all of the following requirements are met:

(1) The making of ~~such~~ the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income for the support, maintenance, comfort and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and ~~such~~ these dependents in the manner to which the incompetent

and ~~such~~ those dependents are accustomed and in keeping with their station in ~~life;~~ life.

(2) Each donee is a donee to which a competent donor could make a gift, without limit as to amount, without incurring federal or State gift tax ~~liability;~~ liability.

(3) Each donee is a donee qualified to receive tax deductible gifts under federal and State income tax ~~laws;~~ laws.

(4) The making of ~~such~~ the gifts will not jeopardize the rights of any creditor of the ~~incompetent; and~~ incompetent.

(5) It is improbable that the incompetent will recover competency during his or her ~~lifetime;~~ lifetime.

(6) Either:

a. All of the following apply:

1. The incompetent, prior to being declared incompetent, executed a ~~paper-writing;~~ paper-writing with the formalities required by the laws of North Carolina for the execution of a valid ~~will;~~ will, including a paper-writing naming a revocable trust created by the incompetent beneficiary.

2. Specific legacies, ~~bequests or devises~~ bequests, devises, or non-discretionary distributions of specific amounts of money, income or property included in ~~such~~ the paper-writing or revocable trust or both, will not be jeopardized by making ~~such gifts;~~ the gifts.

3. All residuary ~~legatees and~~ legatees, devisees and beneficiaries designated in ~~such~~ the ~~paper-writing;~~ paper-writing or revocable trust or both, who would take under the ~~paper-writing~~ paper-writing or revocable trust or both, if the incompetent died contemporaneously with the signing of the order of approval of ~~such~~ the gifts and ~~such paper-writing~~ the paper-writing was probated as the incompetent's will and the spouse, if any, of ~~such~~ the incompetent have been given at least 10 days' written notice that approval for ~~such~~ the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian ~~or trustee~~ was appointed, within the 10-day ~~period;~~ period.

b. Both of the following apply:

1. That so far as is known the incompetent has not prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent; and

2. All persons who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for ~~such~~ the gifts will be sought and that objection may be filed with the clerk of the superior court, of the county in which the guardian ~~or trustee~~ was appointed, within the 10-day period.

(7) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset if the incompetent died contemporaneously with the signing of the order of approval have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed within the 10-day period. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341(6)a.3. and (6)b.2."

Section 6. Chapter 35A of the General Statutes is amended by adding a new section to read:

"**§ 35A-1341.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from principal to individuals unless it appears to the judge's satisfaction that all of the following requirements have been met:

(1) Making the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income for the support, maintenance, comfort, and welfare of the incompetent in order to maintain the incompetent and any dependents legally entitled to support from the incompetent in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life.

(2) The making of the gifts will not jeopardize the rights of any existing creditor of the incompetent.

(3) It is improbable that the incompetent will recover competency during his or her lifetime.

(4) The judge determines that either:

a. All of the following apply:

1. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming a revocable trust created by the incompetent as beneficiary.

2. Each donee is entitled to one or more specific legacies, bequests, devises, or distributions of specific amounts of money, income, or property under either

the paper-writing or revocable trust or both or is a residuary legatee, devisee, or beneficiary designated in the paper-writing or revocable trust or both.

3. The making of the gifts will not jeopardize any specific legacy, bequest, devise, or distribution of specific amounts of money, income, or property.

b. That so far as is known the incompetent has not prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent and each donee is a person who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval of the gifts.

c. The donee is a person who would share in the incompetent's nonprobate estate, if the incompetent died contemporaneously with the signing of the order of approval.

d. The donee is the spouse, parent, descendant of the incompetent, or descendant of the incompetent's parent and the amount of the gift does not exceed the federal annual gift tax exclusion.

(5) If the incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming a revocable trust created by the incompetent as beneficiary; then all residuary legatees, devisees, and beneficiaries designated in the paper-writing or revocable trust or both, who would take under the paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of the gifts and the paper-writing was probated as the incompetent's will, the spouse, if any, of the incompetent and all persons identified in G.S. 35A-1341.1(7) have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed, within the 10-day period.

(6) If so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, all persons who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of the superior court of the county in which the guardian was appointed, within the 10-day period.

(7) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset if the incompetent died contemporaneously with the signing of the order of approval have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior of the county in which the guardian was appointed within the 10-day period. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341.1(5) and (6) above.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death.

Section 7. G.S. 35A-1342 reads as rewritten:

"**§ 35A-1342. Who deemed specific and residuary legatees and devisees of incompetent under § 35A-1341.**

For purposes of G.S. 35A-1341(6)a and 35A-1341.1(4) and (5), ~~of this Article,~~ if ~~such paper-writing~~ the paper-writing provides for the residuary estate to be placed in trust for a term of years, or if the paper-writing names a revocable trust created by the incompetent as beneficiary, and the trust or trusts include dispositive provisions which provide that assets continue in trust for a term of years with stated amounts of income payable to designated beneficiaries during the term and stated amounts payable to designated beneficiaries upon termination of the ~~trust, such~~ trust or trusts, the designated beneficiaries shall be deemed to be specific ~~legatees and devisees~~ legatees, devisees, and beneficiaries and those taking the remaining income of the trust or trusts and, at the end of the term, the remaining principal shall be deemed to be residuary ~~legatees and devisees~~ legatees, devisees, and beneficiaries who would take under the ~~paper-writing~~ paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of ~~such~~ the gifts. In no case shall any prospective executor or trustee be considered either a specific or residuary ~~legatee and devisee~~ legatee, devisee, or beneficiary on the sole basis of prospective service as executor or trustee."

Section 8. G.S. 35A-1343 reads as rewritten:

"**§ 35A-1343. Notice to minors and incompetents under ~~§ 35A-1341.~~ § 35A-1341 and § 35A-1341.1.**

If any person, to whom notice must be given under the provisions of G.S. ~~35A-1341(6)~~ 35A-1341 and G.S. 35A-1341.1 ~~of this Article,~~ is a minor or is incompetent, or is an unborn or unascertained beneficiary, then the notice shall be given to his duly appointed guardian or other duly appointed representative: Provided, that if a ~~minor or incompetent~~ minor, incompetent, unborn, or unascertained beneficiary has no ~~such~~ guardian or ~~representative~~ representative, then

a guardian **ad litem** shall be appointed by the judge and ~~such~~ the guardian **ad litem** shall be given the notice herein required."

Section 9. G.S. 35A-1251 reads as rewritten:

"**§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

(1) To take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5).

(2) To receive assets due the ward from any source.

(3) To maintain any appropriate action or proceeding to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor of or against the ward.

(4) To complete performance of contracts entered into by the ward that continue as obligations of the ward or his estate, or to refuse to complete ~~such~~ the contracts, as the guardian determines to be in the ward's best interests, taking into account any cause of action that might be maintained against the ward for failure to complete ~~such~~ the contract.

(5) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in ~~such~~ a condition that it is of no benefit or value to the ward or his estate.

(5a) To renounce any interest in property as provided in Chapter 31B of the General Statutes, or as otherwise allowed by law.

(6) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward.

(7) To insure the ward's assets against damage or loss, at the expense of the ward's estate.

(8) To pay the ward's debts and obligations that were incurred prior to the date of adjudication of incompetence or appointment of a guardian when the debt or obligation was incurred for necessary living expenses or taxes; or when the debt or obligation involves a specific lien on real or personal property, if the ward has an equity in the property on which there is a specific lien; or when the guardian is convinced that payment of the debt or obligation is in the best interest of the ward or his estate.

(9) To renew the ward's obligations for the payment of money. The guardian's execution of any obligation for the payment of money pursuant to this subsection shall not be held or construed to be binding on the guardian personally.

(10) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.

(11) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(12) To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal.

(13) To pay from the ward's estate necessary expenses of administering the ward's estate.

(14) To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian.

(15) To continue any business or venture or farming operation in which the ward was engaged, where ~~such~~ that continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in ~~such~~ the business.

(16) To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(17) a. Without a court order to lease any of the ward's real estate for a term of not more than three years, or to sell, lease or exchange any of the ward's personal property including securities, provided that the aggregate value of all items of the ward's tangible personal property sold without court order over the duration of the estate shall not exceed one thousand five hundred dollars ($1,500). When any item of the ward's tangible personal property has a value which when increased by the value of all other tangible personal property previously sold in the estate without a court order would exceed one thousand five hundred dollars ($1,500), a guardian may sell the item only as provided in subdivision (17)b.

b. A guardian who is required by subdivision (17)a to do so shall, and any other guardian who so desires may, by motion in the cause, request the court to issue him an order to lease any of the ward's real estate or to sell any item or items of the ward's personal property. Notice of the motion and of the date, time and place of a hearing thereon shall be served, as provided in G.S. 1A-1, Rule 5, Rules of Civil Procedure, upon all parties of record and upon ~~such~~ any other persons ~~as~~ the clerk may direct, and the court may issue the order after conducting a hearing and upon ~~such~~ any conditions ~~as~~ that the court may require; provided that:

1. A sale, lease, or exchange under this subdivision may not be subject to Article 29A of Chapter 1 of the General Statutes unless the order so requires; and
2. The power granted in this subdivision shall not affect the power of the guardian to petition the court for prior approval of expenditures from estate principal under subdivision (12) of this section.

(18) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed or trust, or other lien securing ~~such~~ the bond, note or other obligation, and to bid in the property at ~~such~~ a foreclosure sale, or to acquire the property deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(19) To borrow money for ~~such~~ any periods of time and upon ~~such~~ the terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber ~~such~~ that portion of the ward's estate as may be required to secure ~~such~~ the loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter is controlling.

(20) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

(21) To expend estate income for the support, maintenance, and education of the ward's minor children, spouse, and dependents, and to petition the court for prior approval of expenditures from estate principal for these purposes; provided, the clerk, in the original order appointing the guardian or a subsequent order, may require that the expenditures from estate income also be approved in advance. In determining whether and in what amount to make or approve these expenditures, the guardian or clerk shall take into

account the ward's legal obligations to his minor children, spouse, and dependents; the sufficiency of the ward's estate to meet the ward's needs; the needs and resources of the ward's minor children, spouse, and dependents; and the ward's conduct or expressed wishes, prior to becoming incompetent, in regard to the support of these persons.

(22) To transfer to the spouse of the ward those amounts authorized for transfer to the spouse pursuant to 42 United States Code § 1396r-5.

(23) To create a trust for the benefit of the ward pursuant to 42 United States Code § 1396p(d)(4), provided that all amounts remaining in the trust upon the death of the ward, other than those amounts which must be paid to a state government, are to be paid to the estate of the ward.

(24) To petition the court for prior approval of transfers of assets of the ward to a revocable trust executed by the ward prior to the ward being declared incompetent, provided that the ward executed a paper-writing with all the formalities required by the laws of North Carolina for the execution of a valid will prior to the ward being declared incompetent and that will directs that the assets that are being transferred to the trust are to be distributed to the trust at the ward's death or the revocable trust has the same dispositive provisions as the ward's will or provides that the assets in the trust are to be distributed to the ward's estate upon the death of the ward. The guardian may at any time withdraw any assets (or the proceeds of the sale of any assets) transferred by the guardian to the trust upon 30 days' written notice to the trustee of the trust; provided, however, no assets which have been distributed or otherwise disposed of by the trustee (before the notice is received by the trustee) in accordance with the terms of the trust can be so withdrawn."

Section 10. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1096

Short Title: No Guns at School Law/School Employees. (Public)

Sponsors: Senator Garrou.

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY FOR A SCHOOL EMPLOYEE TO POSSESS A FIREARM ON EDUCATIONAL PROPERTY AND TO MAKE IT A FELONY FOR A STUDENT OR SCHOOL EMPLOYEE TO HAVE A FIREARM AT A CURRICULAR OR EXTRACURRICULAR ACTIVITY SPONSORED BY THE SCHOOL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. -- Any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education, school, community college, college, or university board of trustees, or directors for the administration of any public or private educational institution.

(1a) Employee. -- A person employed by a local board of education, public or private school, community college, college, or university, whether the person is an adult or a minor.

(2) Student. -- A person enrolled in a public or private school, ~~college~~ college, community college, or university, or a person who has been suspended or expelled within the last five years from a public or private school, ~~college~~ community college, college, or university, whether the person is an adult or a minor.

(3) Switchblade knife. -- A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. -- Any device enumerated in subsection (b) or (d) of this section.

(b) It shall be a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(d) It shall be a Class 1 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a Class 1 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property if:

(1) The person is not a student attending school on the educational ~~property;~~ property or an employee employed by the school working on the educational property; and

(1a) The person is not a student attending a curricular or extracurricular activity sponsored by the school at which the student is enrolled or an employee attending a curricular or extracurricular activity sponsored by the school at which the employee is employed; and

~~(2) The firearm is not concealed within the meaning of G.S. 14-269;~~

(3) The firearm is not ~~loaded and is in a locked container, a locked vehicle, or a locked firearm rack which is on a motor vehicle; and~~

loaded, is in a motor vehicle, and is in a locked container or a locked firearm rack.

~~(4) The person does not brandish, exhibit, or display the firearm in any careless, angry, or threatening manner.~~

(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(1a) A person exempted by the provisions of G.S. 14-269(b);

(2) Firefighters, emergency service personnel, North Carolina Forest Service personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or

(3) Home schools as defined in G.S. 115C-563(a)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1113
Judiciary II Committee Substitute Adopted 4/28/99

Short Title: Workers' Comp./Medical Provider Contact. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO EMPLOYER CONTACT WITH MEDICAL CARE PROVIDERS FOR CLAIMS UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-25 reads as rewritten:

"**§ 97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee. ~~The Commission shall adopt rules that govern additional methods of oral and written communications between an employer paying compensation under this Chapter and medical care providers. These rules shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim.~~ In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject

to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 232
Proposed Committee Substitute S232-PCS4685-SD

Short Title: Bo Thomas--Bicycle Safety Act. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE "BO THOMAS CHILD BICYCLE SAFETY ACT" TO REQUIRE THE USE OF CERTAIN SAFETY EQUIPMENT BY CHILDREN WHEN THEY ARE BICYCLE OPERATORS AND PASSENGERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Part 10B to Article 3 to read:

"Part 10B. Child Bicycle Safety Act.

"**§ 20-171.6. Short title.**

This Part shall be known and may be cited as the 'Bicycle Safety Act'.

"**§ 20-171.7. Definitions.**

As used in this Part, the following terms have the following meanings:

(1) 'Bicycle' means a human-powered vehicle with two wheels in tandem designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle designed to transport, by the action of pedaling, which has more than two wheels where the vehicle is used on a public roadway, public bicycle path, or other public right-of-way, but does not include a tricycle.

(2) 'Operator' means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(3) 'Other public right-of-way' means any right-of-way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or a local political subdivision thereof and is designed for use and used by vehicular and/or pedestrian traffic.

(4) 'Passenger' means a person who travels on a bicycle in any manner except as an operator.

(5) 'Protective bicycle helmet' means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI), the Snell Memorial Foundation, A.S.T.M., or the United States Consumer Product Safety Commission under 16 C.F.R. § 1203.

(6) 'Public bicycle path' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by bicycles and pedestrians.

(7) 'Public roadway' means a right-of-way under the jurisdiction and control of this State or a local political subdivision thereof for use primarily by motor vehicles.

(8) 'Restraining seat' means a seat separate from the saddle seat of the operator of the bicycle that is fastened securely to the frame of the bicycle and is adequately equipped to restrain the passenger in such seat and protect such passenger from the moving parts of the bicycle.

(9) 'Tricycle' means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.

"**§ 20-171.8. Requirements for helmet and restraining seat use.**

With regard to any bicycle used on a public roadway, public bicycle path, or other public right-of-way:

(a) It shall be unlawful for any person who is 16 years old or younger to operate or be a passenger on a bicycle unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit fastened securely upon the head with the straps of the helmet.

(b) It shall be unlawful for any person to be a passenger on a bicycle unless all of the following conditions are met:

(1) The person is able to maintain an erect position on the bicycle;

(2) With respect to any person who weighs less than 40 pounds, or is less than 40 inches in height, the person can be and is properly seated in and adequately secured to a restraining seat.

(c) It shall be unlawful for any parent or legal guardian of a person who is 16 years old or younger to knowingly permit such person to operate or be a passenger on a bicycle in violation of subsection (a) or (b) of this section.

(d) A violation of subsection (a), (b), or (c) of this section shall not constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence.

(e) Subsection (a) of this section shall not apply to bicycles operated on 'ocean beaches' as defined in G.S. 77-20.

"**§ 20-171.9. Penalties.**

(a) Except as provided in subsection (b) of this section, any person 16 years of age or older who violates any requirement set forth in G.S. 20-171.8 shall have committed an infraction as defined in G.S. 14-3.1 and may be ordered to pay a fine of up to ten dollars ($10.00). The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction under G.S. 20-171.8 may not be assessed court costs.

(b) If the person convicted of a violation of G.S. 20-171.8 (a), (b), or (c) has not been convicted of a prior violation of this Part within the preceding 12-month period, the court may waive the fine upon receipt of satisfactory proof that the person responsible for the infraction has purchased or otherwise obtained, as appropriate, a protective bicycle helmet or a restraining seat, and uses and agrees to use it as required under G.S. 20-171.8.

"**§ 20-171.10. Effect on local standards.**

Nothing in this Part shall prohibit a unit of local government from adopting more stringent standards for bicycle safety by ordinance, including, but not limited to, making the provisions of this Part applicable to persons over the age of 16."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 999*
Proposed Committee Substitute S999-PCS3794-LH

Short Title: Rt. to Keep & Bear Arms Protection Act. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ONLY THE STATE MAY BRING CERTAIN CIVIL ACTIONS AGAINST FIREARMS OR AMMUNITION MARKETERS, MANUFACTURERS, DISTRIBUTORS, DEALERS, SELLERS, OR TRADE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-409.40 reads as rewritten:

"**§ 14-409.40. Statewide uniformity of local regulation.**

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

(a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.

(b) Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of

firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.

(d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in declared states of emergency under Article 36A of this Chapter.

(g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Furthermore, no action against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association representing or promoting any such marketer, manufacturer, distributor, dealer, or seller shall be brought by the Attorney General without the authorization of the General Assembly by adoption of a concurrent resolution. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit."

Section 2. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not

affect other provisions of the act that can be given effect without the invalid provision.

Section 3. This act is effective when it becomes law and applies to any action pending or filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

S1003-PCSSD-002
PROPOSED COMMITTEE SUBSTITUTE FOR
SENATE BILL 1003

THIS IS A DRAFT-LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Gifts by Guardians. (Public)

Sponsors:

Referred to: Judiciary II.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES REGULATING THE ABILITY OF GUARDIANS TO MAKE GIFTS FROM INCOMPETENT WARDS' ESTATES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 35A-1335 reads as rewritten:

"§ 35A-1335. Gifts authorized with approval of judge of superior court.

With the approval of the resident judge of the superior court of the district in which the guardian ~~he~~ was appointed, upon a duly verified petition the guardian ~~or trustee~~ of a person judicially declared to be incompetent may, from the income of the incompetent, make gifts to the State of North Carolina, its agencies, counties or municipalities, or to the United States or its agencies or instrumentalities, or for religious, charitable, literary, scientific, historical, medical or educational ~~purposes.~~ purposes, or to individuals. References in this Article to the "guardian" include any Trustee appointed by the court under prior law as fiduciary for the incompetent ward's estate."

Section 2. G.S. 35A-1336 reads as rewritten:

"~~§~~ 35A-1336. Prerequisites to approval by ~~judge.~~ judge of gifts for governmental or charitable purposes.

The judge shall not approve ~~such~~ gifts from income for governmental or charitable purposes unless it appears to ~~his~~ the judge's satisfaction that all of the following apply:

(1) After ~~the~~ making ~~of such~~ the gifts and the payment of federal and State income taxes, the remaining income of the incompetent will be reasonable and adequate to provide for the support, maintenance, comfort and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and ~~such~~ those dependents in the manner to which the incompetent and ~~such~~ those dependents are accustomed and in keeping with their station in ~~life (and in no event less than twice the average, for the five calendar years preceding the calendar year of such gifts, of expenditures for the incompetent's support, maintenance, comfort and welfare);~~ life.

(2) Each donee is a donee to which a competent donor could make a gift, without limit as to amount, without incurring federal or State gift tax ~~liability;~~ liability.

(3) Each donee is a donee qualified to receive tax deductible gifts under federal and State income tax ~~laws;~~ laws.

(4) The aggregate of ~~such~~ the gifts does not exceed the percentage of income fixed by federal law as the maximum deduction allowable for ~~such~~ the gifts in computing federal income tax liability.

Section 3. Chapter 35A of the General Statutes is amended by adding a new section to read:

"**§ 35A-1336.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from income to individuals unless it appears to the judge's satisfaction that both the following requirements are met:

(1) After making the gifts and paying federal and State income taxes, the remaining income of the incompetent will be reasonable and adequate to provide for the support, maintenance, comfort, and welfare of the incompetent and those legally entitled to support from the incompetent in order

to maintain the incompetent and those dependents in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life;

(2) The judge determines that either:

a. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent, and each donee is entitled to one or more specific legacies, bequests, devises, or distributions of specific amounts of money, income, or property under the paper-writing or the revocable trust or both or is a residuary legatee, devisee, or beneficiary designated in the paper-writing or revocable trust or both; or

b. That so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent and each donee is a person who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of the approval of the gifts; or

c. The donee is the spouse, parent, descendent of the incompetent, or descendant of the incompetent's parent and the amount of the gift does not exceed the federal annual gift tax exclusion.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death."

Section 4. G.S. 35A-1340 reads as rewritten:

"**§ 35A-1340. Gifts authorized with approval of judge of superior court.**

With the approval of the resident judge of the superior court of the district in which the guardian ~~or trustee~~ was appointed

upon a duly verified petition, the guardian ~~or trustee~~ of a person judicially declared to be incompetent may, from the principal of the incompetent's estate, make gifts to the State of North Carolina, its agencies, counties or municipalities, or the United States or its agencies or instrumentalities, or for religious, charitable, literary, scientific, historical, medical or educational ~~purposes.~~ purposes, or to individuals. The incompetent's estate shall consist of all assets owned by the incompetent, including nonprobate assets. For purposes of this Article, nonprobate assets are those which would not be distributable in accordance with the incompetent's valid probated will or the provisions of Chapter 29 at the incompetent's death. The incompetent's nonprobate estate would include nonprobate assets only. References in this Article to the "guardian" include any Trustee appointed by the court under prior law as fiduciary for the incompetent ward's estate."

Section 5. G.S. 35A-1341 reads as rewritten:

"§ 35A-1341. Prerequisites to approval by ~~judge.~~ judge of gifts for governmental or charitable purposes.

The judge shall not approve ~~such~~ any gifts from principal for governmental or charitable purposes unless it appears to ~~his~~ the judge's satisfaction ~~that:~~ all of the following requirements are met:

(1) The making of ~~such~~ the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income for the support, maintenance, comfort and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and ~~such~~ these dependents in the manner to which the incompetent and ~~such~~ those dependents are accustomed and in keeping with their station in ~~life;~~ life.

(2) Each donee is a donee to which a competent donor could make a gift, without limit as to amount, without incurring federal or State gift tax ~~liability;~~ liability.

(3) Each donee is a donee qualified to receive tax deductible gifts under federal and State income tax ~~laws;~~ laws.

(4) The making of ~~such~~ the gifts will not jeopardize the rights of any creditor of the ~~incompetent; and~~ incompetent.

(5) It is improbable that the incompetent will recover competency during his or her ~~lifetime;~~ lifetime.

(6) Sufficient credible evidence is presented to the court that the proposed gift is of a nature which the incompetent would have approved prior to being declared incompetent.

(7) Either a. or b. applies:

a. All of the following apply:

1. The incompetent, prior to being declared incompetent, executed a ~~paper-writing,~~ paper-writing with the formalities required by the laws of North Carolina for the execution of a valid ~~will;~~ will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent.

2. Specific legacies, ~~bequests or devises~~ bequests, devises, or non-discretionary distributions of specific amounts of money, income or property included in ~~such~~ the paper-writing or revocable trust or both, will not be jeopardized by making ~~such gifts;~~ the gifts.

3. All residuary ~~legatees and~~ legatees, devisees and beneficiaries designated in ~~such~~ the ~~paper-writing,~~ paper-writing or revocable trust or both, who would take under the ~~paper-writing~~ paper-writing or revocable trust or both, if the incompetent died contemporaneously with the signing of the order of approval of ~~such~~ the gifts and ~~such paper-writing~~ the paper-writing was probated as the incompetent's will and the spouse, if any, of ~~such~~ the incompetent have been given at least 10 days' written notice that approval for ~~such~~ the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian ~~or trustee~~ was appointed, within the 10-day ~~period;~~ period.

b. Both of the following apply:

1. That so far as is known the incompetent has not prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent; and
2. All persons who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for ~~such~~ the gifts will be sought and that objection may be filed with the clerk of the superior court, of the county in which the guardian ~~or trustee~~ was appointed, within the 10-day period.

(8) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset if the incompetent died contemporaneously with the signing of the order of approval have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed within the 10-day period. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341(6)a.3. and (6)b.2."

Section 6. Chapter 35A of the General Statutes is amended by adding a new section to read:

"**§ 35A-1341.1. Prerequisites to approval by judge of gifts to individuals.**

The judge shall not approve gifts from principal to individuals unless it appears to the judge's satisfaction that all of the following requirements have been met:

(1) Making the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income for the support, maintenance, comfort, and welfare of the incompetent in order to maintain the incompetent and any dependents legally entitled to support from the incompetent in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life.

(2) The making of the gifts will not jeopardize the rights of any existing creditor of the incompetent.
(3) It is improbable that the incompetent will recover competency during his or her lifetime.
(4) The judge determines that either a., b., c., or d. applies.
a. All of the following apply:
1. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent.
2. Each donee is entitled to one or more specific legacies, bequests, devises, or distributions of specific amounts of money, income, or property under either the paper-writing or revocable trust or both or is a residuary legatee, devisee, or beneficiary designated in the paper-writing or revocable trust or both.
3. The making of the gifts will not jeopardize any specific legacy, bequest, devise, or distribution of specific amounts of money, income, or property.
b. That so far as is known the incompetent has not prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent and each donee is a person who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval of the gifts.
c. The donee is a person who would share in the incompetent's nonprobate estate, if the incompetent died contemporaneously with the signing of the order of approval.
d. The donee is the spouse, parent, descendant of the incompetent, or descendant of the incompetent's parent and the amount of the gift does not exceed the federal annual gift tax exclusion.

(5) If the incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent; then all residuary legatees, devisees, and beneficiaries designated in the paper-writing or revocable trust or both, who would take under the paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of the gifts and the paper-writing was probated as the incompetent's will, the spouse, if any, of the incompetent and all persons identified in G.S. 35A-1341.1(7) have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed, within the 10-day period.

(6) If so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, all persons who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of the superior court of the county in which the guardian was appointed, within the 10-day period.

(7) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset if the incompetent died contemporaneously with the signing of the order of approval have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior of the county in which the guardian was appointed within the 10-day period. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341.1(5) and (6) above.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death.

Section 7. G.S. 35A-1342 reads as rewritten:

"**§ 35A-1342. Who deemed specific and residuary legatees and devisees of incompetent under § 35A-1341.**

For purposes of G.S. 35A-1341(6)a and 35A-1341.1(4) and (5), ~~of this Article,~~ if ~~such paper-writing~~ the paper-writing provides for the residuary estate to be placed in trust for a term of years, or if the paper-writing names as beneficiary a revocable trust created by the incompetent, and the trust or trusts include dispositive provisions which provide that assets continue in trust for a term of years with stated amounts of income payable to designated beneficiaries during the term and stated amounts payable to designated beneficiaries upon termination of the ~~trust, such~~ trust or trusts, the designated beneficiaries shall be deemed to be specific ~~legatees and devisees~~ legatees, devisees, and beneficiaries and those taking the remaining income of the trust or trusts and, at the end of the term, the remaining principal shall be deemed to be residuary ~~legatees and devisees~~ legatees, devisees, and beneficiaries who would take under the ~~paper-writing~~ paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of ~~such~~ the gifts. In no case shall any prospective executor or trustee be considered either a specific or residuary ~~legatee and devisee~~ legatee, devisee, or beneficiary on the sole basis of prospective service as executor or trustee."

Section 8. G.S. 35A-1343 reads as rewritten:

"**§ 35A-1343. Notice to minors and incompetents under ~~§ 35A-1341.~~ § 35A-1341 and § 35A-1341.1.**

If any person, to whom notice must be given under the provisions of G.S. ~~35A-1341(6)~~ 35A-1341 and G.S. 35A-1341.1 ~~of this Article,~~ is a minor or is incompetent, or is an unborn or unascertained beneficiary, then the notice shall be given to his duly appointed guardian or other duly appointed representative: Provided, that if a ~~minor or incompetent~~ minor, incompetent, unborn, or unascertained beneficiary has no ~~such~~ guardian or ~~representative~~ representative, then a guardian ad litem shall be appointed by the judge and ~~such~~ the guardian ad litem shall be given the notice herein required."

Section 9. G.S. 35A-1251 reads as rewritten:

"**§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

(1) To take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5).

(2) To receive assets due the ward from any source.

(3) To maintain any appropriate action or proceeding to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor of or against the ward.

(4) To complete performance of contracts entered into by the ward that continue as obligations of the ward or his estate, or to refuse to complete ~~such~~ the contracts, as the guardian determines to be in the ward's best interests, taking into account any cause of action that might be maintained against the ward for failure to complete ~~such~~ the contract.

(5) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in ~~such~~ a condition that it is of no benefit or value to the ward or his estate.

(5a) To renounce any interest in property as provided in Chapter 31B of the General Statutes, or as otherwise allowed by law.

(6) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward.

(7) To insure the ward's assets against damage or loss, at the expense of the ward's estate.

(8) To pay the ward's debts and obligations that were incurred prior to the date of adjudication of incompetence or appointment of a guardian when the debt or obligation was incurred for necessary living expenses or taxes; or when the debt or obligation involves a specific lien on real or personal property, if the ward has an equity in the property on which there is a specific lien; or when the guardian is convinced that payment of the debt or obligation is in the best interest of the ward or his estate.

(9) To renew the ward's obligations for the payment of money. The guardian's execution of any obligation for the payment of money pursuant to this subsection shall not be held or construed to be binding on the guardian personally.

(10) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.

(11) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(12) To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal.

(13) To pay from the ward's estate necessary expenses of administering the ward's estate.

(14) To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian.

(15) To continue any business or venture or farming operation in which the ward was engaged, where ~~such~~ that continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in ~~such~~ the business.

(16) To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks,

preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(17) a. Without a court order to lease any of the ward's real estate for a term of not more than three years, or to sell, lease or exchange any of the ward's personal property including securities, provided that the aggregate value of all items of the ward's tangible personal property sold without court order over the duration of the estate shall not exceed one thousand five hundred dollars ($1,500). When any item of the ward's tangible personal property has a value which when increased by the value of all other tangible personal property previously sold in the estate without a court order would exceed one thousand five hundred dollars ($1,500), a guardian may sell the item only as provided in subdivision (17)b.

b. A guardian who is required by subdivision (17)a to do so shall, and any other guardian who so desires may, by motion in the cause, request the court to issue him an order to lease any of the ward's real estate or to sell any item or items of the ward's personal property. Notice of the motion and of the date, time and place of a hearing thereon shall be served, as provided in G.S. 1A-1, Rule 5, Rules of Civil Procedure, upon all parties of record and upon ~~such~~ any other persons ~~as~~ the clerk may direct, and the court may issue the order after conducting a hearing and upon ~~such~~ any conditions ~~as~~ that the court may require; provided that:

1. A sale, lease, or exchange under this subdivision may not be subject to Article 29A of Chapter 1 of the General Statutes unless the order so requires; and

2. The power granted in this subdivision shall not affect the power of the guardian to petition the court for prior approval of expenditures from estate principal under subdivision (12) of this section.

(18) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed or trust, or other lien securing ~~such~~ the bond, note or other obligation, and to bid in the property at ~~such~~ a foreclosure sale, or to acquire the property deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(19) To borrow money for ~~such~~ any periods of time and upon ~~such~~ the terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber ~~such~~ that portion of the ward's estate as may be required to secure ~~such~~ the loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter is controlling.

(20) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

(21) To expend estate income for the support, maintenance, and education of the ward's minor children, spouse, and dependents, and to petition the court for prior approval of expenditures from estate principal for these purposes; provided, the clerk, in the original order appointing the guardian or a subsequent order, may require that the expenditures from estate income also be approved in advance. In determining whether and in what amount to make or approve these expenditures, the guardian or clerk shall take into account the ward's legal obligations to his minor children, spouse, and dependents; the sufficiency of the ward's estate to meet the ward's needs; the needs

and resources of the ward's minor children, spouse, and dependents; and the ward's conduct or expressed wishes, prior to becoming incompetent, in regard to the support of these persons.

(22) To transfer to the spouse of the ward those amounts authorized for transfer to the spouse pursuant to 42 United States Code § 1396r-5.

(23) To create a trust for the benefit of the ward pursuant to 42 United States Code § 1396p(d)(4), provided that all amounts remaining in the trust upon the death of the ward, other than those amounts which must be paid to a state government, are to be paid to the estate of the ward.

(24) To petition the court for prior approval of transfers of assets of the ward to a revocable trust executed by the ward prior to the ward being declared incompetent, provided that the ward executed a paper-writing with all the formalities required by the laws of North Carolina for the execution of a valid will prior to the ward being declared incompetent and that will directs that the assets that are being transferred to the trust are to be distributed to the trust at the ward's death or the revocable trust has the same dispositive provisions as the ward's will or provides that the assets in the trust are to be distributed to the ward's estate upon the death of the ward. The guardian may at any time withdraw any assets (or the proceeds of the sale of any assets) transferred by the guardian to the trust upon 30 days' written notice to the trustee of the trust; provided, however, no assets which have been distributed or otherwise disposed of by the trustee (before the notice is received by the trustee) in accordance with the terms of the trust can be so withdrawn."

Section 10. This act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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S1113-PCSSD-001
PROPOSED COMMITTEE SUBSTITUTE FOR
SENATE BILL 1113

Short Title: Workers' Comp./Medical Provider Contact. (Public)

Sponsors:

Referred to: Rules and Operations of the Senate.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO EMPLOYER CONTACT WITH MEDICAL CARE PROVIDERS FOR CLAIMS UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-25 is rewritten to read:

" **§ 97-25. Medical treatment and supplies.**

Medical compensation shall be provided by the employer. Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer paying medical compensation to a provider rendering treatment under this Chapter may obtain records of the treatment without the express authorization of the employee. ~~The Commission shall adopt rules that govern additional methods of oral and written communications between an employer paying compensation under this Chapter and medical care providers. These rules shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim.~~ In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further

treatments as may in the discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

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

S232:
Bo Thomas -- Bicycle Safety Act

BILL ANALYSIS

Committee: Senate Judiciary II
Date: March 23, 1999
Version: 1st Ed.

Introduced by: Sen. Bill Martin
Summary by: Ed Rossi
Committee Co-Counsel

SUMMARY: Senate bill 232 creates the Child Bicycle Safety Act. The bill requires that all persons under 19 wear a helmet when riding a bicycle. Children who weigh less than 40lbs or are less than 3 & ½ feet tall must be strapped into a restraining seat when they are passengers on a bicycle. The bill imposes a fine of up to $10.00 for persons who violate the act.

CURRENT LAW: Current law does not require bicycle riders to wear helmets. Bicycles are considered vehicles for purposes of the motor vehicle code.[1] They are subject to the applicable provisions of motor vehicle code,[2] but are exempt from the impaired driving provisions of that code.[3] Currently, lights and reflectors are the only safety devices required by law.[4]

BILL ANALYSIS: *Application* – The bill only applies to bicycles that are being operated on public roadways, public rights of way, or public bicycle paths. The bill does not address bicycles operated on private roads or trails and it does not address tricycles – other than to exclude them from regulation.

Fines – Parents who knowingly permit their children to ride on bicycles in violation of the bill, may be found guilty of an infraction that carries a fine of up to$10.00. That fine may be waived if a proper helmet or restraining seat is obtained, and is used or intended to be used, and there were no other violations of the act within a 12-month period .

Merchants – The bill also covers merchants who rent bicycles. They are prohibited from renting a bicycle to a person under 19 unless that person: (i) posses a proper helmet at the time of the rental; (ii) the rental includes a proper fitting helmet that the person ***intends*** to wear at all times while riding the bicycle.

In addition, merchants are prohibited from renting a bicycle that will be used by any person under 19 unless that person: (i) posses a proper helmet at the time of the rental; (ii) the rental includes a proper fitting helmet that the person ***intends*** to wear at all times while riding the bicycle.

Thus, at the time of rental, a merchant would presumably have to ask a person under 19 whether they intended to wear a helmet at all times while riding a bicycle. If a merchant was renting or leasing to persons over 19 she would presumably have to ask the renter whether the bicycle would used by someone under 19, and if the answer was yes , the merchant would then have to ask the renter whether the person under 19 intended to wear a helmet at all times while using the bicycle.

Liability – Senate bill 232 potentially imposes different standards of liability. Parents are excluded from a *negligence per se* standard. Merchants are not.

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[1] G.S. § 20-4.01(49)
[2] Id.
[3] G.S. § 20-138.1(e)
[4] G.S. § 20-129(e)

Facts on
The Bo Thomas Bicycle Safety Act

* requires that all bicycle riders aged 18 or younger wear an approved helmet when riding on a public road or public right-of-way

* requires a restraining seat for any bicycle passenger who weighs less than 40 lbs. or is less than 40 inches in height

* forbids rental or lease of a bicycle to anyone aged 18 or younger unless the person is in possession of a protective helmet or a helmet is provided to the rider

* sets an infraction penalty and a fine of $10 (but not court costs) for anyone who violates the act, but permits the court to waive the fine if the rider shows satisfactory proof of obtaining a protective helmet and intending to wear it

Background

* Fifteen states already have statewide bicycle helmet laws.

* An average of 13 children under the age of 19 die each year as the result of bicycle accidents in North Carolina. An additional 120 children are seriously injured.

* Many more children are injured in bicycle accidents that do not involve motor vehicles and are not reported by police. A 1990 study estimated that 800 North Carolina children are hospitalized annually for bicycle-related injuries (including an estimated 264 head injuries), and an additional 13,300 children receive emergency treatment (including an estimated 8,900 head injuries).

* Head injury poses the greatest risk to bicyclists. National studies show that one-third of emergency room visits, two-thirds of hospital admissions, and three-fourths of all bicycle accident deaths involve head injury.

* Numerous studies prove that bicycle helmets reduce the likelihood of head and brain injury by 70 to 88 percent. A non-helmeted bicyclist is two to three times more likely than a helmeted bicyclist to suffer a head injury.

* In North Carolina, 6 percent of bicyclists in accidents are wearing a helmet. For bicyclists under the age of 19, just 3 percent are wearing a helmet.

* Greenville, Carolina Beach and Chapel Hill already have bicycle helmet ordinances. Boone and Black Mountain require helmets for riders of *all ages*.

(over)

<u>Supporting Organizations</u> (partial list)

* College of Emergency Physicians
* N.C. Child Fatality Task Force
* Child Advocacy Institute
* N.C. Chapter, Am. Academy of Pediatrics
* Covenant With North Carolina's Children
* Brain Injury Association of N.C., Inc.
* N.C. Public Health Association
* N.C. Assoc. Of Local Health Directors
* N.C. Soc. Of Public Health Educators
* N.C. State Board of Education

[f-03-99]

INJURIES OF CHILDREN ON BIKES IN NORTH CAROLINA

Time frame of data: 1993-1997
For further information: Liz Newlin, RN ; Trauma Coordinator, WakeMed 919-350-8951
Sharon Kromhout-Schiro, Ph.D, Registry Director 919-966-6263

Ages: 0-18.9
Total Patients: 642 in the data base for that time frame

Cumulative Information:	Total	0-5.9 yrs	6-11.9 yrs	12-18.9 yrs
Total:	642	63	421	258
Deaths with helmet:	2	0	0	2
Deaths without helmets	10	0	7	3
Deaths helmet not documented	13	1	8	4

Types of Injury:	0-5.9	6-11.9	12-18.9
With Helmet on			
Head Injury	0	3	2
Head injury and other body injuries	0	6	8
Other	1	7	12
Without Helmet			
Head injury	3	19	10
Head injury and other body injury	3	44	35
Other	3	29	30
Helmet not documented			
Head Injury	9	28	23
Head Injury and other body injury	14	77	59
Other	30	107	77

***Hospital Charges**

	Mean cost	**maximum cost**
Helmet on		
0-5.9(1)	6,483.00	6,483.00
6-11.9(16)	10,593.94	35,345.00
12-18.9(20)	15,731.85	95,248.00
No Helmet on		
0-5.9(9)	8,490.11	28,846.00
6-11.9(90)	11,937.82	160,430.00
12-18.9(73)	11,361.01	100,820.00
Helmet use not documented in report to hospital		
0-5.9(48)	7,277.00	45,216.00
6-11.9(205)	10,120.00	132,838.00
12-18.9(151)	10,818.00	107,332.00

*This is only for the initial hopital stay, not physician charges, rehab charges, home health or any other continuum of care charges 29 patients had incomplete charge information.

S929:
Abatement of Nuisances

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Sen. Reeves
Date:	April 21, 1999	**Summary by:**	Ed Rossi
Version:	1st. Ed		Committee Counsel

SUMMARY: Senate bill 929, "...amends GS 19-1.1(3) to provide that "knowledge" or "knowledge of such nuisance" means, with regard to nuisances involving assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages or controlled substances, or repeated acts that create and constitute a breach of the peace, evidence that defendant knew, or by exercise of due diligence should have known, of the acts or conduct. Amends GS 19-1.1 to define "breach of the peace" as act that disturbs public tranquility and order including, but not limited to, homicide, assault, affray, communicating threats, stalking, loud obscene or abusive language, unlawful possession of dangerous or deadly weapons, and discharging firearms. Amends GS 19-1.1 to define "prostitution" as offering in any manner or receiving in return for fee, for acts of vaginal intercourse, anal intercourse, fellatio, cunnilingus, masturbation, or physical contact with person's genitals, pubic area, buttocks, or breasts, or other acts of sexual conduct offered or received for pay and sexual gratification. Amends GS 19-1.3(3) to include vehicles and conveyances as personal property declared as nuisances as set out in subsection. Adds new GS 19-1.6 to provide that cessation of nuisance activities does not preclude action for abatement of nuisance based on its past operation. Amends GS 19-2.1 to provide that on request of Att'y General, district attorney, county or municipality, including sheriff or chief of police, Alcohol Law Enforcement Div'n of Dep't of Crime Control and Public Safety or other law enforcement agency may investigate alleged public nuisances and make recommendations concerning actions to abate public nuisances. Amends GS 19-2.5 to provide that court may order closure of property pending trial on merits."[1]

[1] Institute of Government Bill Summary

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

8000 Weston Parkway
Post Office Box 3688
Cary, North Carolina 27519-3688
919.677.0561/800.662.7407
facsimile 919.677.0761
http://www.barlinc.org

Senate Bill 1003 - Gifts by Guardians

Reducing Tax Liability of Incompetents, Subject to Court Approval

For many years the North Carolina guardianship statutes have included a provision which allows gifts from an incompetent's assets to charities for tax and estate planning purposes. The current statute is limited, however to gifts to charities and does not allow gifts to family members or other individuals. The Estate Plannning and Fiduciary Law Section of the North Carolina Bar Association recommends that the existing statute be updated and expanded to allow gifts to family members and other individuals as well as to charities. Senate Bill 1003 contains a number of protective provisions which ensure that sufficient assets are retained to provide for the incompetent's support. The bill statute allows gifts to be made to beneficiaries under the incompetent's will if the incompetent executed a will before incompetency, to intestate takers of the incompetent if the incompetent has not executed a will, and to close family members of the incompetent up to the amount of the annual gift tax exclusion (currently $10,000).

All gifts made pursuant to these changes must be approved by a Superior Court Judge. Prior to such approval, notice must be given to the beneficiaries of the incompetent's will, if any, and the incompetents's intestate takers.

Senate Bill 1003 will assist in estate and tax planning for incompetents with assets subject to estate and gift taxation by reducing potential tax liability.

The North Carolina Bar Association recommends passage of this important legislation.

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

27693

SENATE BILL 1096:
No Guns at School Law/ School Employees

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Garrou
Date:	April 27, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 1096 makes it a Class I felony for a school employee to possess a firearm on educational property, and makes the prohibition against weapons on educational property applicable to community colleges. It also makes it a Class I felony for a student or school employee to have a firearm at a curricular or extracurricular activity sponsored by the school.***

CURRENT LAW: It is currently a Class 1 misdemeanor (rather than a Class I felony) for any person other than a student to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property if the firearm is not concealed, the firearm is not loaded and is in a locked container, vehicle or firearm rack, and the person is not brandishing the firearm.

BILL ANALYSIS: Senate Bill 1096 rewrites the provision which sets out when the possession of a gun on school property is a misdemeanor rather than a felony, so that school employees no longer fall within the exception. The bill would make school employees guilty of a Class I felony for possession of a firearm on educational property. It would also make the offense a Class I felony for a student or school employee attending an activity sponsored by the school at which the person is enrolled or employed. The bill makes the provisions specifically applicable to community colleges as well as other schools and colleges. The presumptive minimum sentence for a Class I felony, assuming no prior convictions, is 4-6 months community punishment as opposed to 1-45 days community punishment for a Class 1 misdemeanor. The offense is a Class 1 misdemeanor only when the person is not a student or employee and the gun is not loaded and is in a locked container or locked fiream rack within a motor vehicle.

The bill would be effective December 1, 1999 and apply to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
SAM JOHNSON	ATTY
Algie Hatewood	Education
Joe Foster	GTE Service Corporation
Penny Morris	Public School Forum
Will Fay	AHHC
Ron Aycock	N.C. Assn Co. Comm.
Don Lyon	AIC Dor
John Brantley	CWC-TU
Joanne E Finney	NCSBA
C. Medlin	Covenant w/ NCs Children
Pam Seaman	Covenant w/ NC's Children
Paula A. Wolf	Covenant w/ NC's Children
Lois B. Britt	Murphy Lamm, R Hall
RL Hudson	atty
Thomas Vera Bennett	NCCFDF

VISITOR REGISTRATION SHEET

S 11
Name of Committee

April 27, 99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Peg Boner	Conference of D.A.s
Jeff Koon	NRD
Pam Lapsley	Sen. Basnight
Catherine Davis	ElectriCities
Matt Osborne	AOC
Bill Seegers	NC Bar Assoc.
Alan Mills	Bailey & Dixon LLP
David Ferrell	H, Mc, CC&C, P.A.
Glenn Wells	DHHS/Public Health
Rodney Johnson	NC ALE
Mary Ann Talley	NCATL
THOMAS BEATTIE	GRASS ROOTS NORTH CAROLINA
Jeff Rau	Grass Roots NC
Karl Knapp	City of Winston-Salem
Bill Wilson	NCAE
Thad Davis	NCAE

VISITOR REGISTRATION SHEET

S 11 — April 27. 1999

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
C MEDLIN	Covenant w/ NC's Children
PAULA A. WOLF	Covenant w/ NC's Children
Pat Yancey	APPCNC/ACLU
Thomas V. Bennett	NCCFTF
Jon Williams	CCPS
Bill Scoggin	NC BAR ASSOC.
M WEISEL	ALLEN + PINNIX
Karl Knapp	City of Winston-Salem
Kim Hibbard	NCLM
Katherine Davis	ElectriCities

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NCSDA
Larry D Cx	OTL

SENATE JUDICIARY II COMMITTEE

MAY 6, 1999

ROOM 1124

HB 477	Community College Campus Police	Representative Jeffus
HB 644	"Quick Take" Notice of Appeal	Representative Gulley
HB 980	Workers' Comp./Third Party Actions	Representative Baddour
HB 991	Workers' Comp. and UIM Insurance	Representative Baddour

Adjournment

SENATE JUDICIARY II COMMITTEE

MAY 6, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, May 6, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Fourteen members were present, including Senator Brad Miller, who presided.

HB 477, Community College Campus Police, was explained by Representative Jeffus. Senator Shaw moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Horton was recognized to explain HB 644, "Quick Take" Notice of Appeal. Andy Romenet, with the NC League of Municipalities, spoke in favor of the bill with a recommendation to delete on page 2, line 14, "at its top." Senator Horton moved to amend the bill according to Mr. Romenet's suggestion. The motion failed. Senator Ballance moved to amend the bill by deleting the words "a qualified attorney" on page 2, line 20, and substituting "an attorney." The motion carried unanimously. Senator Kinnaird moved to again amend the bill on page 2, line 13, deleting "ten" and substituting "twelve." The motion carried unanimously. Senator Rucho moved to engross the amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to committee substitute bill #A, but favorable as to Senate committee substitute.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Thursday, May 06, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**477** Community College Campus Police.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 477
Committee Substitute Reported Without Prejudice 4/7/99
Third Edition Engrossed 4/15/99

Short Title: Community College Campus Police. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF CAMPUS LAW ENFORCEMENT AGENCIES AT COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 115D is amended by adding the following new section to read:

"**§ 115D-21.1. Campus law enforcement agencies.**

(a) The board of trustees of any community college may establish a campus law enforcement agency and employ campus police officers. These officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the community college employing the officer and that portion of any public road or highway passing through the property and immediately adjoining it, wherever located.

(b) The board of trustees of any community college that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into the municipality's jurisdiction and to determine the circumstances under which this extension of authority may be granted.

(c) The board of trustees of any community college that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint agreements with the governing board of any county, with the consent of the sheriff, to extend the law enforcement authority of campus police officers into the county's jurisdiction and to determine the circumstances under which this extension of authority may be granted."

Section 2. G.S. 15A-402(f) reads as rewritten:

"(f) Campus Police Officers, Immediate and Continuous Flight. -- A campus police officer: (i) appointed by a campus law-enforcement agency established pursuant to G.S. 116-40.5(a); ~~or (ii)~~ (ii) appointed by a campus law enforcement agency established under G.S. 115D-21.1(a); or (iii) commissioned by the Attorney General pursuant to Chapter 74E and employed by a college or university which is licensed, or exempted from licensure, by G.S. 116-15 may arrest a person outside his territorial jurisdiction when the person arrested has committed a criminal offense within the territorial jurisdiction, for which the officer could have arrested the person within that territory, and the arrest is made during such person's immediate and continuous flight from that territory."

Section 3. G.S. 74E-6(f) reads as rewritten:

"(f) Campus Option. -- Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C ~~or~~ and Chapter 116 of the General Statutes and the board of trustees of any community college may elect to have its officers certified under Chapter 17C and Chapter 115D of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter."

Section 4. G.S. 160A-288(d) reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 115D-21.1(a) or G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E; and

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 644*
Committee Substitute Favorable 4/23/99

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF OWNER'S RIGHTS IN THE NOTICE OF ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-40 reads as rewritten:

"**§ 40A-40. Notice of action.**

Not less than 30 days prior to the filing of a complaint under the provisions of G.S. 40A-41, a public condemnor listed in G.S. 40A-3(b) or (c) shall provide notice to each owner (whose name and address can be ascertained by reasonable diligence) of its intent to institute an action to condemn property. (The notice shall be sent to each owner by certified mail, return receipt requested. The providing of notice shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Notice by publication is not required. Notice to an owner whose name and/or address cannot be ascertained by reasonable diligence is not required in any manner.)

The notice shall contain a general description of the property to be taken and of the amount estimated by the condemnor to be just compensation for the property to be condemned. The notice shall also state the purpose for which the property is being ~~condemned and~~ condemned, the date condemnor intends to file the ~~complaint.~~ complaint, and in the case of a condemnation action to be commenced pursuant to

G.S. 40A-42(a), a summary of the owner's rights including the right to commence an action for injunctive relief and the right to answer the complaint."

Section 2. This act becomes effective October 1, 1999, and applies to notices of action sent on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 980*
Committee Substitute Favorable 4/20/99

Short Title: Workers' Comp./Third Party Actions. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUDICIAL DISCRETION IN DETERMINING THE AMOUNT OF SUBROGATION OF EMPLOYERS' LIENS IN ACTIONS AGAINST THIRD PARTIES UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-10.2(j) reads as rewritten:

"(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained ~~which is insufficient to compensate the subrogation claim of the Workers' Compensation Insurance Carrier,~~ by the employee in an action against a third party, or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action arose, where the injured employee resides or the presiding judge before whom the cause of action is pending, to determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, if any, of the employer's lien and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge may consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future in determining the appropriate amount of the employer's lien. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division."

Section 2. This act is effective when it becomes law and applies to judgments or settlements entered against third parties on or after that date pursuant to G.S. 97-10.2.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 991
Committee Substitute Favorable 4/26/99

Short Title: Workers' Comp. and UIM Insurance. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT LIABILITY, UNINSURED, AND UNDERINSURED COVERAGE IS NOT REDUCED BY RECEIPT OF SUBROGATED WORKERS' COMPENSATION BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.21(e) reads as rewritten:

"(e) ~~Such~~ Uninsured or underinsured motorist coverage that is provided as part of a motor vehicle liability policy need not insure ~~against~~ against:

(1) A loss ~~from any liability~~ for which benefits ~~are in whole or in part either payable or required to be provided~~ have been paid under any workers' compensation law except as to the amount of an employer's lien determined pursuant to G.S. 97-10.2(h) or (j), in no event to exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy; nor

(2) ~~any~~ A loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured."

Section 2. This act becomes effective October 1, 1999, and applies to policies issued or renewed 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. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Horton
Sen.)

moves to amend the bill on page 2, line 14 ~~and substituting~~

( ) WHICH CHANGES THE TITLE

by deleting "at its top", ~~in the body~~

~~the motion~~.

SIGNED Horton

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Ballance
Sen.)

moves to amend the bill on page 2, line 20

( ) WHICH CHANGES THE TITLE

by deleting the words "A QUALIFIED ATTORNEY" and substituting ~~"YOUR ATTORNEY OR AN ATTORNEY WHO PRACTICES REAL ESTATE LAW."~~ "AN ATTORNEY"

SIGNED L W Ballance

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Kinnaird
Sen.)

moves to amend the bill on page 2, line 13

( ) WHICH CHANGES THE TITLE

by deleting "ten" and substituting "twelve".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H644-CSRV-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 644
THIS IS A DRAFT 5-MAY-99 20:17:32
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF OWNER'S RIGHTS IN THE NOTICE OF ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-40 reads as rewritten:

"**§ 40A-40. Notice of action.**

(a) Not less than 30 days prior to the filing of a complaint under the provisions of G.S. 40A-41, a public condemnor listed in G.S. 40A-3(b) or (c) shall provide notice to each owner (whose name and address can be ascertained by reasonable diligence) of its intent to institute an action to condemn property. (The notice shall be sent to each owner by certified mail, return receipt requested. The providing of notice shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed

wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Notice by publication is not required. Notice to an owner whose name and/or address cannot be ascertained by reasonable diligence is not required in any manner.)

The notice shall contain a general description of the property to be taken and of the amount estimated by the condemnor to be just compensation for the property to be condemned. The notice shall also state the purpose for which the property is being condemned and the date condemnor intends to file the complaint.

(b) In the case of a condemnation action to be commenced pursuant to G.S. 40A-42(a), the notice required by subsection (a) of this section shall be printed in at least ten point bold type, and shall contain conspicuously at its top, the words 'NOTICE OF CONDEMNATION' or similar wording. In addition to the information required by subsection (a) of this section, the notice shall include a summary of the owner's rights including the right to commence an action for injunctive relief and the right to answer the complaint. The notice shall conclude with a statement as follows: 'YOU ARE ENCOURAGED TO CONSULT WITH A QUALIFIED ATTORNEY REGARDING YOUR RIGHTS IN THIS MATTER.'"

Section 2. This act becomes effective October 1, 1999, and applies to notices of action sent on or after that date.

HOUSE BILL 477:
Community College Campus Police

BILL ANALYSIS

Committee: Senate Judiciary II
Date: May 6, 1999
Version: 3rd Edition

Introduced by: Representative Jeffus
Summary by: Brenda J. Carter
Committee Co-Counsel

SUMMARY: ***House Bill 477 would authorize the the establishment of campus law enforcement agencies at community colleges, an option which is currently available to boards of trustees of UNC's constituent institutions. The bill would take effect when it becomes law.***

CURRENT LAW: Currently, community colleges are subject to the Company Police Act (Chapter 74E of the General Statutes). The Company Police Act applies to public and private educational institutions and hospitals, State institutions, and corporations engaged in providing on-site police security personnel services. Each agency may apply to the Attorney General for certification as a company police agency and for commission of an individual designated by that agency to act as its company police officer. Certification of an agency expires on June 30 following the date of certification, and is renewable on an annual basis. An officer's commission also expires on June 30 following the date of issuance, and is renewable annually. The following fees apply:

Maximum Fee Application for Certification as Company Police Agency	$250
Annual Renewal of Certification	$200
Application for Reinstatement of Certification (following revoked or denied certification)	$1,000
Application for Commission as Company Police Officer	$100
Annual Renewal of Commission	$50
Application for Reinstatement of Commission	$150

Individuals who are commissioned as company police officers must take the same oath of office required of law enforcement officers. They must meet and maintain the same minimum preemployment and in-service standards as are required by the NC Criminal Justice Education and Training Standards Commission for State law enforcement officers, and must meet other minimum standards set by the Attorney General. Company police officers for community colleges are classified as campus police officers. They have the same powers, while in the performance of their duties of employment, as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on (i) real property owned by or in possession and control of the community college; (ii) real property owned by or in the possession and control of a person who has contracted with the community college to provide on-site company police security personnel services for the property; (iii) other real property while in continuous and immediate pursuit of a person for an offense committed on property described in (i) and (ii); and (iv) the portion of any public road or highway passing through or immediately adjoining the property described in (i) through (iii). Campus police officers may, if authorized by their superior, carry concealed weapons.

The board of trustees of any community college certified as a company police agency may enter into a mutual aid agreement with the governing board of a municipality or, with the sheriff's consent, a county.

Each constituent institution of The University of North Carolina is also subject to the Company Police Act; however, it may choose to have its officers certified under Chapter 17C (NC Criminal Justice Education and Training Standards Commission) or under Chapter 116 (Higher Education) of the General Statutes rather than under the Company Police Act. The NC Criminal Justice Education and Training Standards Commission (Commission) has numerous duties, including responsibility for the establishment of minimum educational and training standards for the employment, training, and retention of criminal justice officers (which would include campus police officers) and for the certification of qualified individuals. The Commission is directed to establish a cooperative arrangement among criminal justice agencies, including the Justice Academy, to provide education and training to officiers and employees of these agencies.

BILL ANALYSIS: House Bill 477 would allow each community college to choose to have its officers certified under Chapter 17C. This is the same option currently provided to UNC constituent institutions. The primary effect of the bill would be that community colleges choosing this option would no longer be required to pay annual fees for certification as company police agencies or for the commissioning of the campus police officers. The bill would not change the current powers of campus police.

The bill would be effective when it becomes law.

HOUSE BILL 644:
"Quick Take" Notice of Appeal

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Gulley
Date:	May 6, 1999	**Summary by:**	Brenda J. Carter
Version:	2nd Edition		Committee Co-Counsel

SUMMARY: House Bill 644 would require that certain public condemnors who institute a condemnation proceeding in which title may vest immediately (quick-take proceedings) must include, along with the required notice of intention to file a condemnation complaint, a notice of the owner's rights, including the right to answer and to commence an action for injunctive relief.

CURRENT LAW: G.S. 40A-40 specifies the requirements for notice prior to the filing of a condemnation complaint brought by a public condemnor listed in G.S. 40A-3(b) or (c). These condemnors include municipalities and counties, plus certain other public entities such as sanitary districts, hospital authorities, water and sewer authorities, and local redevelopment commissions. A copy of G.S. 40A-3 is attached; the complete list is contained in subsection (c). Actions where a local public condemnor may acquire immediate title to the property include a municipality opening or improving streets, sidewalks, and other ways; counties or municipalities establishing or improving storm sewer and drainage systems or sanitary sewer systems; cities or counties making other drainage improvements; water and sewer authority improvements; municipal public enterprise projects including electricity, water, wastewater, gas distribution, solid waste disposal facilities, and cable tv; county public enterprises such as water systems, sewage systems, and solid waste disposal systems; acquisition by local boards of education of sites for schools and other school facilities. The complete list is contained in G.S. 40A-42(a), and a copy of G.S. 40A-42 is attached.

BILL ANALYSIS: House Bill 644 provides that when a condemnation action provides for immediate vesting of property rights in the condemnor, the notice prior to the filing of a complaint must include a notice of the owner's rights, including the right to answer and the right to commence an action for injunctive relief.

The act would become effective October 1, 1999 and apply to actions filed on or after that date.

§ 40A-3. By whom right may be exercised.

(a) Private Condemnors. - For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

(1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains originating in North Carolina for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:

a. Not be less than 50 feet nor more than 100 feet in width; and

b. Comply with the provisions of G.S. 62-190(b).

The width of land condemned for any natural gas pipelines shall not be more than 100 feet.

(2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.

(3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commission, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding ordered by the Utilities Commission as provided in G.S. 62-232.

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the

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owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors. - For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

(1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.

(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.

(3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.

(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.

(7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.

(8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.

(9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by other statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(c) Other Public Condemnors. - For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

(1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.

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(2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.

(3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.

(4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.

(5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.

(6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.

(7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.

(8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article, provided, however, the provisions of G.S. 162A-7 shall continue to apply.

(9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.

(10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.

(11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.

(12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.

(13) A regional transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter.

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§ 40A-42. Vesting of title and right of possession; injunction not precluded.

(a) When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10) or (12), title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

(b) When a local public condemnor is acquiring property by condemnation for purposes other than for the purposes listed in subsection (a) above, title to the property taken and the right to possession shall vest in the condemnor pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor:

(1) Upon the filing of an answer by the owner who requests only that there be a determination of just compensation and who does not challenge the authority of the condemnor to condemn the property; or

(2) Upon the failure of the owner to file an answer within the 120-day time period established by G.S. 40A-46; or

(3) Upon the disbursement of the deposit in accordance with the provisions of G.S. 40A-44.

(c) If the property is owned by a private condemnor, the vesting of title in the condemnor and the right to immediate possession of the property shall not become effective until the superior court has rendered final judgment (after any appeals) that the property is not in actual public use or is not necessary to the operation of the business of the owner, as set forth in G.S. 40A-5(b).

(d) If the answer raises any issues other than the issue of compensation, the issues so raised shall be determined under the provisions of G.S. 40A-47.

(e) The judge shall enter such orders in the cause as may be required to place the condemnor in possession.

(f) The provisions of this section shall not preclude or otherwise affect any remedy of injunction available to the owner or the condemnor.

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§ 160A-311. Public enterprise defined.

As used in this Article, the term "public enterprise" includes:

(1) Electric power generation, transmission, and distribution systems;

(2) Water supply and distribution systems;

(3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without;

(5) Public transportation systems;

(6) Solid waste collection and disposal systems and facilities;

(7) Cable television systems;

(8) Off-street parking facilities and systems;

(9) Airports;

(10) Structural and natural stormwater and drainage systems of all types.

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§ 153A-274. Public enterprise defined.

As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems,

(2) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems,

(3) Solid waste collection and disposal systems and facilities,

(4) Airports,

(5) Off-street parking facilities,

(6) Public transportation systems,

(7) Structural and natural stormwater and drainage systems of all types.

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§ 115C-517. Acquisition of sites.

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, and the determination of the local board of education of the land necessary for such purposes shall be conclusive.

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VISITOR REGISTRATION SHEET

Jud. II — 5-6-99

Name of Committee — Date

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Sgt. J M Snow	GTCC Campus Police
Alan Edwards	Pitt Com. College
ROBERT C. STORTZ	GTCC CAMPUS POLICE
Lucius PULLEN	ATTORNEY
Eddie Caldwell	NC LAW ENF OFF ASSN / NC Sheriffs Assn
Melissa Lovell	DOJ
Doris Weaver	N.C. CWA Political Council
John Jay Mooney	NC CWA Council
Bill Hunt	CWA 3607 Greensboro NC
Tom Cody	CWA 3607 Director
Donny Hunt	NCCCS
Ann Case	NCLMA
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VISITOR REGISTRATION SHEET

Name of Committee | Date

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VL McBride	NCOA

SENATE JUDICIARY II COMMITTEE

MAY 11, 1999

ROOM 1124

SB 759	Sexual Privacy Act	Senator Kinnaird

SENATE JUDICIARY II COMMITTEE

MAY 11, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, May 11, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

Senator Miller announced that the committee would debate SB 759, Sexual Privacy Act, but that the bill was ineligible to be considered by the House this session since it had failed to meet the crossover deadline.

Senator Kinnaird was recognized to explain SB 759.

Speaking from the public in favor of the bill were the following: Deborah Ross, ACLU NC, John Boddie, Lawyer, Sharon Thompson, Lawyer, The Rev. Jimmy Creech, MK Cullen, ENCPAC, and Sean Haugh, Libertarian Party of North Carolina.

Speaking from the public in opposition to the bill were: John Rustin and Bill Brooks with the North Carolina Family Policy Council.

The meeting adjourned at 11:00 a.m.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 759

Short Title: Sexual Privacy Act. (Public)

Sponsors: Senators Kinnaird; Gulley and Lucas.

Referred to: Judiciary II.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO CRIMINAL PENALTIES FOR PRIVATE SEXUAL ACTIVITY BETWEEN CONSENTING ADULTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-177 reads as rewritten:

"**§ 14-177. Crime against nature.**

(a) If any person shall commit the crime against nature, with mankind or beast, he shall be punished as a Class I felon.

(b) This section shall not apply if the act occurs between consenting adults in privacy and is not for hire."

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

SENATE BILL 759:
Sexual Privacy Act

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Kinnaird
Date:	May 11, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: Senate Bill 759 would amend the crime against nature statute to exempt activity which occurs between consenting adults in privacy, so long as the activity is not engaged in for hire.

CURRENT LAW: G.S. 14-177 makes "crime against nature" a Class I felony. Assuming the defendant has no prior record, the minimum presumptive sentence for Class I felony is 4-6 months community punishment.

North Carolina courts have held each of the following acts to be "the crime against nature" as prohibited by G.S. 14-177:

- the taking by a male of the sexual organ of another male into his mouth;
- the inserting, by a male, of his sexual organ into the mouth or anus of another male or a female;
- the receiving by a male or female of the sexual organ of a male into his or her mouth or anus;
- fellatio (oral stimulation of the male sexual organ) by a female;
- cunnilingus (penetration of the female sexual organ by the tongue);
- analingus (penetration of the anus by the tongue)

BILL ANALYSIS: Senate Bill 759 would decriminalize the aforementioned sexual acts when they occur in privacy between consenting adults, and do not involve prostitution.

The bill would be effective when it becomes law.

Remarks to the Judiciary II Committee of the NC Senate

Good morning, Senators.

Today, I urge you to pass this legislation and forward it on to the floor of the Senate for a vote.
This legislation should be passed for the following reasons:

1) Government should stay out of the private lives of adults,
2) The Crimes Against Nature law is broken, on a regular basis, by a vast majority of North Carolina's citizens, and
3) This law serves no useful purpose.

Debate on this matter raises one central question: What role does government play in the lives of private citizens when it chooses to enter our homes and dictate private actions?

I believe that government should stay out of the private lives of citizens. Period. I urge you to consider this as you deliberate.

Also, studies indicate that a large percentage of adults have engaged in the activities that the Crimes Against Nature law makes illegal. For example, some 80% of the population claim to have engaged in oral sex. I submit to you that a law which is broken by nearly every citizen is a bad law.

And lastly, this law serves no useful purpose. Criminal activity, such as rape and incest, can be and are addressed in other statutes. This law dates from the time reign of King Henry the VIII. It is out-dated, useless, and continues unnecessary government intervention into the private lives of the women and men of North Carolina.

Thank you for your consideration.

Respectfully,

Michael Nelson, Mayor
Town of Carrboro

VISITOR REGISTRATION SHEET

Jud. H — 5-11-99

Name of Committee — Date

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John H. Biddie	Lawyer
Jimmy Creech	clergy
Sarah Levin-Richardson	Equality NC PAC
MK Cutten	ENCPAC
Deborah Ross	ACLU NC
Susan Arnott	ACLU-NC
BRAN HABIT	Commonsense Foundation
Susan Johnston	individual
Tony Stephens	individual
Sean Haugh	Libertarian Party of NC
Tom Howe	Libertarian Party of NC
Barbara Howe	Libertarian Party of NC
Iván Colón	Libertarian Party of NC
Anne Wilson	NC-NOW

GARRETT REDDY — ZION, PA

VISITOR REGISTRATION SHEET

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Myra M. Allen	NASW-NC
Joe McClees	N.C. Legislative Law Enforcement Committee
Lao Rubber	GSK
Sheila DeWitt	Sen. Bob Shaw's office
S. Mauser	NCAR
Dick Taylor	NCATL

SENATE JUDICIARY II COMMITTEE

MAY 13, 1999

ROOM 1124

HB 328	Sent. Commn/Crim Law Changes/AB	Rep. Braswell
HB 975	SAVAN Exemption	Rep. Braswell
HB 1100	Removal/Resignation of Trustees	Rep. Haire

Adjournment

SENATE JUDICIARY II COMMITTEE

MAY 13, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, May 13, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Nine members were present, including Senator Brad Miller, who presided.

HB 975, SAVAN Exemption, was explained by Representative Braswell. Jonathan Williams, with Crime Control and Public Safety, and Katherine Smith, with NC Victims Assistance Program, further explained the bill. Senator Ballance moved to amend the bill on page 1, lines 10 to 12. The motion carried unanimously. Senator Rucho moved to roll the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Miller announced that HB 1100, Removal/Resignation of Trustees, and HB 328, Sent. Commn/Crim Law Changes/AB, would be removed from the calendar. HB 1100 was assigned to a subcommittee for further study.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 328
Committee Substitute Favorable 3/31/99

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

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 14-107. Worthless checks.**

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. -- Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior ~~Class A1 or Class 1~~ misdemeanor ~~conviction or prior impaired driving conviction under G.S. 20-138.1,~~ conviction as defined in this subsection, 1 ~~point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)) and conviction for impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.~~ point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

Section 4. G.S. 19A-35 reads as rewritten:

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

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

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

"**§ 106-418.14. Penalties.**

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

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

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

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

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

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

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding,

or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture and Consumer Services the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

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

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

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

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

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

"**§ 106-549.88. Penalties.**

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 975
Committee Substitute Favorable 4/23/99

Short Title: SAVAN Exemption. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT SERVICES PROVIDED THROUGH THE STATEWIDE AUTOMATED VICTIM ASSISTANCE AND NOTIFICATION SYSTEM ARE SUBJECT TO THE EXEMPTIONS FROM DAMAGE CLAIMS AND OTHER GROUNDS FOR RELIEF PROVIDED FOR BY THE VICTIMS' RIGHTS ACT.

The General Assembly of North Carolina enacts:

Section 1. Effective July 1, 1999, G.S. 15A-839 reads as rewritten:

"**§ 15A-839. No money damages.**

This Article ~~does~~ and services provided through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission do not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees."

Section 2. Effective July 1, 1999, G.S. 15A-840 reads as rewritten:

"**§ 15A-840. No ground for relief.**

The failure or inability of any person to provide a right or service under this ~~Article~~ Article, including a service provided through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission, may not be used by a defendant in a criminal case, by an inmate, by any other accused, or by any victim, as a ground for relief in any criminal or civil proceeding, except in suits for a writ of mandamus by the victim."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1100
Committee Substitute Favorable 4/20/99

Short Title: Removal/Resignation of Trustees. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 36A of the General Statutes reads as rewritten:

"ARTICLE 3.

~~"Resignation, Removal, and Renunciation of Trustees.~~ "Trust Administration.

~~"§ 36A-22. Applicability of this Article.~~

~~(a) Except when otherwise provided by law, the term "trustee," as used in this Article, includes "trustees," "guardians," and other fiduciaries.~~

~~(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

~~(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.~~

"§ 36A-22.1. Definitions.

As used in this Article:

(1) 'Beneficiary' means a person who has any present or future interest, vested or contingent, in a trust, including (i) the owner of an interest by assignment or other transfer and (ii) any person entitled to enforce a charitable trust.

(2) 'Fiduciary' includes personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees.

(3) 'Interested person' includes creditors, beneficiaries, and any others having a property right in or a claim against a trust estate which may be affected by the proceeding. The term also includes fiduciaries representing interested persons. The meaning of the term as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in a particular proceeding.

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

(5) 'Trust' includes any express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include other constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, and 54B-129, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

(6) 'Trustee' includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust. Substitution of trustees in mortgages and deeds of trust are governed by the provisions of G.S. 45-10.

~~"§ 36A-23. Clerk's power to accept resignations.~~

~~The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.~~

"§ 36A-23.1. Court; jurisdiction of trusts.

(a) The clerks of superior court of this State have original jurisdiction over all proceedings initiated by interested persons concerning the internal affairs of trusts except proceedings to modify or terminate trusts. Except as provided in subdivision (3) of this section, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;
(2) To review trustees' fees and review and settle interim or final accounts; and
(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk, on the clerk's own motion, may determine that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court.

(b) To the extent that the procedures in this Article for proceedings before the clerk concerning the administration of trusts conflict with the procedures for proceedings heard by the clerk, the provisions of this Article control.

(c) A proceeding under this section does not result in continuing supervisory proceedings.

(d) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as provided by law. Nothing in this section shall be construed (i) to confer upon the clerk any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the provisions of the governing instrument or of State law, or (ii) to confer upon any interested person any additional right, remedy, or cause of action not otherwise conferred by law.

(e) Nothing in this section affects the right of a person to file an action for declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes.

~~"§ 36A-24. Petition; contents and verification.~~

~~When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualifications as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.~~

"§ 36A-24.1. Trust proceedings; venue.

(a) If the trustee is required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is the place where the accountings are filed.

(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is in any county of this State in which the trust has its principal place of administration or where any beneficiary resides. Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee;

(2) The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate trustee; or

(3) The usual place of business or residence of any of the cotrustees as agreed upon by the cotrustees.

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

~~Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The beneficiaries, creditors, or any other person interested in the trust estate, have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter, and if it appears to the court that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted, or if it appears to the court that sufficient reasons exist for allowing the resignation, and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of his discretion, allow the applicant to resign; and in such case the clerk shall proceed to appoint the successor of the petitioner in the manner provided in this Article.~~

"§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.

The clerk of superior court shall not, over the objection of a party, entertain proceedings under G.S. 36A-23.1 involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state where the trust has its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk may grant a continuance or enter any other appropriate order.

~~"§ 36A-26. Resignation allowed; costs; judge's approval.~~

~~In making an order allowing the trustee to resign, the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.~~

"§ 36A-26.1. Trust proceedings; necessary parties.

Proceedings under G.S. 36A-23.1 are initiated by filing a petition or complaint in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. The clerk shall issue the summons for the defendants, and except as provided in this Article, the procedure shall be the same as in other special proceedings. The clerk may order notification of additional persons. An order is valid as to all persons who are given notice of the proceeding even if all interested persons are not notified. The beneficiaries, creditors, or any other persons interested in the trust estate have the right to answer the petition and to offer evidence against granting the petition. The clerk shall then proceed to hear and determine the matter.

"§ 36A-26.2. Waiver of notice.

An interested person, or a person representing an interested person as provided in G.S. 36A-26.3, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

"§ 36A-26.3. When parties represented by others.

In proceedings involving trusts, the following rules apply:

(1) Interests to be affected shall be described in pleadings that give reasonable information to interested persons by name or class, by reference to the instrument creating the interests, or in some other appropriate manner.

(2) Interested persons shall be represented by others in the following cases:

a. The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as objects, takers in default, or otherwise, are subject to the power.

b. If the clerk finds that there is no conflict of interest between the interested person and the person representing the

interested person, or among persons represented, a guardian of the estate shall represent the person whose estate the guardian controls; a guardian of the person shall represent the ward if no guardian of the ward's estate has been appointed; a trustee shall represent beneficiaries of the trust in proceedings to probate a will establishing or adding to the trust, to review the acts or accounts of a prior fiduciary, and in other proceedings involving creditors or other third parties; and a personal representative shall represent persons interested in the undistributed assets of the decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or guardian of the person has been appointed, a parent shall represent a minor child.

c. If the clerk finds that another party has an interest in the proceeding substantially identical to the interest of an unborn or unascertained person who is not otherwise represented, that party shall represent the unborn or unascertained person.

d. At any point in a proceeding, a clerk shall allow an attorney-in-fact to represent the attorney-in-fact's principal, provided that, if the principal is incapacitated, the power of attorney is durable as defined in G.S. 32A-8, and provided that the power of attorney grants to the attorney-in-fact either (i) the authority to do, execute, or perform any act that the principal might or could do or otherwise evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property; (ii) the powers described under G.S. 32A-2(2) and G.S. 32A-2(8) and, if interests in real property are affected, the powers described in G.S. 32A-2(1); or (iii) other direct or indirect authority the clerk deems sufficient in the clerk's discretion.

(3) At any point in the proceeding, the clerk may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity is unknown, if the clerk determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The clerk shall set forth the clerk's reasons for appointing a guardian ad litem as a part of the record of the proceedings.

(4) An order binding a person who represents an interested person binds the interested person.

Nothing in this section authorizes the disbursement of funds distributable to any person to those authorized to represent that person under this section.

"§ 36A-27. Appeal; stay effected by appeal.

Any party in interest may appeal from the decision of the clerk to the ~~judge at chambers,~~ superior court. ~~and in such event the procedure shall be the same as in other special proceedings as now provided by law.~~ If ~~the clerk allows the resignation, and~~ an appeal is taken from ~~his decision,~~ the decision of the clerk, such appeal shall ~~have the effect to~~ stay the judgment and order of the clerk until the cause is heard and determined by the ~~judge~~ superior court upon the appeal taken. To the extent that the procedure for an appeal from an order of the clerk concerning administration of a trust provided under this Article conflicts with the procedure for appeal from orders of the clerk in other matters, the provisions of this Article control.

"§ 36A-28. On appeal judge determines facts.

Upon an appeal taken from the clerk to the ~~judge,~~ superior court, the judge shall have the power to review the findings of fact made by the clerk and to find the facts or to take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the appellate division.

"§ 36A-29. Final accounting before resignation.

~~No~~ If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be ~~allowed or~~ permitted to resign ~~his trust~~ as trustee until ~~he shall first file with the court his~~ a final account of the trust ~~estate,~~ estate is filed with the clerk, and until the court shall be satisfied that the ~~said~~ account is true and correct.

~~"§ 36A-30. Resignation effective on settlement with successor.~~

~~In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.~~

"§ 36A-31. ~~Court to appoint successor; when~~ When bond required.

~~If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court,~~ A trustee need not provide bond to secure performance of the trustee's duties unless required by the terms of the governing instrument, or found by the clerk to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, in no event shall bond be required if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be in a sum double the value of the personal property to come into ~~his~~ the trustee's hands

when bond is executed by a personal ~~surety~~ surety, and in an amount not less than one and one-fourth times the value of all personal property of the ~~decedent~~ trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of ~~his~~ the trustee's duties ~~as such trustee~~ and for the payment to the persons entitled to receive ~~the same of~~ all moneys, assets, or other things of value which may come into ~~his hands; provided, that where by the terms of the creating instrument the trustee who has resigned was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk, upon due investigation finds that bond is not necessary for the protection of the estate, the clerk, with the approval of the judge, upon the petition of any party in interest, may waive the requirement of a bond for the successor trustee and permit said successor trustee to serve without bond.~~ the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk.

"§ 36A-32. Rights and duties devolve on successor.

~~Upon the acceptance by the court of the resignation of any trustee, and upon the appointment by the court of his successor in the manner provided by this Article, the~~ A successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the ~~creating~~ governing instrument.

"§ 36A-33. Appointment of ~~successors to deceased or incapacitated trustees.~~ successor trustee on clerk's own motion.

~~Upon the death or incapacity of a trustee, a new trustee may be appointed on application by any beneficiary, or other interested persons, by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered, making all necessary parties defendants. The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person so named in the petition, or he may appoint some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee; and the clerk shall require the person so appointed to give bond as required in G.S. 36A-31; provided, that where by the terms of the instrument upon which the deceased or incapacitated trustee claimed, said trustee was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve~~

~~without bond, or where the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the decision of the clerk as provided in G.S. 36A-27 and 36A-28.~~

~~Nothing~~ Unless the governing instrument provides otherwise, if the trustee is required to account to the clerk of court, nothing in this ~~section~~ Article shall be construed to limit the authority of the clerk ~~of superior court~~ to appoint a successor trustee to a deceased or incapacitated trustee upon ~~his~~ the clerk's own motion.

~~"§ 36A-34. Testamentary trustee may renounce.~~

~~(a) Any person or corporation named as trustee in any will admitted to probate in this State, or any substitute trustee, may at any time prior to qualifying as required by G.S. 36A-107 or taking any action as trustee if such qualification is not required, and whether or not such person or corporation is entitled to so qualify or act, renounce such trusteeship by a writing filed with the clerk of superior court of the county in which the will is admitted to probate. Upon receipt of such renunciation the clerk shall give notice thereof to all persons interested in the trust, including successor or substitute trustees named in the will, which notice shall also comply with the requirements of subsection (c) of this section.~~

~~(b) If the will names or identifies a substitute trustee in case of renunciation, the provisions of the will shall be complied with, and the clerk shall enter an appropriate order appointing the substitute trustee in accordance therewith unless the substitute trustee also renounces. A substitute trustee so named shall succeed to the office of trustee upon the date of the order of appointment by the clerk unless the will provides otherwise.~~

~~(c) If the will does not name or identify a substitute trustee in case of renunciation, and it appears that a substitute trustee should be appointed, the clerk shall appoint some fit and suitable person or corporation as substitute trustee. If the will does not name or identify a substitute trustee, but contains provisions regarding the selection of a substitute trustee, such provisions shall be complied with unless the clerk determines that such provisions would result in the selection of an unfit or unsuitable trustee. A substitute trustee so appointed shall succeed to the office of trustee upon the date of the order of appointment unless the will provides otherwise.~~

~~(d) A substitute trustee shall, upon succeeding to the office of trustee, unless the will provides otherwise, have such powers and duties and be vested with the title to the property included in the trust, as if the substitute trustee had been originally named in the will.~~

~~(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a~~

~~post office or official depository under the exclusive care and custody of the United States Post Office Department.~~

~~(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.~~

~~"§ 36A-35. Removal of trustee.~~

~~Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

~~Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.~~

"§ 36A-36. Appointment of special trustee.

If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

"§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee.

Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or ~~reincorporated~~ reincorporated, all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

~~"§ 36A-38. Powers of successor trustee.~~

~~Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

"§ 36A-39. Powers of cotrustees.

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~ appointed, except those powers which the remaining trustees are prohibited from exercising under the governing instrument or by law.

"§ 36A-40. Vesting of title.

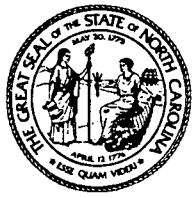
A special or successor trustee is vested with the title of the ~~original~~ predecessor trustee. A predecessor trustee ~~who resigns, is removed, or is otherwise severed from his office~~ shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so, the clerk may order ~~him~~ the predecessor trustee to execute such documents, or the clerk may ~~himself~~ transfer title.

~~"§ 36A-41. Applicability.~~

~~The provisions of this Article shall not apply to proceedings begun before January 1, 1978.~~

"§§ 36A-42 through 36A-46: Reserved for future codification purposes."

Section 2. This act becomes effective October 1, 1999, and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established before or after that date.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 328

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

S328-ARV-002 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
Second Edition

Senator _____

moves to amend the bill on page 3, line 44,
by inserting after the period the following:
"~~The Director is hereby authorized to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of the animals until either sold or euthanized and any fine levied in connection with this section shall be applied toward reimbursement of such State funds as the Director shall have expended.~~"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. 975 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line ~~13~~ 10-12

( ) WHICH CHANGES THE TITLE

by rewriting The Lines ~~underlined language~~. to read as follows:

"This ~~Article does~~ Article, including a service provided through the Statewide Automated Victim Assistance and Notification System established by The Governor's Crime Commission ~~do~~ does"

And on page 1 line 12 by deleting the word "do"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 328:
Sentencing Commission/Criminal Law Changes

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Rep. Braswell
Date:	May 13, 1999	**Summary by:**	Brenda J. Carter
Version:	2nd Edition		Committee Co-Counsel

SUMMARY: House Bill 328 makes various technical corrections to certain criminal laws and criminal penalties, as recommended by the North Carolina Sentencing and Policy Advisory Commission.

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

Section 2 amends the penalty portion of G.S. 14-229, which presently makes it an unspecified misdemeanor for an officer to enter on the duties of his office before executing and delivering the necessary bonds and taking the necessary oath. The amendment specifies that a violation is a Class 1 misdemeanor. (The bill does not increase the penalty, since under G.S. 14-3, a person convicted of a misdemeanor for which no specific classification and no specific punishment is prescribed by statute is punished as a Class 1 misdemeanor).

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

Section 4 amends G.S. 19A-35, which provides the penalty for failure to adequately care for animals in animal shelters, pet shops, boarding kennels, and other animal dealers. The present penalty for failure to properly house, feed, and water animals is an unspecified misdemeanor with a fine of not less than $5 and not more than $1,000. The amendment changes this to a Class 3 misdemeanor, with the fine remaining as is. Counsel to the House Judiciary II

Committee pointed out that as presently written the statute authorizes the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture to sell or euthenize animals seized because of a violation of the Animal Welfare Act once there is a conviction of a person under the Article. The act authorizes the Director to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of the animals, and further provides that fines levied because of violation of the act shall be applied toward reimbursement of funds the Director has expended in providing for the welfare of the animals. It was the opinion of Committee Counsel for House Judiciary II that these last two provisions appear to be in violation of the Executive Budget Act and the Constitution of North Carolina. The provision authorizing the Director "to disburse State funds in such amount as in his discretion is necessary" would allow the Director to expend funds from the General Fund without a specific appropriation, thus violating the Executive Budget Act and Article V, Section 7 of the State Constitution, and the provision allowing fines levied to be applied toward reimbursement of these funds would appear to violate Article IX, Section 7 of the constitution which provides that the clear proceeds of fines collected from breach of State penal laws shall belong to the counties to be used exclusively for maintaining free public schools. The House Judiciary II Committee voted to amend the bill to eliminate the last sentence of G.S. 19A-35. **An amendment is now necessary to replace the deleted language and strike through it in accordance with coded bill drafting requirements.**

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

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

Section 7 amends G.S.106-549.59, dealing with the punishment for violations of the Poultry Products Inspections Act. The penalties were never reclassified under Structured Sentencing or the Fair Sentencing Act. The amendments would make violations a Class 1 misdemeanor (instead of a fine of not more than $1,000 and/or imprisonment of not more than one year), and where the violation involves intent to defraud or distribution of adulterated items, the offense is a Class H felony, which may include a maximum $10,000 fine (presently it is imprisonment for not more than three years and/or the fine). This section also amends subsection (c) of G.S. 106-549.59 which provides the penalty for a person who forcibly assaults, resists, or otherwise interferes with a person performing official duties under the Poultry Products Inspections Act. Present penalty provides for a fine of not more than $5,000 or imprisonment for not more than three years, or both. This violation becomes a Class 2 misdemeanor and may include a maximum $5,000 fine. If deadly or dangerous weapons are involved, a violation is a Class A1

misdemeanor and may include a maximum $10,000 fine, in lieu of the present penalty of imprisonment of not more than 10 years and/or the $10,000 fine.

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

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

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

The bill becomes effective December 1, 1999, and applies to acts committed on or after that date.

HOUSE BILL 975:
SAVAN Exemption

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Braswell
Date:	April 20, 1999	**Summary by:**	Robin S. Johnson
Version:	2nd Ed.		Committee Counsel

SUMMARY: The proposed committee substitute makes technical changes.

House Bill 975 would clarify that no claim for damages or other relief may arise from the development, implementation, and operation of the Statewide Automated Victim Assistance and Notification (SAVAN) system. This exemption would apply to the State, counties, municipalities, and to any of their agencies, instrumentalities, officers, and employees. The bill would take effect when it becomes law.

CURRENT LAW: The Crime Victims' Rights Act (Article 46 of Chapter 15A) requires law enforcement agencies, district attorneys, and other State and local entities to provide certain services to crime victims. In order to carry out their responsibilities under this Act, these entities will be using an automated notification system (SAVAN). The Governor's Crime Commission designed SAVAN to link agencies to a database that can deliver status information 24 hours/day by telephone to the public on inmates, probationers, and parolees.

The Crime Victims Rights Act specifically provides in G.S. 15A-839 that the Act does not create a claim for damages against the State, a county, a municipality, or any of their agencies, instrumentalities, officers, or employees. G.S. 15A-840 provides that the failure or inability of any person to provide a right or service under the Act is not a ground for relief in any criminal or civil proceeding, except in suits for a writ of mandamus by a victim.

BACKGROUND: Some law enforcement agencies are concerned that they may be liable for problems arising from the development, implementation and operation of SAVAN. An advisory letter dated March 25, 1999, from David Roy Blackwell, Special Deputy Attorney General, to William Dudley, Secretary of Crime Control and Public Safety, attempted to answer this concern. Mr. Blackwell stated, "Clearly, a State, county or municipal agency participating in SAVAN so acts to fulfill its Article 46 responsibilities. So long as the agency took the challenged action pursuant to its obligations" under that Article, then the exemptions under G.S. 15A-839 and 840 would apply.

H975-SMRH-001

VISITOR REGISTRATION SHEET

Jud. II — 5-13-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Madler	Sentencing Commission
Jonathan Williams	CCPS
Andy Ellen	NCPMA
[illegible]	NCAOC
Scott Mooneyham	AP
Patsy Kinsey	JP Pearce Charlotte
Garrett Berger	20A, PA
James Wise	NCCADV

SENATE JUDICIARY II COMMITTEE

MAY 18, 1999

ROOM 1124

HB 201	Appointment of Successor Trustees/AB	Rep. Culpepper
HB 214	Land Records Statutes Tech. Mods/AB	Rep. Jeffus Rep. Mosley Rep. Wainwright
HB 604	Clarify Atty-In-Fact Gifts	Rep. Thomas

Adjournment

SENATE JUDICIARY II COMMITTEE

MAY 18, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, May 18, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Nine members were present, including Senator Brad Miller, who presided.

Representative Jeffus was recognized to explain HB 214, Land Records Statutes Tech. Mods/AB. Gail Holden, with the Department of The Secretary of State, was introduced to further clarify the bill. Senator Moore moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

HB 604, Clarify Atty-In-Fact Gifts, was explained by Representative Thomas. Bill Scoggins from the North Carolina Bar Association was called on answer questions pertaining to the bill. Senator Hagan moved to send HB 604 to a subcommittee for further study. The motion carried unanimously.

HB 210, Appointment of Successor Trustees/AB, was explained by Senator Miller. Floyd M. Lewis, General Statutes Commission, spoke in favor of the bill. Senator Moore moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Tuesday, May 18, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **201** Appointment of Successor Trustees/AB.
Sequential Referral: None
Recommended Referral: None

H.B. **214** Land Records Statutes Tech. Mods/AB.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**975** SAVAN Exemption.
Draft Number: PCS1270
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 201

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

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

March 2, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

HOUSE BILL 214

Short Title: Land Records Statutes Tech. Mods/AB. (Public)

Sponsors: Representatives Jeffus, Mosley, and Wainwright (Primary Sponsors).

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

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE LAND RECORDS STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 102-15 reads as rewritten:

"**§ 102-15. Improvement of land records.**

There is hereby established a statewide program for improvement of county land records to be administered by the Secretary of ~~Environment and Natural Resources~~ State (hereafter called the Secretary). First emphasis shall be given to the completion of countywide base maps. Counties with a base map system prepared to acceptable standards will be encouraged to undertake subsequent logical improvements in their respective land records systems. Work undertaken by any county under this program will be eligible for financial assistance out of funds appropriated for this purpose to the Department of ~~Environment and Natural Resources.~~ the Secretary of State. The amount allotted to each project is to be determined by the Secretary, but in no case shall such allotments exceed one dollar for every dollar of local tax funds expended on the project by the county. Federal or other State funds available to the project will not be eligible as matching money under the State program."

Section 2. G.S. 102-17 reads as rewritten:

"**§ 102-17. County projects eligible for assistance.**

All projects funded under this assistance program shall be described as conforming to one or more of the project outlines defined herein. All projects shall achieve a substantial measure of conformity with the objectives set forth in these project outlines such that a greater degree of statewide standardization of land records will

result. The Secretary shall prepare and make available to all counties administrative regulations designed to assist the counties in preparing project plans and applications for assistance, and to assure compliance with the objectives and other requirements of G.S. 102-15, 102-16, and this section. County projects shall be eligible for assistance subject to availability of funds, compliance with administrative regulations, and conformity with one or more of the project outlines as follows:

(1) Base Maps. -- Preparation of accurate planimetric or orthophoto maps with countywide coverage at one or more scale ratios suitable as a base for the development and maintenance of current cadastral maps. These maps shall have additional information included where appropriate to increase their utility for other purposes. The formulation of technical standards and detailed specifications and the coordination of all such mapping projects with other State mapping programs shall be the responsibility of the Department of ~~Environment and Natural Resources.~~ the Secretary of State. Insofar as possible mapping projects funded under this assistance program shall utilize existing photography, geodetic control surveys, and previously mapped information, and be coordinated or combined with adjacent or related mapping projects to achieve the best efficiency and economy consistent with the maintenance of high quality map production.

(2) Cadastral Maps. -- Preparation of accurate maps of all property boundaries together with other supporting information and based on up-to-date planimetric or orthophoto maps conforming to the specifications for base maps outlined in subdivision (1) of this section. The formulation of specifications and standards for these cadastral maps shall be the responsibility of the Department of ~~Revenue.~~ the Secretary of State. These specifications and standards shall be designed to conform to the best acceptable practice for county land records in North Carolina. The cadastral maps shall be scheduled as nearly as possible to be completed and made available for the next revaluation cycle to be undertaken by each county and the maps shall include references to subdivision plat numbers, property codes, and other related information considered useful to the appraisal process or to the public generally.

(3) Standardized Parcel Identifiers. -- Adoption of a system of parcel identifiers which will serve to provide unique identification of each parcel of land, a permanent historical record of change and the chain of title, and any necessary cross-reference to other preexisting parcel identifiers. The proposed system of parcel identifiers shall conform to such minimum specifications and standards as may be promulgated by the Secretary for the purpose of achieving consistency and compatibility among all counties

throughout the State. Said minimum specifications and standards for parcel identifier systems shall be adopted and administered by the Secretary only after consultation with the recommendation from an advisory committee on land records with a membership representative of professional organizations concerned with public land records and map making.

(4) Automated Processing of Land Parcel Records. -- Preparation and implementation of a system of automated record keeping and processing which will expedite the maintenance of accurate up-to-date files, improve the appraisal process, and facilitate analytical operations needed to respond to requirements for current information. Technical standards and minimum specifications shall be the joint responsibility of the Department of ~~Environment and Natural Resources,~~ the Secretary of State, the Department of Revenue, and the Department of Cultural Resources."

Section 3. G.S. 161-22.2 reads as rewritten:

"**§ 161-22.2. Parcel identifier number indexes.**

(a) In lieu of the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1, the register of deeds of any county in which unique parcel identifier numbers have been assigned to all parcels of real property may install an index by land parcel identifier numbers. For each instrument filed of record, the entry in a land parcel identifier number index must contain the following information:

(1) The parcel identifier number of the parcel or parcels affected;

(2) A brief description of the parcel or parcels, including subdivision block and lot number, if any;

(3) A description of the type of instrument recorded and the date the instrument was filed;

(4) The names of the parties to the instrument to the same extent as required by G.S. 161-22 and the legal status of the parties indexed;

(5) The book and page number, or film reel and frame number, or other file number where the instrument is recorded.

(b) Every instrument affecting real property filed for recording in the office of such register of deeds shall be indexed under the parcel identifier number of the land parcel or parcels affected.

(c) The parcel identifier number index may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the parcel identifier number index is maintained in a computer or other automated data-processing machine, the register of deeds shall, at least once each month, obtain from the computer or other data-processing machine a printed copy on paper or film of all index entries made since the previous printed copy was obtained. The printed copies shall be retained as security copies and shall not be altered or destroyed.

(d) Before a register of deeds may install a parcel identifier number index in lieu of the alphabetical indexes required by G.S. 161-22, the proposed index must be

approved by the Secretary of ~~Environment and Natural Resources.~~ State. Before approving a parcel identifier number index, the Secretary must find that:

(1) The requirements of this section, G.S. 161-22, and all other applicable indexing requirements of the North Carolina General Statutes and applicable judicial decisions will be met by the index;

(2) Measures for the protection of the indexed information are such that computer or other machine failure will not cause an irremediable loss of the information;

(3) Printed forms and index sheets used in the index permit a display of all information required by law and are otherwise adequate;

(4) Any computer or other data-processing machine used and the program for the use of such machines are adequate to perform the tasks assigned to them;

(5) Access to the information contained in the index can be obtained by the use of both a parcel identifier number and the name of any party to an instrument filed of record;

(6) Any parcel identifier number either reflects the State plane coordinates of some point in the parcel, or is keyed to a map of the parcel that shows the location of the parcel within the county;

(7) The parcel identifier numbering system is designed so that no parcel will be assigned the same number as any other parcel within the county;

(8) The parcel identifier numbering system shows for parcels of land created by subdivision, the number of the parcel of land subdivided in addition to the numbers of the newly-created parcels;

(9) The parcel identifier numbering system shows for parcels of land created by the combining of separate parcels, the numbers of the land parcels that were combined in addition to the number of the newly-created parcel;

(10) The parcel identifier numbering system is capable of identifying condominium units and other separate legal interests that may be created in a single parcel of land;

(11) The parcel identifier numbering system will meet the needs of the users as well as or better than the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1.

The Secretary may require a register of deeds seeking approval of a parcel identifier number index to furnish him with any information concerning the index that is pertinent to the findings required for approval.

(e) (1) An approved parcel identifier number index shall become effective as the official real property index of the county as of the first day of July or the first day of January, as the board of commissioners directs, following approval by the Secretary of ~~Environment and Natural Resources.~~ State.

(2) In any county in which a parcel identifier index is the official index, the register of deeds shall post notices in the alphabetical index books and at other appropriate places in his office stating that the parcel identifier number index is the official index and the date when the change became effective."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 604

Short Title: Clarify Atty-In-Fact Gifts. (Public)

Sponsors: Representative Thomas.

Referred to: Judiciary IV.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by

the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

Section 2. G.S. 32A-2(15) reads as rewritten:

"(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of lifetime gifts."

Section 3. Section 1 of this act becomes effective July 1, 1999, and applies to all powers of attorney executed on or after October 1, 1995. Section 2 of this act becomes effective October 1, 1999, and applies to all powers of attorney executed on or after that date. Section 3 of this act is effective when it becomes law.

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

RECEIVED
MAY
RESEARCH DIVISION

MEMORANDUM

TO: Senate Judiciary II Committee

FROM: General Statutes Commission

DATE: May 17, 1999

RE: House Bill 201 (Appointment of Successor Trustees)

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

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

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

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

HOUSE BILL 604:
Clarify Attorney-in-Fact Gifts

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Thomas
Date:	May 18, 1999	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: ***House Bill 604 makes clear the circumstances under which an attorney-in-fact may make gifts.***

CURRENT LAW: G.S. 32A-2 sets out a list of powers conferred by the Statutory Short Form Power of Attorney. Subsection (14) of that section sets out the powers conferred on the attorney-in-fact with regard to gifts to charities and to individuals other than the attorney-in-fact. It provides that an attorney-in-fact may make gifts of any of the principal's property to any individual in accordance with the principal's personal history of making lifetime gifts; however the attorney-in-fact may not make such gifts to himself or herself or to his or her creditors or estate. Subsection (15) of that section provides that the attorney-in-fact may make gifts to the attorney-in-fact named in the power of attorney or to the estate, creditors, or creditors of the estate of the attorney-in-fact.

BILL ANALYSIS: House Bill 604 clarifies that under the Statutory Short Form Power of Attorney, the attorney-in-fact has the authority to make gifts in favor of the attorney-in-fact or the estate or creditors of the attorney-in-fact if the gifts are expressly authorized in the power of attorney. This provision becomes effective July 1, 1999 and applies to powers of attorney executed on or after October 1, 1995.

House Bill 604 also provides that authority to make gifts to the attorney-in-fact or to the creditors of the attorney-in-fact is provided to the extent such gifts are in accordance with the principal's personal history of making of lifetime gifts. This provision becomes effective October 1, 1999 and applies to all powers of attorney executive on or after that date.

NORTH CAROLINA
1899 – 1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

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Post Office Box 3688
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House Bill 604 - Clarify Atty-In-Fact Gifts

The North Carolina Bar Association Estate Planning and Fiduciary Law Section has studied the provisions in N.C.G.S. Chapter 32A and noted two problems which HB 604 would correct.

Conflict if two paragraphs selected on form:

N.C.G.S. Chapter 32A was amended in 1995 to specify when an attorney-in-fact could make gifts pursuant to a power of attorney. Two new powers (14. and 15.) were added to the Short Form Power of Attorney in G.S. 32A-1. Paragraph (14)b. of G.S. 32A-2 prohibits gifts in favor of the attorney-in-fact. Paragraph 15 specifically gives the attorney-in-fact the power to make gifts to himself. If both paragraphs 14 and 15 are checked, there is a conflict. Section §32A-14.1 dealing with the authority of an attorney-in-fact to make gifts was also added to Chapter 32A in 1995. This Article was intended to codify the existing North Carolina common law. Although §32A-14.1 includes the phrase "or unless gifts are expressly authorized by the power of attorney," this phrase was apparently left out of the Short Form Power of Attorney provisions. **Section 1** of this Act would add that phrase to G.S. 32A-2(14)b. to make it consistent with the common law and to avoid any conflict if both paragraphs 14 and 15 are selected.

Inconsistency as to power of attorney-in-fact to make gifts:

A second correction to the Short Form Power of Attorney provisions involves the power of the attorney-in-fact to make gifts to himself and to third parties. Under the current statute, an attorney-in-fact can make gifts to himself without limit, while gifts to third parties are subject to the principal's history of making gifts. **Section 2** of the Act adds language to paragraph 15 to clarify that gifts by the attorney-in-fact to the attorney-in-fact can only be made in accordance with the principal's history of making or joining in the making of gifts. This makes the language of paragraph 15 consistent with the language of paragraph 14.

Section 1 of the Act would apply to powers of attorney executed after October 1, 1995, which is the effective date of the prior amendments to the Section, while Section 2 would apply to powers of attorney executed on or after October 1, 1999.

The North Carolina Bar Association recommends the passage of HB 604.

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

VISITOR REGISTRATION SHEET

Judiciary II
Name of Committee

May 18 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Floyd M. Lewis	General Statutes Commission
Bill Scoggin	NC Bar Assoc
Linda L. Pope	SOS
Laura Holden	SOS
Ron Aycock	County Comm. Assoc.

SENATE JUDICIARY II COMMITTEE

MAY 20, 1999

ROOM 1124

HB 304	Child Care Subsidy Fraud/AB	Rep. Earle
HB 973	Marriage License Change/Study	Rep. Hill
HB 1021	Revise UCC Filings Procedures	Rep. Hill

Adjournment

SENATE JUDICIARY II COMMITTEE

MAY 20, 1999

MINUTES

The Senate Judiciary II Committee met on Thursday, May 20, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Eleven members were present, including Senator Brad Miller, who presided.

Senator Miller announced that HB 973, Marriage License Change/Study, would be removed from the agenda.

Representative Hill was recognized to explain HB 1021, Revise UCC Filings Procedures. Senator Ballance moved to amend the bill on page 2, lines 18-21. The motion carried unanimously. Senator Hagan moved to roll the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to Senate committee substitute.**

HB 304, Child Care Subsidy Fraud/AB, was explained by Representative Earle. Senator Rucho moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 304
Second Edition Engrossed 4/5/99
Committee Substitute Favorable 4/12/99
Fourth Edition Engrossed 4/15/99

Short Title: Child Care Subsidy Fraud/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CRIMINAL PENALTIES FOR FRAUDULENT MISREPRESENTATION INVOLVING CHILD CARE SUBSIDIES AND TO PROVIDE COUNTIES A FINANCIAL INCENTIVE TO INVESTIGATE AND PURSUE FRAUD IN CHILD CARE PAYMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-107. Fraudulent misrepresentation.**

(a) A person, whether a provider or recipient of child care subsidies or someone claiming to be a provider or recipient of child care subsidies, commits the offense of fraudulent misrepresentation when both of the following occur:

(1) With the intent to deceive, that person makes a false statement or representation regarding a material fact, or fails to disclose a material fact.

(2) As a result of the false statement or representation or the omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) If the child care subsidy is not more than one thousand dollars ($1,000), the person is guilty of a Class 1 misdemeanor. If the child care subsidy is more than one thousand dollars ($1,000), the person is guilty of a Class I felony.

(c) As used in this section:

(1) 'Child care subsidy' means the use of public funds to pay for day care services for children.

(2) 'Person' means an individual, association, consortium, corporation, body politic, partnership, or other group, entity, or organization."

Section 2. Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-108. Financial incentives for counties to investigate and pursue alleged child care fraud.**

The Department of Health and Human Services shall allow each local purchasing agency to retain as an incentive bonus the actual amount of child care fraud and overpayment claims collected by the local purchasing agency. Incentive bonuses under this section shall be used by the agency for the purchase of subsidized child care or to enhance and improve program integrity. The agency shall use at least seventy-five percent (75%) of the incentive bonus funds under this section for the purchase of subsidized child care. The agency shall not use more than twenty-five percent (25%) of the incentive bonus funds under this section for program integrity. On or before October 1 each year, each agency shall report to the Department of Health and Human Services on the use of the incentive bonuses under this section during the previous fiscal year. This section does not apply to overpayments due to administrative errors of local purchasing agency staff."

Section 3. Section 1 of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 973
Committee Substitute Favorable 4/21/99

Short Title: Marriage License Change/Study. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES CONCERNING THE ISSUANCE OF A MARRIAGE LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons if it appears that ~~such~~ these persons ~~are authorized to~~ may be married in accordance with the laws of this State. In making a determination as to whether or not the parties ~~are authorized to~~ may be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates ~~or birth registration cards provided for in G.S. 130-73,~~ or ~~such~~ any other evidence ~~as~~ the register of deeds deems necessary to ~~such~~ this determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. If the applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of such a statement, the register of deeds shall issue the license, provided all other requirements are met, and shall retain the statement with the register's copy of the license. The

register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1021

Short Title: Revise UCC Filings Procedures. (Public)

Sponsors: Representative Hill.

Referred to: Judiciary II.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH REGARD TO THE PROCEDURE FOR FILING OF FINANCING STATEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-402 reads as rewritten:

"**§ 25-9-402. Formal requisites of financing statement; amendments; mortgage as financing statement.**

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must indicate that the collateral is or includes crops, must contain a description of the real estate concerned, and must contain the county of the debtor's residence, or where the debtor is not a resident of this State the county where the crops are growing or to be grown. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or when the financing statement is filed as a fixture filing (G.S. 25-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement

is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this State.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this State, or when the debtor's location is changed to this State. Such a financing statement must state that the collateral was brought into this State or that the debtor's location was changed to this State under such circumstances; or

(b) Proceeds under G.S. 25-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) Collateral as to which the filing has lapsed; or

(d) Collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) ~~A form substantially as follows is sufficient to comply with subsection (1).~~ A financing statement complies with subsection (1) of this section if it is filed on paper that is carbonized or the original statement is accompanied by carbon copies and the form is substantially as follows:

Name of debtor (or assignor) .....
Address .....
Name of secured party (or assignee) .....
Address .....
1. This financing statement covers the following types (or items) of property:
(Describe) .....
2. (If collateral is crops) The above described crops are growing or are to be grown on:
(Describe Real Estate) .....
3. (If applicable) The above goods are to become fixtures on* .....
*Where appropriate substitute either "The above timber is standing on ....." or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on ....."
(Describe Real Estate) .....
(If the debtor does not have an interest of record) The name of a record owner is .....
4. (If products of collateral are claimed) Products of the collateral are also covered.
(use ..... whichever
Signature of Debtor (or Assignor)

is .....
applicable) Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments. Amendments shall be accompanied by a copy of the original financing statement when filed to be effective.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or a financing statement filed as a fixture filing (G.S. 25-9-313) must contain a description of the real estate. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner. A financing statement filed as a fixture filing (G.S. 25-9-313) on a form shall have the appropriate box checked to indicate that the collateral is, or includes, fixtures. If (a) a copy of a security agreement is filed as a financing statement, as authorized by G.S. 25-9-402, or (b) a nonstandard form is filed, to perfect security interests in fixtures, the secured party or other filer shall attach thereto a form financing statement with the appropriate block checked to indicate that the collateral is, or includes, fixtures. If a financing statement is not marked as required by this subsection, it shall not be required to be indexed pursuant to G.S. 25-9-403(7).

(6) A mortgage or deed of trust is effective as a financing statement filed as a fixture filing from the date of its recording if

(a) The goods are described in the mortgage or deed of trust by item or type; and

(b) The goods are or are to become fixtures related to the real estate described in the mortgage or deed of trust; and

(c) The mortgage or deed of trust complies with the requirements for a financing statement in this section; and

(d) The mortgage or deed of trust is duly recorded in the real estate records. Such a mortgage or deed of trust shall not be indexed or filed in the Uniform Commercial Code files. No fee with reference to such a mortgage or deed of trust is required other than the regular recording and satisfaction fees with respect to the mortgage or deed of trust.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change,

unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

(9) The Secretary of State shall have the authority to promulgate, issue and prescribe such financing statement forms and such other forms as he deems necessary to be used as standard forms for any filing contemplated by any section of this Article."

Section 2. G.S. 25-9-403(3) reads as rewritten:

"(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, be accompanied by a copy of the original financing statement, identify the original statement by file number and also by the most current file number if any continuation was filed and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of G.S. 25-9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic ~~record, or in other cases after one year after the lapse.~~ record. In any event, one year after a financing or continuation statement has lapsed, the filing officer may remove the lapsed statement from any files, including computer files, and destroy it immediately. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained. Any continuation statement which is not filed in accordance with the requirements set forth herein and during the stated time periods set forth above shall be invalid."

Section 3. Any register of deeds office in this State that has had computer files for a period of at least five years is not required to cancel financing statements manually.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1021

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

H1021-ALT-001

Page 1 of __

Date _____ ,1999

Comm. Sub. []
Amends Title []

Representative

moves to amend the bill on page 2, lines 18 through 21, by rewriting those lines to read:

"~~(3) A form substantially as follows is sufficient to comply with subsection (1):~~ A financing statement complies with subsection (1) of this section if it is filed (i) electronically in a format acceptable to the filing officer or (ii) on 8 1/2" x 11" paper that is carbonized or the original statement is accompanied by carbon copies and the form is substantially as follows:"; and

on page 4, line 43, by deleting "October 1, 1999." and substituting "January 1, 2000."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Thursday, May 20, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**304** Child Care Subsidy Fraud/AB.
Sequential Referral: None
Recommended Referral: Appropriations

TOTAL REPORTED: 1

Committee Clerk Comment:

HOUSE BILL 304:
Child Care Subsidy Fraud

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Earle
Date:	May 20, 1999	**Summary by:**	Brenda J. Carter
Version:	4th Edition		Committee Co-Counsel

SUMMARY: ***House Bill 304 would provide specific criminal penalties for fraudulent misrepresentation involving child care subsidies. If the amount involved is $1000 or less the offense is a Class 1 misdemeanor. If the amount is more than $1000, the offense is a Class I felony. The bill also requires the Department of Health and Human Services (DHHS) to allow local purchasing agencies to keep monies recovered though fraud investigations.***

BILL ANALYSIS: House Bill 304 is a companion bill to Senate Bill 291, which was introduced by Senator Phillips and given a favorable report by this Committee on March 18. This bill differs from the earlier Senate version in that:

- It requires that when the offense of fraudulent misrepresentation is based on a person's false statement or representation, that the false statement or misrepresentation must be **regarding a material fact.** This phrase was not in the earlier Senate version.
- It raises the threshold for the point at which the offense becomes a felony. Senate Bill 291 set the amount at $400, this version of the bill sets it at $1,000.
- It deletes the last three words of a phrase that defines child care subsidy as the use of public funds to pay for day care services for children "***of needy families***".

There are specific offenses in Chapter 108A that deal with Medicaid Card Fraud, Food Stamp Fraud, and Welfare Fraud. This new offense closely tracks the offense of welfare fraud, which applies with regard to public assistance programs such as AFDC, foster care, adoption assistance, low-income energy assistance, medical assistance, and others.

Section 1 of the bill provides that any provider or recipient of child care subsidies, or anyone claiming to be a provider or recipient, commits the offense of fraudulent misrepresentation if he or she makes a false statement or misrepresentation regarding a material fact or fails to disclose a material fact with the intent to deceive, and as a result the person obtains, attempts to obtain, or continues to receive a child care subsidy for himself or another person. If the amount involved is $1000 or less, the offense is a Class 1 misdemeanor. Under structured sentencing, assuming the person has no prior record, a Class 1 misdemeanor is punishable by 1-45 days community punishment – judgment may consist of a fine only; the amount of the fine is in the discretion of the court. If the amount involved is more than $1000, the offense is a Class I felony. Assuming again that the person has no prior record, the presumptive minimum sentence for a Class I felony is 4-6 months community punishment. Again, judgment may consist of a fine only, the amount of the fine being in the discretion of the court.

Section 2 of the bill is described in the title as providing counties a financial incentive to investigate and pursue fraud in child care payments. A new G.S. 110-108 would require DHHS to allow each local purchasing agency to retain as an incentive bonus the actual amount of child care fraud and overpayment

claims collected by the local agency. At least 75% of the amount is to be used for the purchase of subsidized child care, up to 25% may be used to "enhance and improve program integrity". Each agency is required to report to DHHS on an annual basis the use of the bonus funds.

The criminal offense would become effective December 1, 1999 and apply to offenses committed on or after that date. The remainder of the bill would become effective July 1, 1999.

HOUSE BILL 1021:
Revise UCC Filings Procedures

BILL ANALYSIS

Committee:	House Judiciary II	**Introduced by:**	Representative Hill
Date:	April 21, 1999	**Summary by:**	Robin S. Johnson Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 1021 would amend provisions of the Uniform Commercial Code – Secured Transactions dealing with the procedure for filing finance statements.

The bill would amend G.S. 25-9-402 to require that a UCC financing statement presented for recording be filed on carbonized paper or be accompanied by carbon copies. It would also require amendments to be filed with a copy of the original financing statement.

The bill would amend G.S. 25-9-403 to require continuation statements to be accompanied by a copy of the original financing statement. Currently, continuation statements must identify the original financing statement by file number.

The bill also would allow filing officers, one year after a filing or continuation statement has lapsed, to remove the statement from the files, including computer files, and to destroy it. Currently, lapsed statements are considered public records and may only be destroyed if their custodian certifies to the Department of Cultural Resources that they have no further use or value for official business. The Department then must certify that they appear to have no further use or value for research or reference. At that time their custodian may destroy them.

Section 3 would provide that if a register of deeds has maintained computerized UCC files for at least 5 years, the register is not required to cancel financing statements manually.

The bill would take effect October 1, 1999.

H1021-SMRH-001

VISITOR REGISTRATION SHEET

Jud H — Name of Committee

5-20-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Shanece Ramsey	DSS
Mary Carnibi	Mecklenburg County
Soren K. Schmidt	NC Justice Center
Brenda K. Robbins	DOJ
Bob Rilla	Child Support Enforcement DHHS/DSS
Walter Price	Charlotte Chamber
David Daughtry	Child Support Enf. DHHS/DSS
Dennis Patterson	AP
Jim Blackburn	County Commissioners Association
Roslyn Sawtt	NC Child Care Coalition
Bill Rowe	N.C Justice Center
Melissa Lovell	DOJ

SENATE JUDICIARY II COMMITTEE

MAY 25, 1999

ROOM 1124

HB 980	Workers' Comp./Third Party Actions	Rep. Baddour
HB 991	Workers' Comp. and UIM Insurance	Rep. Baddour

Adjournment

SENATE JUDICIARY II COMMITTEE

MAY 25, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, May 25, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Eleven members were present, including Senator Brad Miller, who presided.

Senator Hagan was called on to preside while Senator Miller explained the bills on the agenda.

Senator Miller was recognized to explain HB 980, Workers' Comp./Third Party Actions. Speaking to the bill from the public were the following: Dick Taylor, Academy of Trial Lawyers, and Susan Valauri, Nationwide Insurance. Senator Miller moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Rucho moved to give the proposed committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to Senate committee substitute.**

HB 991, Workers' Comp. and UIM Insurance, was explained by Senator Miller. Senator Miller moved to adopt a proposed committee substitute. The motion carried unanimously. Dick Taylor with the Academy of Trial Lawyers, was called on to clarify the bill. Senator Horton moved to give the proposed committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to Senate committee substitute.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 980*
Committee Substitute Favorable 4/20/99

Short Title: Workers' Comp./Third Party Actions. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUDICIAL DISCRETION IN DETERMINING THE AMOUNT OF SUBROGATION OF EMPLOYERS' LIENS IN ACTIONS AGAINST THIRD PARTIES UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-10.2(j) reads as rewritten:

"(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained ~~which is insufficient to compensate the subrogation claim of the Workers' Compensation Insurance Carrier,~~ by the employee in an action against a third party, or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action arose, where the injured employee resides or the presiding judge before whom the cause of action is pending, to determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, if any, of the employer's lien and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge may consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future in determining the appropriate amount of the employer's lien. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division."

Section 2. This act is effective when it becomes law and applies to judgments or settlements entered against third parties on or after that date pursuant to G.S. 97-10.2.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 991
Committee Substitute Favorable 4/26/99

Short Title: Workers' Comp. and UIM Insurance. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT LIABILITY, UNINSURED, AND UNDERINSURED COVERAGE IS NOT REDUCED BY RECEIPT OF SUBROGATED WORKERS' COMPENSATION BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.21(e) reads as rewritten:

"(e) ~~Such~~ Uninsured or underinsured motorist coverage that is provided as part of a motor vehicle liability policy need not insure ~~against~~ against:

(1) A loss ~~from any liability~~ for which benefits ~~are in whole or in part either payable or required to be provided~~ have been paid under any workers' compensation law except as to the amount of an employer's lien determined pursuant to G.S. 97-10.2(h) or (j), in no event to exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy; nor

(2) ~~any~~ A loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured."

Section 2. This act becomes effective October 1, 1999, and applies to policies issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

H980-CSRV-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 980
Committee Substitute Favorable 4/20/99

THIS IS A DRAFT 24-MAY-99 15:58:54
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Workers' Comp./Third Party Actions. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW JUDICIAL DISCRETION IN DETERMINING THE AMOUNT OF SUBROGATION OF EMPLOYERS' LIENS IN ACTIONS AGAINST THIRD PARTIES UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-10.2(j) reads as rewritten:

"(j) Notwithstanding any other subsection in this section, in the event that a judgment is obtained ~~which is insufficient to compensate the subrogation claim of the Workers' Compensation Insurance Carrier,~~ by the employee in an action against a third party, or in the event that a settlement has been agreed upon by the employee and the third party, either party may apply to the resident superior court judge of the county in which the cause of action arose, where the injured employee resides or the presiding judge before whom the cause of action is pending, to determine

the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, if any, of the employer's ~~lien~~ lien, whether based on accrued or prospective workers' compensation benefits, and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge shall consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future, the net recovery to plaintiff, the likelihood of the plaintiff prevailing at trial or on appeal, the need for finality in the litigation, and any other factors the court deems just and reasonable, in determining the appropriate amount of the employer's lien. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division."

Section 2. This act is effective when it becomes law and applies to judgments or settlements entered against third parties on or after that date pursuant to G.S. 97-10.2.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H991-CSRV-001.1
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 991
Committee Substitute Favorable 4/26/99

THIS IS A DRAFT 25-MAY-99 09:35:31
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Workers' Comp. and UIM Insurance. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT LIABILITY, UNINSURED, AND UNDERINSURED COVERAGE IS NOT REDUCED BY RECEIPT OF SUBROGATED WORKERS' COMPENSATION BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.21(e) reads as rewritten:

"(e) ~~Such~~ Uninsured or underinsured motorist coverage that is provided as part of a motor vehicle liability policy ~~need not~~ shall insure ~~against~~ that portion of a loss ~~from any liability for which benefits are in whole or in part either payable or required to be provided under~~ uncompensated by any workers' compensation law ~~nor~~ and the amount of an employer's lien determined pursuant to G.S. 97-10.2 (h) or (j). In no event shall this subsection be construed to require that coverage exceed the applicable uninsured or underinsured coverage limits

of the motor vehicle policy or allow a recovery for damages already paid by worker's compensation. The policy need not insure a loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured.

Section 2. This act becomes effective October 1, 1999, and applies to policies issued or renewed on or after that date.

HOUSE BILL 980:
Workers' Compensation/Third Party Actions

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Baddour
Date:	May 25, 1999	**Summary by:**	Brenda J. Carter
Version:	Proposed Senate Comm. Sub.		Committee Co-Counsel

SUMMARY: ***The proposed Senate Committee Substitute for House Bill 980 would allow judicial discretion in determining the amount of subrogation of employer's liens in actions against third parties under the Workers' Compensation Act, regardless of whether the judgement is sufficient to compensate the subrogation claim.***

CURRENT LAW: Under current law, employees receiving workers' compensation may proceed against a third party tortfeasor. The employer or workers' compensation carrier that is paying workers' compensation to the employee may place a lien on the settlement or judgment resulting from the lawsuit between the employee and a third party. Under G.S. 97-10.2(j), as interpreted by the North Carolina Supreme Court, a judge has authority "'to exercise discretion in determining or allocating the amount of the lien or disbursement [when] (1) a judgment [is] insufficient to compensate the subrogation claim of the workers' compensation insurance carrier [or the claim of the employer where the employer is self-insured] or (2) [there is] a settlement.'" Johnson v. Southern Indus. Constructors, 347 N.C. 530, 534, 495 S.E.2d 356 (1998), *citing*, Hieb v. Lowery, 344 N.C. 403, 409, 474 S.E.2d 323, 326 (1996). In cases where the judgment is sufficient to compensate the subrogation claim, judges have no discretion in determining the amount of the lien or disbursement and the judgment is disbursed in the following order: first to pay the court costs, second to pay the attorney's fees, third to reimburse the employer for compensation paid to the employee, and forth to the employee. In determining whether or not the judgment is sufficient to compensate the employer, the judge may not consider future benefits (workers' compensation) to be paid by the employer to the employee.

BILL ANALYSIS: The proposed Senate Committee Substitute for House Bill 980 would allow judges to exercise their discretion in determining or allocating the amount of the lien or disbursement regardless of whether the judgement is sufficient to compensate the subrogation claim. In addition, the bill would allow the judge to consider accrued or prospective compensation (workers' compensation) due the employee from the employer in the allocation of the judgment, as well as the net recovery to the plaintiff, the likelihood of the plaintiff prevailing at trial or on appeal, and other factors the court deems reasonable.

This act is effective when it becomes law and applies to judgments entered against third parties on or after that date pursuant to G.S. 97-10.2.

H980-SMRV-002

H991:
Workers Comp. and UIM Insurance

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Rep. Baddour
Date:	May 24, 1999	**Summary by:**	Ed Rossi
Version:	Proposed Senate Committee Substitute H991-CSRV-001.1		Committee Co-Counsel

SUMMARY: House bill 991 requires that uninsured ("UM") and underinsured ("UIM") automobile policies insure the following:

1. ***Losses that are not compensated by workers compensation insurance.***
2. ***The amount of an employer's lien pursuant for workers compensation benefits.***

This new proposed UM and UIM coverage cannot exceed the UM/UIM policy limits nor provide coverage for damages already paid by workers compensation.

CURRENT LAW:

UM & Worker Compensation -- The Motor Vehicle Safety and Financial Responsibility Act[1] ("Act") provides a comprehensive legislative scheme that requires motor vehicle operators to be financially responsible. The part of the Act being amended by this bill[2] addresses the interplay of workers compensation insurance and UM/UIM coverage. This part has been judicially interpreted to require that when a worker gets hurt in an automobile accident and files a UM claim with the automobile insurance carrier, the UM coverage must be reduced by the amount of workers compensation benefits that have already been paid to the injured worker who filed the UM claim.[3]

Workers Compensation Liens -- Under current law, when an employee gets injured on the job and sues someone other than the employer, the employer or workers compensation carrier that is paying workers' compensation to the employee may place a lien on the settlement or judgment resulting from the lawsuit between the employee and the third party.[4] Under current law, a judge has authority "to exercise discretion in determining the amount of the lien or disbursement when:

1. The judgment is insufficient to compensate the subrogation claim of the workers' compensation insurance carrier or employer.
2. The parties reach a settlement.

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[1] Article 9A of Chapter 20 of the General Statutes.
[2] G.S. § 20-279.21(e)
[3] See McMillan v. North Carolina Farm Bureau, 347 N.C. 560 (1988)
[4] 97-10.2(h)

BILL ANALYSIS: House bill 991 amends the section of the Act dealing workers compensation cases. It requires that automobile liability policies containing UM and UIM coverage provide coverage for injuries that are not compensated by workers compensation insurance. This would include claims for pain and suffering as well as other compensatory damages that are not covered due to award limits imposed by workers compensation. In addition, the bill requires that UM & UIM coverage cover the amount of an employer's lien.

Certain limitations are imposed on this new coverage:

1. The UM/UIM coverage cannot exceed the applicable policy limits.
2. Plaintiffs cannot recover damages that were already paid by workers compensation.

BACKGROUND:

VISITOR REGISTRATION SHEET

Senate Judiciary II Committee — May-25-99
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Evan Valenti	National
[illegible]	NCAFL
John McCombs	MFDs
Robert PASchal	Young, Moore
Jim Speed	
John Cyrus	n.c. State Grange
VL McBride	NCFA
Charlie Dell	NC Outdoor Adv. Assoc.
Steve Woodson	NC Farm Bureau Federation
Mike Carnette	NCHBA
Paul Wilms	NCHBA
LE Hartsell	NCBA
Gardner Payne	Governor's Office
Richard Westbrook	UTU

SENATE JUDICIARY II COMMITTEE

JUNE 1, 1999

ROOM 1124

HB 494	Uniform Child-Custody Act	Representative Hackney
HB 495	Family Law Arbitration Act	Representative Hackney
HB 1209	Personal Watercraft Safety	Representative Preston

Adjournment

SENATE JUDICIARY II COMMITTEE

JUNE 1, 1999

MINUTES

The Senate Judiciary II Committee met on Tuesday, June 1, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

HB 494, Uniform Child-Custody Act, was explained by Representative Hackney. Senator Odom moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

HB 495, Family Law Arbitration, was explained by Representative Hackney. Senator Moore moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

HB 1209, Personal Watercraft Safety, was explained by Representative Preston. Senator Robinson moved to amend the bill on page 2, line 1, deleting "13" and substituting "12". Ed Jenkins, with the N.C. Wildlife Resources Commission, was recognized to answer questions from members regarding accident statistics.

Senator Miller adjourned the meeting at 11:00 a.m. with the understanding that HB 1209 would again be taken up at the next meeting.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Tuesday, June 01, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

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

H.B. **1021** Revise UCC Filings Procedures.

Draft Number:	PCS1274
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**980** Workers' Comp./Third Party Actions.

Draft Number:	PCSA147
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1)**991** Workers' Comp. and UIM Insurance.

Draft Number:	PCS8137
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chairman

Wednesday, June 02, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**494** Uniform Child-Custody Act.
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**495** Family Law Arbitration Act.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 494
Committee Substitute Favorable 4/19/99

Short Title: Uniform Child-Custody Act. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1.(a) G.S. 50A-1 through G.S. 50A-25 are designated as Article 1 of Chapter 50A of the General Statutes.

Section 1.(b) Article 1 of Chapter 50A of the General Statutes, as designated by this section, is repealed.

Section 2. The title of Chapter 50A of the General Statutes reads as rewritten:

"Chapter 50A.

"Uniform ~~Child-Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 3. Chapter 50A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2.

"Uniform Child-Custody Jurisdiction and Enforcement Act.

"Part 1. General Provisions.

"§ 50A-101. Short title.

This Article may be cited as the Uniform Child-Custody Jurisdiction and Enforcement Act.

"§ 50A-102. Definitions.

In this Article:

(1) 'Abandoned' means left without provision for reasonable and necessary care or supervision.
(2) 'Child' means an individual who has not attained 18 years of age.
(3) 'Child-custody determination' means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
(4) 'Child-custody proceeding' means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Part 3 of this Article.
(5) 'Commencement' means the filing of the first pleading in a proceeding.
(6) 'Court' means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.
(7) 'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.
(8) 'Initial determination' means the first child-custody determination concerning a particular child.
(9) 'Issuing court' means the court that makes a child-custody determination for which enforcement is sought under this Article.
(10) 'Issuing state' means the state in which a child-custody determination is made.
(11) 'Modification' means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
(12) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) 'Person acting as a parent' means a person, other than a parent, who:
a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and
b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.
(14) 'Physical custody' means the physical care and supervision of a child.
(15) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(16) 'Tribe' means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.
(17) 'Warrant' means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

"§ 50A-103. Proceedings governed by other law.

This Article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

"§ 50A-104. Application to Indian tribes.

(a) A child-custody proceeding that pertains to an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this Article to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

"§ 50A-105. International application of Article.

(a) A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying Parts 1 and 2.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Article must be recognized and enforced under Part 3.

(c) A court of this State need not apply this Article if the child-custody law of a foreign country violates fundamental principles of human rights.

"§ 50A-106. Effect of child-custody determination.

A child-custody determination made by a court of this State that had jurisdiction under this Article binds all persons who have been served in accordance with the laws of this State or notified in accordance with G.S. 50A-108 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard.

As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

"§ 50A-107. Priority.

If a question of existence or exercise of jurisdiction under this Article is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

"§ 50A-108. Notice to persons outside State.

(a) Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

"§ 50A-109. Appearance and limited immunity.

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this Article committed by an individual while present in this State.

"§ 50A-110. Communication between courts.

(a) A court of this State may communicate with a court in another state concerning a proceeding arising under this Article.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, 'record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"§ 50A-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

"§ 50A-112. Cooperation between courts; preservation of records.

(a) A court of this State may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State.

(d) A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

"Part 2. Jurisdiction.

"§ 50A-201. Initial child-custody jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State has jurisdiction to make an initial child-custody determination only if:

(1) This State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this State but a parent or person acting as a parent continues to live in this State;

(2) A court of another state does not have jurisdiction under subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under G.S. 50A-207 or G.S. 50A-208, and:

a. The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

b. Substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under G.S. 50A-207 or G.S. 50A-208; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

"§ 50A-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State which has made a child-custody determination consistent with G.S. 50A-201 or G.S. 50A-203 has exclusive, continuing jurisdiction over the determination until:

(1) A court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) A court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

(b) A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under G.S. 50A-201.

"§ 50A-203. Jurisdiction to modify determination.

Except as otherwise provided in G.S. 50A-204, a court of this State may not modify a child-custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under G.S. 50A-201(a)(1) or G.S. 50A-201(a)(2) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under G.S. 50A-202 or that a court of this State would be a more convenient forum under G.S. 50A-207; or

(2) A court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

"§ 50A-204. Temporary emergency jurisdiction.

(a) A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this Article and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, a child-custody determination made under this section becomes a final determination if it so provides, and this State becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this Article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under G.S. 50A-201 through G.S. 50A-203. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under G.S. 50A-201 through G.S. 50A-203 shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to G.S. 50A-201 through G.S. 50A-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

"§ 50A-205. Notice; opportunity to be heard; joinder.

(a) Before a child-custody determination is made under this Article, notice and an opportunity to be heard in accordance with the standards of G.S. 50A-108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This Article does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this Article are governed by the law of this State as in child-custody proceedings between residents of this State.

"§ 50A-206. Simultaneous proceedings.

(a) Except as otherwise provided in G.S. 50A-204, a court of this State may not exercise its jurisdiction under this Part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this Article, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under G.S. 50A-207.

(b) Except as otherwise provided in G.S. 50A-204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to G.S. 50A-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this Article, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this Article does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

"§ 50A-207. Inconvenient forum.

(a) A court of this State which has jurisdiction under this Article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances, and that a court of another state is a more appropriate forum. The issue of inconvenient forum may

be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this State;

(3) The distance between the court in this State and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this State may decline to exercise its jurisdiction under this Article if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

"**§ 50A-208. Jurisdiction declined by reason of conduct.**

(a) Except as otherwise provided in G.S. 50A-204 or by other law of this State, if a court of this State has jurisdiction under this Article because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under G.S. 50A-201 through G.S. 50A-203 determines that this State is a more appropriate forum under G.S. 50A-207; or

(3) No court of any other state would have jurisdiction under the criteria specified in G.S. 50A-201 through G.S. 50A-203.

(b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child

and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under G.S. 50A-201 through G.S. 50A-203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this Article.

"§ 50A-209. Information to be submitted to court.

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, the pleading or affidavit shall identify the court, the case number, and the date of the child-custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, the pleading or affidavit shall identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subdivisions (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivisions (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying

information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

"§ 50A-210. Appearance of parties and child.

(a) In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to G.S. 50A-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

"Part 3. Enforcement.

"§ 50A-301. Definitions.

In this Part:

(1) 'Petitioner' means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) 'Respondent' means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

"§ 50A-302. Enforcement under Hague Convention.

Under this Part, a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

"§ 50A-303. Duty to enforce.

(a) A court of this State shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this Article or the determination was made under factual circumstances meeting the jurisdictional standards of this Article, and the determination has not been modified in accordance with this Article.

(b) A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another state. The

remedies provided in this Part are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

"§ 50A-304. Temporary visitation.

(a) A court of this State which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this State makes an order under subdivisions (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2. The order remains in effect until an order is obtained from the other court or the period expires.

"§ 50A-305. Registration of child-custody determination.

(a) A child-custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

(1) A letter or other document requesting registration;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in G.S. 50A-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Direct the petitioner to serve notice upon the persons named pursuant to subdivison (a)(3), including notice of their opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision (b)(2) must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that

determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under Part 2;

(2) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law, and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

"§ 50A-306. Enforcement of registered determination.

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another state.

(b) A court of this State shall recognize and enforce, but may not modify, except in accordance with Part 2, a registered child-custody determination of a court of another state.

"§ 50A-307. Simultaneous proceedings.

If a proceeding for enforcement under this Part is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Part 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

"§ 50A-308. Expedited enforcement of child-custody determination.

(a) A petition under this Part must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must

be enforced under this Article and, if so, identify the court, the case number, and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of a child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child-custody determination has been registered and confirmed under G.S. 50A-305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under G.S. 50A-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2;

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

"§ 50A-309. Service of petition and order.

Except as otherwise provided in G.S. 50A-311, the petition and order must be served, by any method authorized by the law of this State, upon respondent and any person who has physical custody of the child.

"**§ 50A-310. Hearing and order.**

(a) Unless the court issues a temporary emergency order pursuant to G.S. 50A-204 upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child-custody determination has not been registered and confirmed under G.S. 50A-305 and that:

a. The issuing court did not have jurisdiction under Part 2;

b. The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2; or

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of G.S. 50A-108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under G.S. 50A-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Part 2.

(b) The court shall award the fees, costs, and expenses authorized under G.S. 50A-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this Part.

"**§ 50A-311. Warrant to take physical custody of child.**

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by G.S. 50A-308(b).

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
(2) Direct law enforcement officers to take physical custody of the child immediately; and
(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

"§ 50A-312. Costs, fees, and expenses.

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this Article.

"§ 50A-313. Recognition and enforcement.

A court of this State shall accord full faith and credit to an order issued by another state and consistent with this Article which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2.

"§ 50A-314. Appeals.

An appeal may be taken from a final order in a proceeding under this Part in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under G.S. 50A-204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

"§ 50A-315. Role of prosecutor or public official.

(a) In a case arising under this Article or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this Part or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) An existing child-custody determination;
(2) A request to do so from a court in a pending child-custody proceeding;
(3) A reasonable belief that a criminal statute has been violated; or

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

"**§ 50A-316. Role of law enforcement.**

At the request of a prosecutor or other appropriate public official acting under G.S. 50A-315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under G.S. 50A-315.

"**§ 50A-317. Costs and expenses.**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under G.S. 50A-315 or G.S. 50A-316."

Section 4. G.S. 1C-1702(1) reads as rewritten:

"(1) 'Foreign Judgment' means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a 'child support order,' as defined in G.S. 52C-1-101 (The Uniform Interstate Family Support Act), a 'custody decree,' as defined in ~~G.S. 50A-2(4) (The Uniform Child Custody Jurisdiction Act),~~ G.S. 50A-102 (The Uniform Child-Custody Jurisdiction and Enforcement Act), or a domestic violence protective order as provided in G.S. 50B-4(d)."

Section 5. G.S. 7B-1100(4), as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"(4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform ~~Child Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 6. G.S. 7B-1101, as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Administrative Office of the Courts. In addition to the right to appointed counsel set forth above, a guardian ad litem shall

be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1110(6); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Administrative Office of the Courts when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

Section 7. G.S. 7B-1104(7), as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"(7) That the petition has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform ~~Child Custody Jurisdiction Act.~~ Child-Custody Jurisdiction and Enforcement Act."

Section 8. G.S. 48-2-100(c) reads as rewritten:

"(c) The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child-Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes."

Section 9. G.S. 48-2-304(b)(4) reads as rewritten:

"(4) Any information required by the ~~Uniform Child Custody Jurisdiction Act,~~ Uniform Child-Custody Jurisdiction and Enforcement Act, ~~G.S. 50A-1, et seq.~~ Article 2 of Chapter 50A of the General Statutes, which is known to the petitioner;".

Section 10. G.S. 50-11.2 reads as rewritten:

"**§ 50-11.2. Judgment provisions pertaining to care, custody, tuition and maintenance of minor children.**

Where the court has the requisite jurisdiction and upon proper pleadings and proper and due notice to all interested parties the judgment in a divorce action may contain such provisions respecting care, custody, tuition and maintenance of the minor children of the marriage as the court may adjudge; and from time to time such provisions may be modified upon due notice and hearing and a showing of a substantial change in condition; and if there be no minor children, the judgment may so state. The jurisdictional requirements of G.S. ~~50A-3~~ 50A-201, 50A-203, or 50A-204 shall apply in regard to a custody decree."

Section 11. G.S. 50-13.5(c)(2) reads as rewritten:

"(2) The courts of this State shall have jurisdiction to enter orders providing for the custody of a minor child under the provisions of G.S. ~~50A-3.~~ 50A-201, 50A-202, and 50A-204."

Section 12. G.S. 50-13.5(d)(1) reads as rewritten:

"(1) Service of process in civil actions for the custody of minor children shall be as in other civil actions. Motions for support of a minor child in a pending action may be made on 10 days notice to the other parties and compliance with G.S. 50-13.5(e). Motions for custody of a minor child in a pending action may be made on 10 days notice to the other parties and after compliance with G.S. ~~50A-4.~~ 50A-205."

Section 13. G.S. 50-13.7 reads as rewritten:

"**§ 50-13.7. Modification of order for child support or custody.**

(a) An order of a court of this State for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.

(b) When an order for support of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and upon a showing of changed circumstances, enter a new order for support which modifies or supersedes such order for support, subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. ~~50A-3,~~ 50A-201, 50A-202, and 50A-204, when an order for custody of a minor child has been entered by a court of another state, a court of this State may, upon gaining jurisdiction, and a showing of changed circumstances, enter a new order for custody which modifies or supersedes such order for custody."

Section 14. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Child-Custody Jurisdiction and Enforcement Act as the Revisor deems appropriate.

Section 15. This act becomes effective October 1, 1999, and applies to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 495
Committee Substitute Favorable 4/12/99

Short Title: Family Law Arbitration Act. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

Section 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3.

"Family Law Arbitration Act.

"§ 50-41. Purpose; short title.

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

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

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

(a) During, or after marriage, parties may agree in writing to submit to arbitration any controversy, except for the divorce itself, arising out of the marital relationship. Before marriage, parties may agree in writing to submit to arbitration any controversy, except for child support, child custody, or the divorce itself, arising out of the marital relationship. This agreement is valid, enforceable, and irrevocable except with both parties' consent, without regard to the justiciable character of the controversy and without regard to whether litigation is pending as to the controversy.

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

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

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

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

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

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

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

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

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

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

interim measures and review or modification of any interim measures governing child support or child custody.

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

(1) An order of attachment or garnishment;
(2) A temporary restraining order or preliminary injunction;
(3) An order for claim and delivery;
(4) Appointment of a receiver;
(5) Delivery of money or other property into court;
(6) Notice of lis pendens;
(7) Any relief permitted by G.S. 7B-502, 7B-1902, 50-13.5(d), 50-16.2A, 50-20(h), 50-20(i), or 50-20(i1); or Chapter 50A, Chapter 50B, or Chapter 52C of the General Statutes;
(8) Any relief permitted by federal law or treaties to which the United States is a party; or
(9) Any other order necessary to ensure preservation or availability of assets or documents, the destruction or absence of which would likely prejudice the conduct or effectiveness of the arbitration.

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

(e) In considering a request for interim relief or enforcement of interim relief, any finding of fact of the arbitrators in the proceeding shall be binding on the court, including any finding regarding the probable validity of the claim that is the subject of the interim relief sought or granted, except that the court may review any findings of fact or modify any interim measures governing child support or child custody.

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

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

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

(i) A party seeking interim measures, or any other proceeding before the arbitrators, shall proceed in accordance with the agreement to arbitrate. If the

agreement to arbitrate does not provide for a method of seeking interim measures, or for other proceedings before the arbitrators, the party shall request interim measures or a hearing by notifying the arbitrators and all other parties of the request. The arbitrators shall notify the parties of the date, time, and place of the hearing.

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

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

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

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

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

(3) The parties cannot agree on an arbitrator.

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

(1) The positions and desires of the parties.

(2) The issues in dispute.

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

(4) The availability of prospective arbitrators.

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

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

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

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

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

"§ 50-46. Majority action by arbitrators.

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

"§ 50-47. Hearing.

Unless otherwise provided by the agreement:

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

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

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

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

"§ 50-48. Representation by attorney.

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

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

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

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

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

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

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

"§ 50-50. Consolidation.

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

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

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

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

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

"§ 50-51. Award; costs.

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

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

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

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

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

(f) Costs:

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

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

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

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

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

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

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

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

a. The party entitled to costs;

b. The party who shall pay costs;

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

d. The manner in which costs shall be paid.

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

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

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

"§ 50-53. Confirmation of award.

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

"§ 50-54. Vacating an award.

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

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

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

(3) The arbitrators exceeded their powers;

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

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

(6) The court determines that the award for child support or child custody is not in the best interest of the child. The burden of proof at a hearing under this subdivision is on the party seeking to vacate the arbitrator's award;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 50-58. Applications to the court.**

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

"**§ 50-59. Court; jurisdiction.**

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

"**§ 50-60. Appeals.**

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

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

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

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

(4) An order modifying or correcting an award;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1209
Committee Substitute Favorable 4/27/99
Third Edition Engrossed 4/29/99

Short Title: Personal Watercraft Safety. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 reads as rewritten:

"**§ 75A-13.3. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, ~~nor shall~~ and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow ~~a person under the age of 16~~ that person to operate a personal watercraft. A person of

at least 13 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least ~~16~~ 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses ~~a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary.~~ on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) Each livery that rents personal watercraft to the public shall carry liability insurance providing coverage of not less than three hundred thousand dollars ($300,000) per occurrence against liability for injury to persons or property arising out of the rental of personal watercraft.

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast ~~Guard;~~ Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water skis or other devices unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or ~~property, including~~ property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and include:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel ~~unreasonably or unnecessarily close of~~ within 100 feet of such other vessel or when visibility around such other vessel is obstructed; ~~and~~

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision~~ collision;

(4) Operating at greater than no-wake speed within 100 feet of an anchored or moored vessel, the shoreline, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel; and

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

~~shall constitute reckless operation of a vessel as provided in G.S. 75A-10.~~

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

~~(g) This section applies only to that portion of the waters of the upper Catawba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section.~~"

Section 2. G.S. 75A-18 is amended by adding a new subsection to read:

"(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000)."

Section 3. G.S. 75A-13.2 is repealed.

Section 4. This act becomes effective December 1, 1999 and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 991
Committee Substitute Favorable 4/26/99
Proposed Committee Substitute H991-PCS8137-RV

Short Title: Workers' Comp. and UIM Insurance. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT LIABILITY, UNINSURED, AND UNDERINSURED COVERAGE IS NOT REDUCED BY RECEIPT OF SUBROGATED WORKERS' COMPENSATION BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.21(e) reads as rewritten:

"(e) ~~Such~~ Uninsured or underinsured motorist coverage that is provided as part of a motor vehicle liability policy ~~need not~~ shall insure ~~against~~ that portion of a loss ~~from any liability for which benefits are in whole or in part either payable or required to be provided under~~ uncompensated by any workers' compensation law ~~nor~~ and the amount of an employer's lien determined pursuant to G.S. 97-10.2 (h) or (j). In no event shall this subsection be construed to require that coverage exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or allow a recovery for damages already paid by workers' compensation. The policy need not insure a loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured."

Section 2. This act becomes effective October 1, 1999, and applies to policies issued or renewed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1209

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

H1209-ASD-001

Date_____,1999

Comm. Sub. []
Amends Title []
Third

moves to amend the bill on page 1, line 16,
by rewriting the line to read:
" in the conventional manner of sitting or standing inside the
~~vehicle.~~ vessel."

And on page 3 lines 35 and 36 by inserting the following between the lines:
" (h) Nothing in this section prohibits units of local government, marine commissions, or local wake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1209 DATE _____

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

Rep.) Robinson
Sen.)

moves to amend the bill on page 2, line 1

by deleting "13" and substituting "~~13~~ 12"

SIGNED Dan Robinson

ADOPTED _____ FAILED _____ TABLED _____

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

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UNIFORM CHILD CUSTODY ACT

House Bill 494

The North Carolina Bar Association and its Family Law Section ***recommend passage*** of House Bill 494, Uniform Child Custody Act which embodies the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

The UCCJEA is a revision of the Uniform Child Custody Jurisdiction Act (UCCJA), which was enacted in every state. The revision was necessary to bring the act into compliance with federal statutes such as the Parental Kidnapping Prevention Act (PKPA) and the Violence Against Women Act, and to bring consistency to varying court interpretations. The objective was to strengthen the impact of the UCCJA, which removed the legal incentives to take children across state lines for the purpose of relitigating custody disputes.

The UCCJA always provided that the principal place to make a child custody determination was the home state of the child. The "home state" was defined as the state where the child resided when the custody proceeding began, or the state where a parent resided if the child was absent but lived in a state within the previous six months. But, the UCCJA did not give a priority to the home state over the other states that had another basis for taking jurisdiction. The new UCCJEA established such a priority.

The UCCJEA provided that a state which made the initial custody determination has continuing exclusive jurisdiction so long as a party to the original custody determination remains in that state. Continuing exclusive jurisdiction was not a provision in the original UCCJA, though the subsequent federal PKPA recognized the concept. Under the new act, a state with continuing exclusive jurisdiction is the only state in which modification of a custody order can take place. If it determines that another state has a more significant connection to the child, the state with continuing exclusive jurisdiction may relinquish its authority.

Oklahoma enacted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) on June 10, 1998. It has been introduced in the legislatures of Alaska, California, Hawaii, Kansas, Maine, Maryland, Michigan, Missouri, Nebraska, Virginia, Washington, West Virginia, and the U.S. Virgin Islands.

Laura E. Hartsell, Assistant Director of Governmental Affairs
lhartsel@mail.barlinc.org • 919.677.0561 extension 380

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House Bill 495 Family Law Arbitration Act

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

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

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

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

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

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

Laura E. Hartsell, Assistant Director of Governmental Affairs
lhartsel@mail.barlinc.org • 919.677.0561 extension 380

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Pamela Best	AOC
Ed Jenkins	N.C. Wildlife Resources Commission
Joel Wilson	Senator Lee
John Kurtz	NCFPC
Bill Scoggin	NC BAR ASSOC.
LE Hartsell	NC Bar Assoc.
Patricia Rawlen	NCACC
Anne Jo Bain	NC Medical Society

SENATE JUDICIARY II COMMITTEE

JUNE 3, 1999

ROOM 1124

HB 222	Strengthen Littering Law	Representative Mitchell
HB 1192	Tracing Crime Weapons	Representative Kinney
HB 1209	Personal Watercraft Safety	Representative Preston

Adjournment

SENATE JUDICIARY II COMMITTEE

JUNE 3, 1999

MINUTES

The Senate Judiciary II Committee met on June 3, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Eleven members were present, including Senator Brad Miller, who presided.

Senator Miller recognized Representative Preston to continue the discussion of HB 1209, Personal Watercraft Safety. Senator Robinson explained his proposed amendment to change the age requirement from 13 to 12, on page 2, line 1. Ed Jenkins, with the NC Wildlife Commission, was called on to describe the boating course requirement. The amendment carried.

Senator Ballance sent forth an amendment to change the bill on page 1, line 16, and on page 3, lines 35 and 36. The amendment was displaced.

Senator Martin moved to amend the bill on page 2, line 4, by inserting after the word "watercraft" the following: "and who possesses in his or her name a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA). After discussion of the amendment, Senator Martin withdrew his motion.

Senator Ballance moved to amend the bill on page 2, lines 18 through 21, by rewriting those lines. (amendment attached) The motion carried unanimously.

Senator Miller displaced HB 1209 until the next meeting.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 222
Committee Substitute Favorable 3/22/99
Committee Substitute #2 Favorable 4/20/99

Short Title: Strengthen Littering Law. (Public)

Sponsors:

Referred to:

March 3, 1999

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LITTERING LAW BY INCREASING THE MINIMUM AND MAXIMUM FINES AND BY REQUIRING COMMUNITY SERVICE IN THOSE INSTANCES WHERE IT IS CURRENTLY PERMISSIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ two hundred fifty dollars ($250.00) nor more than ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) for the first offense. In addition, the court ~~may~~ shall require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent offense within three years after the date of a prior offense is punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ five hundred dollars ($500.00) nor more than ~~one thousand dollars ($1,000).~~ two thousand dollars ($2,000). In addition, the court ~~may~~ shall require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ five hundred dollars ($500.00) nor more than ~~one thousand dollars ($1,000).~~ two thousand dollars ($2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(e) Any person who violates this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court ~~may~~ shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point

on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to ~~G.S. 58-30.4~~ G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

~~(2) "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.~~

(2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of such entity.

(3) "Law enforcement officer" means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);

(4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. "Litter" does not include

political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) "Vehicle" has the same meaning as in G.S. 20-4.01(49); and

(6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

Section 2. The Commissioner of Motor Vehicles is directed to include at least one question relating to littering on the next drivers license examination prepared by the Division of Motor Vehicles.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1192
Committee Substitute Favorable 4/23/99

Short Title: Tracing Crime Weapons. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE TRACING OF FIREARMS USED IN THE COMMISSION OF A CRIME.

The General Assembly of North Carolina enacts:

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

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

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

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, the necessary data to make a trace regarding all firearms seized, forfeited, found, or otherwise coming into the possession of any State or local law enforcement agency of the State that are believed to have been used in the commission of a crime, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of

successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1209
Committee Substitute Favorable 4/27/99
Third Edition Engrossed 4/29/99

Short Title: Personal Watercraft Safety. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 reads as rewritten:

"**§ 75A-13.3. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, ~~nor shall~~ and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow ~~a person under the age of 16~~ that person to operate a personal watercraft. A person of

at least 13 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least ~~16~~ 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses ~~a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary.~~ on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) Each livery that rents personal watercraft to the public shall carry liability insurance providing coverage of not less than three hundred thousand dollars ($300,000) per occurrence against liability for injury to persons or property arising out of the rental of personal watercraft.

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast ~~Guard;~~ Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water skis or other devices unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or ~~property, including~~ property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and include:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel ~~unreasonably or unnecessarily close of~~ within 100 feet of such other vessel or when visibility around such other vessel is obstructed; ~~and~~

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision~~ collision;

(4) Operating at greater than no-wake speed within 100 feet of an anchored or moored vessel, the shoreline, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel; and

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

~~shall constitute reckless operation of a vessel as provided in G.S. 75A-10.~~

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

~~(g) This section applies only to that portion of the waters of the upper Catawba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section.~~"

Section 2. G.S. 75A-18 is amended by adding a new subsection to read:

"(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000)."

Section 3. G.S. 75A-13.2 is repealed.

Section 4. This act becomes effective December 1, 1999 and applies to acts committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1209 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Martin
Sen.)

moves to amend the bill on page 2, line 4

( ) WHICH CHANGES THE TITLE

by inserting after the word "watercraft" the following: "and who possesses in his or her name a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA)."

withdrawn

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1209 DATE _____

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

Rep.) Robinson
Sen.)

moves to amend the bill on page 2, line 1

by deleting "13" and substituting "~~13~~ 12"

SIGNED Dan Robinson

ADOPTED _____ FAILED _____ TABLED _____

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1209

AMENDMENT NO._____
(to be filled in by Principal Clerk)
Page 2 of __

H1209AAED002

Date_____,1999

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

moves to amend the bill on page 2, lines 18 through 21 by rewriting those lines to read:

" (c1)It shall be unlawful for any person, firm or corporation to engage in the business of renting personal watercraft to the public for operation by the rentee unless such person, firm or corporation has secured insurance for his own liability and that of his rentee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell liability insurance in this State. Each such personal watercraft rented must be covered by a policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars ($300,000) per occurrence."

SIGNED Ingram Ballinger
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1209

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

H1209-ASD-002

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 222:
Strengthen Littering Law

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 3, 1999
Version: 3rd Edition

Introduced by: Representative Mitchell
Summary by: Mary Shuping
Research Assistant
House Finance Committee

SUMMARY: House Bill 222, Strengthen Littering Law, will increase the minimum and maximum fines for littering offenses and will require community service in those instances where community service is currently permissive.

CURRENT LAW: Current law requires the following:

Amount of Litter Discarded	Classification	Fine	Community Service
15 lbs. or less; not for commercial purposes – *1st offense*	Class 3 Misdemeanor	$100 - $500	*May* require 8 – 24 hours of picking up litter or other labor commensurate with the offense
15 lbs. or less; not for commercial purposes – *2nd or subsequent offense committed within 3 years*	Class 3 Misdemeanor	$100 - $1,000	*May* require 16 - 50 hours of picking up litter or other labor commensurate with the offense
+15 lbs. – 500 lbs.; not for commercial purposes	Class 3 Misdemeanor	$100 - $1,000	*Shall* require 24 – 100 hours of picking up litter or other labor commensurate with the offense.
In excess of 500 lbs. ; or for commercial purposes; or hazardous waste	Class I Felony	Discretion of the court	*May* order the violator to remove or render harmless the litter; repair, restore, or pay for any property damage; or perform community service.

BILL ANALYSIS: House Bill 222 would increase the fines for littering and make community service mandatory as follows:

Amount of Litter Discarded	Classification	Fine	Community Service
15 lbs. or less; not for commercial purposes – *1st offense*	Class 3 Misdemeanor	**$250 – $1,000**	***Shall*** require 8 – 24 hours of picking up litter or other labor commensurate with the offense
15 lbs. or less; not for commercial purposes – *2nd or subsequent offense committed within 3 years*	Class 3 Misdemeanor	**$500 – $2,000**	***Shall*** require 16 - 50 hours of picking up litter or other labor commensurate with the offense
+15 lbs. – 500 lbs.; not for commercial purposes	Class 3 Misdemeanor	**$500 – $2,000**	*(Required under current law; no change)*
In excess of 500 lbs.; or for commercial purposes; or hazardous waste	Class I Felony	Discretion of the court	***Shall*** order the violator to remove or render harmless the litter; repair, restore, or pay for any property damage; or perform community service.

"Commercial purposes" is used throughout the existing littering law, but is not defined. House Bill 222 clarifies the definition of "commercial purposes" and removes the definition of "commercial vehicle" since the term is not used in this section.

EFFECTIVE DATE: House Bill 222 would become effective December 1, 1999, and apply to offenses committed on or after that date.

HOUSE BILL 1192:
Tracing Crime Weapons.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Kinney
Date:	April 21, 1999	**Summary by:**	William R. Gilkeson & Ed Rossi Staff Counsel
Version:	2nd Edition		

SUMMARY: House Bill 1192 would require the Attorney General to collect information in the Division of Criminal Statistics on firearms believed to have been used in the commission of a crime.

CURRENT LAW: Currently, the Attorney General is required through his Division of Criminal Statistics to collect all sorts of information about crimes in North Carolina.

BILL ANALYSIS: The bill would add to the information the Division would collect information about firearms that have come into the possession of law enforcement and are believed to have been used in the commission of crimes.

BACKGROUND: As originally introduced, the bill required the Attorney General to promulgate rules requiring law enforcement to report specific information, including:

- The firearm serial number.
- A description of the crime committed and how the agency came into possession of the firearm.
- The identity of the person from whom the firearm was taken.
- The place where the firearm was purchased.
- What happened to the firearm.

The House committee substitute removed these specific reporting requirements.

HOUSE BILL 1209:
Personal Watercraft Safety

BILL ANALYSIS

Committee: Senate JII
Date: April 21, 1999
Version: 3rd Edition

Introduced by: Rep. Preston
Summary by: Barbara Riley & Ed Rossi
Staff Counsel

SUMMARY:

House Bill 1209 would enact changes to the State's boating safety laws conforming the regulations for personal watercraft (jet skis)to the recommendations of the National Association of State Boating Law Administrators (NASBLA).

CURRENT LAW: Two sections of Chapter 75A, the Boating Safety Act, deal specifically with the operation of personal watercraft (pwc's). One provision is the statewide law and the other is a local law for the upper Catawba River region. The statewide provision, G.S. 75A-13.2 provides that a pwc may not be operated between the period one hour after sunset to one hour before sunrise. No person may operate or be towed behind a pwc without wearing a personal floatation device. Reckless operation of the pwc is forbidden including (1) unnecessary weaving (2) wake jumping, and (3) approaching another vessel only to swerve at the last moment to avoid a collision. Reckless operation of a pwc is a Class 2 misdemeanor.

In addition to the provisions of the statewide law, the local provision for the upper Catawba River requires a person to be at least 16 in order to operate a pwc. Persons 13 to 16 years of age may operate a pwc if accompanied by a person 16 or older, or if they have a boating safety certificate. Liveries may not lease a pwc to a person under 16 unless they meet the above criteria. Further, if the pwc is equipped with a lanyard-type switch, that lanyard must be attached to the operators clothing or pfd at all times so that the engine is cut off if the operator dismounts while the pwc is in operation.

BILL ANALYSIS: House Bill 1209 repeals G.S. 75A-13.2, the statewide statute, and amends G.S. 75A-13.3, the upper Catawba provision, making it statewide in application and conforming the requirements of the law with the recommendations of NASBLA. As amended G.S. 75A-13.3 would require:

1. No operation of a pwc between sunset and sunrise.

2. Minimum age of 16. 13 year olds may operate a pwc if they have completed a NASBLA approved boating safety course or are accompanied by a person 18 or older.

3. Must wear a Type I, II, III, or V floatation device. No inflatable pfd's.

4. When towing a person behind the pwc, must have an observer in addition to the operator or a rear view mirror. Total number of persons being towed and onboard may not exceed manufacturers load limit.

5. Activities constituting reckless operation include operating a greater than no wake speed near within 100' of a moored or anchored vessel , the shore, a dock, a marked swimming area, swimmers, surfers, and anglers. Pwc operators are also required to observe the "rules of the road" and may not follow another vessel too closely.

6. Boat liveries renting pwc's must carry liability insurance in the amount of $300,000.

The bill also amends G.S. 75A-18, providing penalties for violations of Chapter 75A, to make violation of G.S. 75A-13.3 by a person under the age of 16 an infraction. Further, boat liveries that fail to carry the required insurance are guilty of a Class 2 misdemeanor and subject only to a fine not to exceed $1,000.

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

North Carolina Boat Type Accident Statistics: 1998

Type of Boat	#Boats in Accidents
Unknown	8
Auxiliary Sail	4
Cabin Motorboat	12
Canoe/Kayak	3
Open Motorboat	140
Other	2
Personal Watercraft	140
Pontoon	14
Rowboat	2
Sail (only)	1
Total Boats	**326**

North Carolina Personal Watercraft (PWC) Accident Statistics:1998			
Operator Age	**Number of PWC in Accidents**	**Number of Injuries**	**Number of Fatalities**
11	2	1	1
12	2	3	0
13	2	0	0
14	7	2	0
15	8	3	0
16	6	2	0
17	7	5	0
18	6	2	0
19	9	4	1
20	2	2	0
21	7	4	0
22	2	1	0
23	8	5	0
24	4	1	0
25	7	1	0
26	4	2	0
27	6	1	1
28	5	3	0
29	1	1	0
30	4	1	0
31	4	1	0
32	3	5	1
33	1	0	0
35	2	1	0
36	8	3	0
37	1	1	0
38	3	2	0
40	3	2	0
41	1	1	0
42	1	1	0
43	2	2	0
44	2	2	1
45	1	0	0
47	1	0	0
49	1	1	0
56	1	0	0
61	1	0	0
65	1	1	0
78	1	1	0
Unknown	3	0	0
Totals	**140**	**68**	**5**

North Carolina Personal Watercraft (PWC) Accident Statistics: 1997

Operator Age	Number of PWC in Accidents	Number of Injuries	Number of Fatalities
9	1	0	0
10	1	1	0
11	1	0	0
14	2	1	0
15	3	1	0
16	5	2	0
17	4	2	0
18	5	2	0
19	8	6	0
20	5	1	0
21	6	6	0
22	4	2	0
23	1	1	0
24	1	1	0
25	3	2	0
26	3	1	0
28	3	3	0
29	3	3	0
30	1	0	0
32	2	2	0
33	1	0	0
34	4	0	1
35	2	1	1
36	2	2	0
37	3	3	0
38	1	1	0
40	2	0	0
43	1	0	0
44	1	1	0
45	2	2	0
47	2	1	0
48	1	0	1
51	1	1	0
53	1	1	0
61	1	0	0
Unknown	25	6	0
1997 Totals	**112**	**56**	**3**

North Carolina Personal Watercraft (PWC) Accident Statistics: 1996

Operator Age	Number of PWC in Accidents	Number of Injuries	Number of Fatalities
11	2	1	0
13	3	2	0
14	4	1	0
15	5	2	0
16	1	0	0
17	7	7	1
18	4	2	0
19	3	1	1
20	5	3	0
21	2	2	0
22	5	2	0
23	8	5	0
24	4	3	0
25	9	6	0
26	3	2	0
27	1	0	0
28	4	3	0
31	2	1	0
33	1	1	0
34	2	1	0
35	4	1	0
36	1	0	0
37	1	0	1
40	3	2	0
44	4	3	0
45	2	2	0
46	2	0	0
47	2	2	0
52	1	0	1
54	1	0	0
55	1	1	0
71	1	1	0
79	1	1	0
Unknown	10	1	0
1996 Totals	**109**	**59**	**4**

North Carolina Personal Watercraft (PWC) Accident Statistics: 1995

Operator Age	Number of PWC in Accidents	Number of Injuries	Number of Fatalities
9	1	1	0
11	1	0	0
12	1	1	0
13	3	1	0
14	4	2	0
15	4	2	0
16	4	4	0
17	5	3	0
18	2	1	1
19	7	2	0
20	3	2	0
21	2	2	0
22	3	1	0
23	6	4	0
24	4	4	0
25	6	1	0
26	1	0	0
28	2	1	0
29	2	2	0
30	2	2	0
31	3	1	0
33	1	0	0
34	1	1	0
35	2	1	0
36	1	1	0
37	2	2	0
41	2	2	0
44	2	1	0
47	1	1	0
48	1	1	0
56	1	0	0
57	1	1	0
68	1	0	0
78	1	1	0
Unknown	8	0	0
1995 Totals	**91**	**49**	**1**

VISITOR REGISTRATION SHEET

J-2 — Name of Committee

6/3/99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	NCGV
Oak McLeod	SCENIC NC, INC.
Jack Cozart	Parker Poe Adams & Bernstein
A.B Swindell	BTI
Bechie Street	PPnG
PG	AFB
Steve Woodson	North Carolina Farm Bureau Federation, Inc.
David McLeod	NCDA&CS
Dave Hall	Smith
Butch Funnells	NC Soft Drink Assoc.
LISA REYES	THE INSIDER
Christie Cromer	NC ATL
Bryan Beatty	DOJ
Ed Regan	N.C.A.C.C.
Natalie English	NC Ag. Council

VISITOR REGISTRATION SHEET

J-2 — Name of Committee

6/3/99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	McCleer Consulting

SENATE JUDICIARY II COMMITTEE

JUNE 8, 1999

ROOM 1124

HB 222	Strengthen Littering Law	Representative Mitchell
HB 1192	Tracing Crime Weapons	Representative Kinney
HB 1209	Personal Watercraft Safety	Representative Preston

Adjournment

SENATE JUDICIARY II COMMITTEE

JUNE 8, 1999

MINUTES

The Senate Judiciary II Committee met on June 8, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

The discussion of HB 1209, Personal Watercraft Safety, was continued from the previous meeting. Senator Moore moved to amend the bill on page 1, line 16, and on page 3, lines 35 and 36. He subsequently withdrew the motion.

Senator Kinnaird moved to amend the bill on page 1, line 16, by changing "vehicle" to "vessel," and on page 3, lines 35 and 36, by inserting: "Nothing in this section prohibits units of local government, marine commissions, or local wake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section." The motion carried.

Senator Shaw moved to engross the amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried. **Unfavorable as to Senate Committee Substitute #1, but favorable as to Senate Committee Substitute #2.**

HB 222, Strengthen Littering Law, was explained by Representative Mitchell. Senator Ballance moved to amend the bill on page 2, lines 10 and 17, by deleting the word "shall" and substituting "may." The motion failed.

Senator Rucho moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 222
Committee Substitute Favorable 3/22/99
Committee Substitute #2 Favorable 4/20/99

Short Title: Strengthen Littering Law. (Public)

Sponsors:

Referred to:

March 3, 1999

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LITTERING LAW BY INCREASING THE MINIMUM AND MAXIMUM FINES AND BY REQUIRING COMMUNITY SERVICE IN THOSE INSTANCES WHERE IT IS CURRENTLY PERMISSIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ two hundred fifty dollars ($250.00) nor more than ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) for the first offense. In addition, the court ~~may~~ shall require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent offense within three years after the date of a prior offense is punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ five hundred dollars ($500.00) nor more than ~~one thousand dollars ($1,000).~~ two thousand dollars ($2,000). In addition, the court ~~may~~ shall require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ five hundred dollars ($500.00) nor more than ~~one thousand dollars ($1,000).~~ two thousand dollars ($2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(e) Any person who violates this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court ~~may~~ shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point

on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to ~~G.S. 58-30.4~~ G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

~~(2) "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.~~

(2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of such entity.

(3) "Law enforcement officer" means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);

(4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. "Litter" does not include

political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) "Vehicle" has the same meaning as in G.S. 20-4.01(49); and

(6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

Section 2. The Commissioner of Motor Vehicles is directed to include at least one question relating to littering on the next drivers license examination prepared by the Division of Motor Vehicles.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1192
Committee Substitute Favorable 4/23/99

Short Title: Tracing Crime Weapons. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE TRACING OF FIREARMS USED IN THE COMMISSION OF A CRIME.

The General Assembly of North Carolina enacts:

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

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

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

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, the necessary data to make a trace regarding all firearms seized, forfeited, found, or otherwise coming into the possession of any State or local law enforcement agency of the State that are believed to have been used in the commission of a crime, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of

successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1209
Committee Substitute Favorable 4/27/99
Third Edition Engrossed 4/29/99

Short Title: Personal Watercraft Safety. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 reads as rewritten:

"**§ 75A-13.3. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, ~~nor shall~~ and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow ~~a person under the age of 16~~ that person to operate a personal watercraft. A person of

at least 13 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least ~~16~~ 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses ~~a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary.~~ on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) Each livery that rents personal watercraft to the public shall carry liability insurance providing coverage of not less than three hundred thousand dollars ($300,000) per occurrence against liability for injury to persons or property arising out of the rental of personal watercraft.

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast ~~Guard;~~ Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water skis or other devices unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or ~~property, including:~~ property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and include:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel ~~unreasonably or unnecessarily close of~~ within 100 feet of such other vessel or when visibility around such other vessel is obstructed; ~~and~~

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision~~ collision;

(4) Operating at greater than no-wake speed within 100 feet of an anchored or moored vessel, the shoreline, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel; and

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

~~shall constitute reckless operation of a vessel as provided in G.S. 75A-10.~~

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

~~(g) This section applies only to that portion of the waters of the upper Catawba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section.~~"

Section 2. G.S. 75A-18 is amended by adding a new subsection to read:

"(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000)."

Section 3. G.S. 75A-13.2 is repealed.

Section 4. This act becomes effective December 1, 1999 and applies to acts committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 222 DATE _____

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

Rep.) Ballance
)
Sen.)

moves to amend the bill on page 2, line 10 & 17

by deleting the words : "~~may~~ shall" & substituting ~~Amend~~ "may"

SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1209

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

H1209-ASD-001

Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]
Third

moves to amend the bill on page 1, line 16,
by rewriting the line to read:
" in the conventional manner of sitting or standing inside the
~~vehicle.~~ vessel."

And on page 3 lines 35 and 36 by inserting the following between the lines:
" (h) Nothing in this section prohibits units of local government, marine commissions, or local wake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1209

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

H1209-ARV-001

Page 1 of __

Date_____,1999

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

Senator Dalton

moves to amend the bill on page 1, line 16,
by rewriting that line to read:
"in the conventional manner of sitting or standing inside the
~~vehicle.~~ vessel." ;

and also moves to amend the bill on page 3, lines 35 and 36,
by inserting between those lines the following:
" (h) Nothing in this section prohibits units of local government, marine commissions, or local wake authorities from proscribing or regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that where the operation of personal watercraft is permitted the regulations are not in conflict with the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section."

SIGNED K. Moore
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1209
Committee Substitute Favorable 4/27/99
Third Edition Engrossed 4/29/99
Proposed Committee Substitute H1209-PCS3437-SD

Short Title: Personal Watercraft Safety. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 reads as rewritten:

"**§ 75A-13.3. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the ~~vehicle.~~ vessel.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, ~~nor shall~~ and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow ~~a person under the age of 16~~ that person to operate a personal watercraft. A person of

at least ~~13~~ 12 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least ~~16~~ 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses ~~a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary.~~ on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) It shall be unlawful for any person, firm, or corporation to engage in the business of renting personal watercraft to the public for operation by the rentee unless such person, firm, or corporation has secured insurance for his own liability and that of his rentee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell liability insurance in this State. Each such personal watercraft rented must be covered by a policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars ($300,000) per occurrence.

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast ~~Guard;~~ Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water skis or other devices unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or ~~property, including:~~ property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and include:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel ~~unreasonably or unnecessarily close of~~ within 100 feet of such other vessel or when visibility around such other vessel is obstructed; ~~and~~

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision~~ collision;

(4) Operating at greater than no-wake speed within 100 feet of an anchored or moored vessel, the shoreline, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel; and

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

~~shall constitute reckless operation of a vessel as provided in G.S. 75A-10.~~

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

~~(g) This section applies only to that portion of the waters of the upper Catawba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section.~~

(h) Nothing in this section prohibits units of local government, marine commissions, or local wake authorities from proscribing or regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that where the operation of personal watercraft is permitted the regulations are not in conflict with the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section."

Section 2. G.S. 75A-18 is amended by adding a new subsection to read:

(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000)."

Section 3. G.S. 75A-13.2 is repealed.

Section 4. This act becomes effective December 1, 1999 and applies to acts committed on or after that date.

HOUSE BILL 222:
Strengthen Littering Law

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 3, 1999
Version: 3rd Edition

Introduced by: Representative Mitchell
Summary by: Mary Shuping
Research Assistant
House Finance Committee

SUMMARY: House Bill 222, Strengthen Littering Law, will increase the minimum and maximum fines for littering offenses and will require community service in those instances where community service is currently permissive.

CURRENT LAW: Current law requires the following:

Amount of Litter Discarded	Classification	Fine	Community Service
15 lbs. or less; not for commercial purposes – *1st offense*	Class 3 Misdemeanor	$100 - $500	*May* require 8 – 24 hours of picking up litter or other labor commensurate with the offense
15 lbs. or less; not for commercial purposes – *2nd or subsequent offense committed within 3 years*	Class 3 Misdemeanor	$100 - $1,000	*May* require 16 - 50 hours of picking up litter or other labor commensurate with the offense
+15 lbs. – 500 lbs.; not for commercial purposes	Class 3 Misdemeanor	$100 - $1,000	*Shall* require 24 – 100 hours of picking up litter or other labor commensurate with the offense.
In excess of 500 lbs. ; or for commercial purposes; or hazardous waste	Class I Felony	Discretion of the court	*May* order the violator to remove or render harmless the litter; repair, restore, or pay for any property damage; or perform community service.

BILL ANALYSIS: House Bill 222 would increase the fines for littering and make community service mandatory as follows:

Amount of Litter Discarded	Classification	Fine	Community Service
15 lbs. or less; not for commercial purposes – *1st offense*	Class 3 Misdemeanor	**$250 – $1,000**	***Shall*** require 8 – 24 hours of picking up litter or other labor commensurate with the offense
15 lbs. or less; not for commercial purposes – *2nd or subsequent offense committed within 3 years*	Class 3 Misdemeanor	**$500 – $2,000**	***Shall*** require 16 - 50 hours of picking up litter or other labor commensurate with the offense
+15 lbs. – 500 lbs.; not for commercial purposes	Class 3 Misdemeanor	**$500 – $2,000**	*(Required under current law; no change)*
In excess of 500 lbs.; or for commercial purposes; or hazardous waste	Class I Felony	Discretion of the court	***Shall*** order the violator to remove or render harmless the litter; repair, restore, or pay for any property damage; or perform community service.

"Commercial purposes" is used throughout the existing littering law, but is not defined. House Bill 222 clarifies the definition of "commercial purposes" and removes the definition of "commercial vehicle" since the term is not used in this section.

EFFECTIVE DATE: House Bill 222 would become effective December 1, 1999, and apply to offenses committed on or after that date.

North Carolina Boat Type Accident Statistics: 1998

Type of Boat	#Boats in Accidents
Unknown	8
Auxiliary Sail	4
Cabin Motorboat	12
Canoe/Kayak	3
Open Motorboat	140
Other	2
Personal Watercraft	140
Pontoon	14
Rowboat	2
Sail (only)	1
Total Boats	**326**

North Carolina Personal Watercraft (PWC) Accident Statistics:1998			
Operator Age	Number of PWC in Accidents	Number of Injuries	Number of Fatalities
11	2	1	1
12	2	3	0
13	2	0	0
14	7	2	0
15	8	3	0
16	6	2	0
17	7	5	0
18	6	2	0
19	9	4	1
20	2	2	0
21	7	4	0
22	2	1	0
23	8	5	0
24	4	1	0
25	7	1	0
26	4	2	0
27	6	1	1
28	5	3	0
29	1	1	0
30	4	1	0
31	4	1	0
32	3	5	1
33	1	0	0
35	2	1	0
36	8	3	0
37	1	1	0
38	3	2	0
40	3	2	0
41	1	1	0
42	1	1	0
43	2	2	0
44	2	2	1
45	1	0	0
47	1	0	0
49	1	1	0
56	1	0	0
61	1	0	0
65	1	1	0
78	1	1	0
Unknown	3	0	0
Totals	**140**	**68**	**5**

North Carolina Personal Watercraft (PWC) Accident Statistics: 1997

Operator Age	Number of PWC in Accidents	Number of Injuries	Number of Fatalities
9	1	0	0
10	1	1	0
11	1	0	0
14	2	1	0
15	3	1	0
16	5	2	0
17	4	2	0
18	5	2	0
19	8	6	0
20	5	1	0
21	6	6	0
22	4	2	0
23	1	1	0
24	1	1	0
25	3	2	0
26	3	1	0
28	3	3	0
29	3	3	0
30	1	0	0
32	2	2	0
33	1	0	0
34	4	0	1
35	2	1	1
36	2	2	0
37	3	3	0
38	1	1	0
40	2	0	0
43	1	0	0
44	1	1	0
45	2	2	0
47	2	1	0
48	1	0	1
51	1	1	0
53	1	1	0
61	1	0	0
Unknown	25	6	0
1997 Totals	**112**	**56**	**3**

North Carolina Personal Watercraft (PWC) Accident Statistics: 1996

Operator Age	Number of PWC in Accidents	Number of Injuries	Number of Fatalities
11	2	1	0
13	3	2	0
14	4	1	0
15	5	2	0
16	1	0	0
17	7	7	1
18	4	2	0
19	3	1	1
20	5	3	0
21	2	2	0
22	5	2	0
23	8	5	0
24	4	3	0
25	9	6	0
26	3	2	0
27	1	0	0
28	4	3	0
31	2	1	0
33	1	1	0
34	2	1	0
35	4	1	0
36	1	0	0
37	1	0	1
40	3	2	0
44	4	3	0
45	2	2	0
46	2	0	0
47	2	2	0
52	1	0	1
54	1	0	0
55	1	1	0
71	1	1	0
79	1	1	0
Unknown	10	1	0
1996 Totals	**109**	**59**	**4**

North Carolina Personal Watercraft (PWC) Accident Statistics: 1995

Operator Age	Number of PWC in Accidents	Number of Injuries	Number of Fatalities
9	1	1	0
11	1	0	0
12	1	1	0
13	3	1	0
14	4	2	0
15	4	2	0
16	4	4	0
17	5	3	0
18	2	1	1
19	7	2	0
20	3	2	0
21	2	2	0
22	3	1	0
23	6	4	0
24	4	4	0
25	6	1	0
26	1	0	0
28	2	1	0
29	2	2	0
30	2	2	0
31	3	1	0
33	1	0	0
34	1	1	0
35	2	1	0
36	1	1	0
37	2	2	0
41	2	2	0
44	2	1	0
47	1	1	0
48	1	1	0
56	1	0	0
57	1	1	0
68	1	0	0
78	1	1	0
Unknown	8	0	0
1995 Totals	**91**	**49**	**1**

VISITOR REGISTRATION SHEET

Jud. II — Name of Committee

6-8-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	NCGU
Jon Williams	CCPS
AB Swindell	BFI Waste
Lois Nixon	Lake Co. KAB
Allen Lamb	NCDOT Beautification
Sandra Payne	Governor's Office
J. Allison Adams	Parker, Poe, Adams & Bernstein
Jack Cozort	Parker Poe Adams & Bernstein
Steve Woodson	NC Farm Bureau Federation
Oak McKee	Scenic North Carolina, Inc.
John McMillan	MFAs
FRAN PRESTON	NCRMA
Butch Gunnells	NC Soft Drink Assoc
John Madler	NC Sentencing Commission
Doug Lassiter	McClees Consulting

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kim Hibbard	NCLM
Bob Slocum	NC Forestry Assoc
Cindy Ellen	NC Retail Merchants Assoc
Alice Garland	Electricities
Catherine Davis	Electricities
Lilo Rubert	CYPC
Charles Cromer	NCATL
Bryan Beatty	DOS
Henry Hutaff	Coca Cola

SENATE JUDICIARY II COMMITTEE

JUNE 10, 1999

ROOM 1124

HB 478	Threaten Court Officers	Representative Jarrell
HB 1192	Tracing Crime Weapons	Representative Kinney

Adjournment

SENATE JUDICIARY II COMMITTEE

JUNE 10, 1999

MINUTES

The Senate Judiciary II Committee met on June 10, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

Senator Miller announced the subcommittee members who would hear HB 604, Clarify Atty-in-Fact Gifts, and HB 1100, Removal/Resignation of Trustees: Senator Hagan, Chair, and Senators Robinson and Horton.

Representative Jarrell was recognized to explain HB 478, Threaten Court Officers. Senator Kinnaird sent forth an amendment which would add at the end of the line on page 2, line 30, the words: "court reporter or any," and on page 2, line 33, delete "attorneys" and substitute "persons." The motion carried unanimously. Peg Dorer, Conference of District Attorneys, spoke in support of the bill. Senator Miller assigned HB 478 to the subcommittee named at the start of the meeting.

HB 1192, Tracing Crime Weapons, was explained by Representative Kinney. Bryan Beatty, Attorney General's office, explained that the purpose of the bill was to ensure that the Attorney General would continue to collect information in the Division of Criminal Statistics on firearms used in crimes. Also speaking to the bill was Bruce Thompson, North Carolinians Against Gun Violence. Senator Martin moved a favorable report of the bill. The motion carried. **Favorable report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

HOUSE BILL 478
Committee Substitute Favorable 4/7/99
Third Edition Engrossed 4/20/99

Short Title: Threaten Court Officers. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 5A.

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

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

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

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

(c) Any person who commits an offense under subsection (a) and inflicts serious bodily injury to any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~

officer, executive ~~officer as named in G.S. 147-3(c)~~ officer, or court officer, shall be punished as a Class F felon.

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

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

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

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

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

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

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

"**§ 14-16.10. Definitions.**

The following definitions apply in this Article:

(1) Court officer. -- Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court counselor as defined in G.S. 7B-1501(5); or any attorney licensed to practice in the General Court of Justice when in a building where judicial functions are exercised or while in the exercise of that attorney's judicial duties.

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

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

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

"(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1192
Committee Substitute Favorable 4/23/99

Short Title: Tracing Crime Weapons. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE TRACING OF FIREARMS USED IN THE COMMISSION OF A CRIME.

The General Assembly of North Carolina enacts:

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

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

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

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, the necessary data to make a trace regarding all firearms seized, forfeited, found, or otherwise coming into the possession of any State or local law enforcement agency of the State that are believed to have been used in the commission of a crime, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of

successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

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

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

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

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 478 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Kinnaird
)
Sen.)

moves to amend the bill on page 2, line 30

( ) WHICH CHANGES THE TITLE

by adding at the end of that line the words "court reporter or any"

and on page 2 line 33

by deleting "attorney's" and substituting "Person's"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1192:
Tracing Crime Weapons.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Representative Kinney
Date:	April 21, 1999	**Summary by:**	William R. Gilkeson & Ed Rossi Staff Counsel
Version:	2nd Edition		

SUMMARY: House Bill 1192 would require the Attorney General to collect information in the Division of Criminal Statistics on firearms believed to have been used in the commission of a crime.

CURRENT LAW: Currently, the Attorney General is required through his Division of Criminal Statistics to collect all sorts of information about crimes in North Carolina.

BILL ANALYSIS: The bill would add to the information the Division would collect information about firearms that have come into the possession of law enforcement and are believed to have been used in the commission of crimes.

BACKGROUND: As originally introduced, the bill required the Attorney General to promulgate rules requiring law enforcement to report specific information, including:

- The firearm serial number.
- A description of the crime committed and how the agency came into possession of the firearm.
- The identity of the person from whom the firearm was taken.
- The place where the firearm was purchased.
- What happened to the firearm.

The House committee substitute removed these specific reporting requirements.

VISITOR REGISTRATION SHEET

J-11 — Name of Committee

6-10-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	NCGV
Tara Seidel	Parker Poe Adams & Bernstein
Henri McClees	McClees Consulting
Doug Lassiter	McClees Consulting
Peg Dorer	Conference of D.A.s
Matt Osborne	AOC
Bryan Beatty	DOS
Gaither Payne	Governor's Office
[illegible]	NC ACCE
Jack Cozart	Parker Poe
[illegible]	UNC GA
George Reed	NC Council of Churches
Larry Dix	DJJ
Jon Williams	CCPS
[illegible]	NCDOA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tom Coley	NCCWA
Deborah Ross	ACLU

SENATE JUDICIARY II COMMITTEE

JUNE 15, 1999

ROOM 1124

HB 331	Sentencing Services Program	Representative Bowie
HB 685	Arrest Warrants/Copies	Representative Bridgeman
HB 1022	Unlawful Use of Driver's License	Representative Allen
HB 1209	Personal Watercraft Safety	Representative Preston

Adjournment

SENATE JUDICIARY II COMMITTEE

JUNE 15, 1999

MINUTES

The Senate Judiciary II Committee met on June 15, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Ten members were present, including Senator Brad Miller, who presided.

Senator Miller began the discussion of HB 1209, Personal Watercraft Safety, by stating that the wrong amendment had been engrossed into a committee substitute and that the bill had been re-referred to the Senate Judiciary II committee in order to correct the error. Senator Forrester moved to reconsider the vote on HB 1209. The motion carried unanimously. For purposes of discussion, Senator Forrester moved to adopt the proposed committee substitute. The motion carried unanimously.

Senator Hagan moved to amend the bill on page 4, line 6 regarding the posting of signs to provide notice to personal watercraft users of the stricter regulations imposed by local governments, marine commissions, or local wake authorities. The motion carried unanimously.

Senator Hagen moved to amend the bill on page 2, line 22, by deleting the word "licensed" and inserting the word "authorized." The motion carried unanimously.

Senator Kinnaird moved to engross the amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried. **Unfavorable as to committee substitute bill #1, but favorable as to Senate committee substitute.**

HB 685, Arrest Warrants/Copies, was explained by Representative Bridgeman. Eddie Caldwell, NC Law Enforcement Association and NC Sheriff's Association, said that the request for the bill came from the Charlotte/Mecklenburg Police Department. Senator Ballance move to amend the bill on page 1, line 16, by adding after the word "agency" the following: "and the officer verifies with the agency that the warrant is current and valid." The motion carried unanimously.

Senator Moore moved to engross the amendment into a committee substitute and to give the committee substitute a favorable. The motion carried unanimously. **Unfavorable as to committee substitute bill #1, but favorable as to Senate committee substitute.**

Representative Allen was recognized to explain HB 1022, Unlawful Use of Driver's License. Jim Loftin, with NCAFI, explained that the purpose of the bill is to try to stop the practice of people passing false identification.

Senator Horton moved to amend the bill on page 2, line 24, by deleting the word "which" and inserting the word "that", and on page 2, lines 25 and 26, by deleting "firm or corporation." The motion carried unanimously.

Senator Ballance moved to amend the bill on page 2, line 24, by deleting the words "conjunction with", and on page 2, line 37, by deleting the words "connection with." The motion carried unanimously.

Senator Horton moved to engross the amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to committee substitute bill #1, but favorable as to Senate committee substitute.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Thursday, June 10, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #2)**222** Strengthen Litter Law.
Sequential Referral: None
Recommended Referral: Finance

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1209** Personal Watercraft Safety.
Draft Number: PCS3437
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Tuesday, June 15, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1)**1192** Tracing Crime Weapons.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 331*
Committee Substitute Favorable 3/23/99

Short Title: Sentencing Services Program/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REDESIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIII of Chapter 7A of the General Statutes reads as rewritten:

"SUBCHAPTER XIII. COMMUNITY PENALTIES PROGRAM.

"ARTICLE 61.

"~~Community Penalties Program Act of 1983.~~
Sentencing Services Programs.

"**§ 7A-770. Purpose.**

This Article shall be known and may be cited as the ~~"Community Penalties Act of 1983."~~ "Sentencing Services Act." The purpose of this Article is to ~~reduce prison overcrowding by providing~~ establish a statewide sentencing services program that will provide the judicial system with ~~community sentences to be used in lieu of and at less cost than imprisonment.~~ information that will assist that system in imposing sentences that make the most effective use of available resources. In furtherance of this purpose, this Article provides for the following:

(1) Establishment of local ~~sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.~~ programs that can provide judges and other

court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services.

(2) Increased opportunities for certain felons to make restitution to victims of crime through financial reimbursement or community service.

(3) Local involvement in the development of ~~community penalties~~ sentencing services to assure that they are specifically designed to meet local needs.

(4) ~~Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added.~~ Effective use of available community corrections programs by advising judges and other court officials of the offenders most suited for a particular program.

"**§ 7A-771. Definitions.**

As used in this Article:

(1) ~~"Community penalties~~ "Sentencing services program" means an agency or State-run office within the ~~judicial~~ superior court district which shall (i) prepare ~~community penalty~~ sentencing plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) ~~monitor the progress of offenders placed on community penalty plans.~~ assist offenders in initially obtaining services ordered as part of a sentence entered pursuant to a sentencing plan, if the assistance is not available otherwise.

(2) ~~"Community penalty~~ "Sentencing plan" means a plan presented in writing to the sentencing judge which provides a detailed assessment and description of the ~~targeted offender's proposed community penalty.~~ offender's background, including available information about past criminal activity, a matching of the specific offender's needs with available resources, and, if appropriate, the program's recommendations regarding an intermediate sentence.

(2a) "Director" means the Director of the Administrative Office of the Courts.

(2b) "Superior court district" means a superior court district established by G.S. 7A-41 for those districts consisting of one or more entire counties, and otherwise means the applicable set of districts as that term is defined in G.S. 7A-41.1.

~~(3) "Judicial district" means a district court district as defined in G.S. 7A-133.~~

(4) Repealed by Session Laws 1991, c. 566, s. 4.

~~(5) "Targeted offenders" means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior~~

~~record level and who are facing an imminent and substantial threat of imprisonment.~~

"§ 7A-772. Allocation of funds.

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of ~~community penalties~~ sentencing services programs. ~~Community penalties~~ Sentencing services programs that are grantees shall use ~~such~~ the funds ~~to develop, implement, and monitor community penalty plans.~~ exclusively to develop a sentencing services program that provides sentencing information to judges and other court officials. Grants shall be awarded by the Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein. The Director shall consider the plan required by G.S. 7A-774 in making funding decisions. If a senior resident superior court judge has not formally endorsed the plan, the Director shall consider that fact in making grant decisions, but the Director may, if appropriate, award grants to a program in which the judge has not endorsed the plan as submitted.

(b) The Director may establish local ~~community penalties~~ sentencing services programs and appoint those staff as the Director deems necessary. These personnel may serve as full-time or part-time State employees or may be hired on a contractual basis when determined appropriate by the director. Contracts entered under the authority of this subsection shall be exempt from the competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of ~~community penalties~~ sentencing services programs under this Article shall be administered by the Administrative Office of the Courts.

"§ 7A-773. Responsibilities of a ~~community penalties~~ sentencing services program.

A ~~community penalties~~ sentencing services program shall be responsible for:

(1) ~~Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.~~ Identifying offenders who:

a. Are charged with or have been offered a plea by the State for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so;

b. Have a high risk of committing future crimes without appropriate sanctions and interventions; and

c. Would benefit from the preparation of an intensive and comprehensive sentencing plan of the type prepared by sentencing services programs.

(2) Preparing detailed ~~community penalty~~ sentencing services plans requested pursuant to G.S. 7A-773.1 for presentation to the

sentencing ~~judge by the offender's attorney or at the request of the sentencing judge.~~ judge.

(3) Contracting or arranging with public or private agencies for services described in the ~~community penalty~~ sentencing plan.

~~(4) Monitoring the progress of offenders under community penalty plans.~~

"**§ 7A-773.1. Who may request plans; disposition of plans; contents of plans.**

(a) A judge presiding over a case in which the offender meets the criteria set forth in G.S. 7A-773(1) may request, at any time prior to the imposition of sentence, that the sentencing services program provide a sentencing plan. The court may also request, at any time prior to the imposition of sentence, that the program provide a sentencing plan in misdemeanor cases in which the class of offense is Class A1 or Class 1 and the prior conviction level is Level III, if the court determines that the preparation of such a plan is in the interest of justice. In addition, in cases in which the offender meets the criteria set forth in G.S. 7A-773, the defendant or a prosecutor, at any time before the court has accepted a guilty plea or received a guilty verdict, may request that the program provide a plan. However, prior to an adjudication of guilt, a defendant may decline to participate in the preparation of a plan within a reasonable time after the request is made. In that case, no plan shall be prepared or presented to the court by the sentencing services program prior to an adjudication of guilt. A defendant's decision not to participate shall be made in writing and filed with the court. The comprehensive sentencing services program plan prepared pursuant to G.S. 7A-774 shall define what constitutes a reasonable time within the meaning of this subsection.

(b) Any sentencing plan prepared by a sentencing services program shall be presented to the court, the defendant, and the State in an appropriate manner.

(c) Sentencing plans prepared by sentencing services programs may include recommendations for use of any treatment or correctional resources available, unless the sentencing court instructs otherwise. Sentencing plans that identify an offender's needs for education, treatment, control, or other services shall, to the extent feasible, also identify resources to meet those needs. Plans may report that no intermediate punishment is appropriate under the circumstances of the case.

(d) To the extent allowed by law, the sentencing services program shall develop procedures to ensure that the program staff may work with offenders before a plea is entered. To that end, no information obtained in the course of preparing a sentencing plan may be used by the State for the purpose of establishing guilt.

"**§ 7A-774. Requirements for a comprehensive ~~community penalties~~ sentencing services program plan.**

Agencies applying for grants shall prepare a comprehensive ~~community penalties~~ sentencing services program plan for the development, implementation, operation, and improvement of a ~~community penalties~~ sentencing services program for the ~~judicial~~ superior court district, as prescribed by the Director. The plan shall be updated annually and shall be submitted to the senior resident superior court judge for the superior court district for the judge's advice and written endorsement. The

plan shall then be forwarded to the Director for approval. The ~~Such~~ plan shall include:

(1) ~~Objectives~~ Goals and objectives of the ~~community penalties~~ sentencing services program.

(2) ~~Goals for reduction of offenders committed to prison for each county within the district, and a system of monitoring the number of commitments to prison.~~ Specification of the kinds or categories of offenders for whom the programs will provide sentencing information to the courts.

(3) ~~Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program.~~ Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in G.S. 7A-773(1).

(4) Procedures for preparing and presenting ~~community penalty~~ plans to the court.

(4a) Strategies for ensuring that judges and court officials who are possible referral sources use the program's services in appropriate cases.

(5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs.

~~(6) Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender.~~

~~(7) Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.~~

~~(8) Procedures for evaluating the program's effect on numbers of prison commitments.~~

"§ 7A-775. ~~Community penalties~~ Sentencing services board.

(a) Each ~~community penalties~~ sentencing services program shall establish a ~~community penalties~~ sentencing services board to provide direction and assistance to the ~~community penalties~~ sentencing services program in the implementation and evaluation of the plan. ~~Community penalties~~ Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The ~~community penalties~~ sentencing services board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The ~~community penalties~~ sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:

(1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. 7A-772(a);

~~(1)~~ (1a) Development of an annual budget for the program;

(2) Hiring, firing, and evaluation of program personnel;

(3) Selection of board members;
(4) Arranging for ~~a private and independent~~ an annual ~~audit;~~ audit, in accordance with G.S. 143-6.1;
(5) Development of procedures for contracting for services.

(b) If the board serves as an advisory board to a sentencing services program located in a local or State agency, the board's duties do not include budgeting and personnel decisions.

"§ 7A-776. Limitation on use of funds.

Funds provided for use under the provisions of this Article shall not be used for the operating costs, construction, or any other costs associated with local jail ~~confinement.~~ confinement, or for any purpose other than the operation of a sentencing services program that complies with this Article.

"§ 7A-777. Evaluation.

The Director shall evaluate each ~~community penalties~~ sentencing services program on an annual basis to determine the degree to which the ~~prison commitments have been reduced or have kept from increasing as a result of the community penalties program. The Director shall not renew or continue a program that has failed to affect commitments and that shows no promise of doing so in the future, after allowing for changes in the number of convictions.~~ program effectively meets the needs of the courts in its judicial district by providing them with sentencing information. In conducting the evaluation, the Director shall consider the goals and objectives established in the program's plan, as well as the extent to which the program is able to ensure that the offenders served by the plan meet the criteria established in G.S. 7A-773(1)."

Section 2. G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:
a. Special probation as defined in G.S. 15A-1351(a).
b. Assignment to a residential program.
c. House arrest with electronic monitoring.
d. Intensive probation.
e. Assignment to a day-reporting center.
~~In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.~~"

Section 3. G.S. 15A-1340.14(f) reads as rewritten:

"(f) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:
(1) Stipulation of the parties.
(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

Section 4. Section 2 of this act becomes effective October 1, 1999, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1999, except that community penalties plans requested for offenders prior to that date shall be governed by the law in effect at the time the plan was requested.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 685*
Committee Substitute Favorable 4/12/99

Short Title: Arrest Warrants/Copies. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A LAW ENFORCEMENT OFFICER MAY ARREST A PERSON ON PRIVATE PREMISES OR IN A VEHICLE IN ACCORDANCE WITH STATE LAW WITH A COPY OF THE ORIGINAL ARREST WARRANT OR ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-401(e) reads as rewritten:

"(e) Entry on Private Premises or Vehicle; Use of Force. --

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a ~~person~~ person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of the officer's employing law enforcement agency; or the officer is authorized to arrest a person without a warrant or order having been issued,

b. The officer has reasonable cause to believe the person to be arrested is present, and

c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

(2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1022
Committee Substitute Favorable 4/23/99

Short Title: Unlawful Use of Drivers License. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE UNLAWFUL USE OF A DRIVERS LICENSE, A LEARNER'S PERMIT, OR A SPECIAL IDENTIFICATION CARD ISSUED BY THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-30 reads as rewritten:

"**§ 20-30. Violations of license or learner's permit provisions.**

It shall be unlawful for any person to commit any of the following acts:

(1) To display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license or learner's permit.

(3) To display or to represent as one's own a license or learner's permit not issued to the person so displaying same.

(4) To fail or refuse to surrender to the Division upon demand any driver's license or learner's permit that has been suspended, canceled or revoked as provided by law.

(5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license or learner's permit, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to

procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license or learner's permit procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State.

(6) To photostat or otherwise reproduce a driver's license or learner's permit or to possess a driver's license or learner's permit which has been photostated or otherwise reproduced, unless such photostat or other reproduction was authorized by the Commissioner.

(7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. Any person, firm or corporation violating the provisions of this subsection shall be guilty of a Class I felony.

(8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

(9) To present, display, or use a drivers license or learner's permit which contains a false or fictitious name in conjunction with the commission or attempted commission of a felony. Any person, firm, or corporation violating the provisions of this subdivision shall be guilty of a Class I felony."

Section 2. G.S. 20-37.8 reads as rewritten:

"**§ 20-37.8. Fraudulent use prohibited.**

(a) It shall be unlawful for any person to use a false or fictitious name or give a false or fictitious address in any application for a special identification card or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application or to obtain or possess more than one such card for a fraudulent purpose or knowingly to permit or allow another to commit any of the foregoing acts.

(b) It shall be unlawful for any person to present, display, or use a special identification card which contains a false or fictitious name in connection with the commission or attempted commission of a felony.

(c) A violation of subsection (a) of this section shall constitute a Class 2 misdemeanor. A violation of subsection (b) of this section shall constitute a Class I felony."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 1209
Committee Substitute Favorable 4/27/99
Third Edition Engrossed 4/29/99
Senate Judiciary II Committee Substitute Adopted 6/10/99

Short Title: Personal Watercraft Safety. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 reads as rewritten:

"**§ 75A-13.3. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the ~~vehicle.~~ vessel.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, ~~nor shall~~ and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow ~~a person under the age of 16~~ that person to operate a personal watercraft. A person of

at least ~~13~~ 12 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least ~~16~~ 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses ~~a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary.~~ on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) It shall be unlawful for any person, firm, or corporation to engage in the business of renting personal watercraft to the public for operation by the rentee unless such person, firm, or corporation has secured insurance for his own liability and that of his rentee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell liability insurance in this State. Each such personal watercraft rented must be covered by a policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars ($300,000) per occurrence.

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast ~~Guard;~~ Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water skis or other devices unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or ~~property, including~~ property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and include:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel ~~unreasonably or unnecessarily close of~~ within 100 feet of such other vessel or when visibility around such other vessel is obstructed; ~~and~~

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision~~ collision;

(4) Operating at greater than no-wake speed within 100 feet of an anchored or moored vessel, the shoreline, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel; and

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

~~shall constitute reckless operation of a vessel as provided in G.S. 75A-10.~~

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

~~(g) This section applies only to that portion of the waters of the upper Catawba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section.~~

(h) Nothing in this section prohibits units of local government, marine commissions, or local wake authorities from proscribing or regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that where the operation of personal watercraft is permitted the regulations are not in conflict with the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section."

Section 2. G.S. 75A-18 is amended by adding a new subsection to read:

(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000)."

Section 3. G.S. 75A-13.2 is repealed.

Section 4. This act becomes effective December 1, 1999 and applies to acts committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2nd

H. B. No. 685 DATE 6-15-99

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

COMMITTEE SUBSTITUTE _____

Rep.) Ballance
)
Sen.)

1 moves to amend the bill on page 1, line 16
2 ( ) WHICH CHANGES THE TITLE
3 by adding after the word agency the following:
4 "and ~~provided that~~ the officer verifies with
5 the agency that the warrant is current and
6 valid"
7
8
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14
15
16
17
18
19

SIGNED Tim Ballance Jr.

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 685*
Committee Substitute Favorable 4/12/99
Proposed Committee Substitute H685-PCS7252-SD

Short Title: Arrest Warrants/Copies. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A LAW ENFORCEMENT OFFICER MAY ARREST A PERSON ON PRIVATE PREMISES OR IN A VEHICLE IN ACCORDANCE WITH STATE LAW WITH A COPY OF THE ORIGINAL ARREST WARRANT OR ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-401(e) reads as rewritten:

"(e) Entry on Private Premises or Vehicle; Use of Force. --

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a ~~person~~ person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of the officer's employing law enforcement agency and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued,

b. The officer has reasonable cause to believe the person to be arrested is present, and

c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

(2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1022 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 24

( ) WHICH CHANGES THE TITLE

by deleting the words "conjunction with"
and on page 2, line ~~30~~ 37
by deleting the words "connection with"

SIGNED Franklin Ballance, Jr.

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1022 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 24

( ) WHICH CHANGES THE TITLE

by deleting the word "which" and inserting the word "that" in its place; and

on page 2 lines 25 + 26 by deleting ", firm or corporation"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1022
Committee Substitute Favorable 4/23/99
Proposed Committee Substitute H1022-PCS4267-SD

Short Title: Unlawful Use of Drivers License. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE UNLAWFUL USE OF A DRIVERS LICENSE, A LEARNER'S PERMIT, OR A SPECIAL IDENTIFICATION CARD ISSUED BY THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-30 reads as rewritten:

"**§ 20-30. Violations of license or learner's permit provisions.**

It shall be unlawful for any person to commit any of the following acts:

(1) To display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license or learner's permit.

(3) To display or to represent as one's own a license or learner's permit not issued to the person so displaying same.

(4) To fail or refuse to surrender to the Division upon demand any driver's license or learner's permit that has been suspended, canceled or revoked as provided by law.

(5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license or learner's permit, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise

commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license or learner's permit procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State.

(6) To photostat or otherwise reproduce a driver's license or learner's permit or to possess a driver's license or learner's permit which has been photostated or otherwise reproduced, unless such photostat or other reproduction was authorized by the Commissioner.

(7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. Any person, firm or corporation violating the provisions of this subsection shall be guilty of a Class I felony.

(8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

(9) To present, display, or use a drivers license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony. Any person violating the provisions of this subdivision shall be guilty of a Class I felony."

Section 2. G.S. 20-37.8 reads as rewritten:

"**§ 20-37.8. Fraudulent use prohibited.**

(a) It shall be unlawful for any person to use a false or fictitious name or give a false or fictitious address in any application for a special identification card or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application or to obtain or possess more than one such card for a fraudulent purpose or knowingly to permit or allow another to commit any of the foregoing acts.

(b) It shall be unlawful for any person to present, display, or use a special identification card which contains a false or fictitious name in the commission or attempted commission of a felony.

(c) A violation of subsection (a) of this section shall constitute a Class 2 misdemeanor. A violation of subsection (b) of this section shall constitute a Class I felony."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill No. 1209

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

H1209-ASD-003

Page 1 of __

Date June 15 ,1999

Comm. Sub. [yes]
Amends Title []

moves to amend the bill on page 4, line 6,
by inserting the following after the period:
" Whenever a unit of local government, marine commission, or local wake authority regulates personal watercraft pursuant to this subsection, it shall conspicuously post signs that are reasonably calculated to provide notice to personal watercraft users of the stricter regulations."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1209
Committee Substitute Favorable 4/27/99
Third Edition Engrossed 4/29/99
Senate Judiciary II Committee Substitute Adopted 6/10/99
Proposed Senate Committee Substitute H1209-PCS3440-SD

Short Title: Personal Watercraft Safety. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 reads as rewritten:

"**§ 75A-13.3. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the ~~vehicle.~~ vessel.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, ~~nor shall~~ and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow ~~a person under the age of 16~~ that person to operate a personal watercraft. A person of

at least ~~13~~ 12 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least ~~16~~ 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses ~~a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary.~~ on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) It shall be unlawful for any person, firm, or corporation to engage in the business of renting personal watercraft to the public for operation by the rentee unless such person, firm, or corporation has secured insurance for his own liability and that of his rentee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell liability insurance in this State. Each such personal watercraft rented must be covered by a policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars ($300,000) per occurrence.

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast ~~Guard;~~ Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water skis or other devices unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or ~~property, including:~~ property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and include:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel ~~unreasonably or unnecessarily close of~~ within 100 feet of such other vessel or when visibility around such other vessel is obstructed; ~~and~~

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision~~ collision;

(4) Operating at greater than no-wake speed within 100 feet of an anchored or moored vessel, the shoreline, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel; and

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

~~shall constitute reckless operation of a vessel as provided in G.S. 75A-10.~~

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

~~(g) This section applies only to that portion of the waters of the upper Catawba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section.~~

(h) Nothing in this section prohibits units of local government, marine commissions, or local wake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section."

Section 2. G.S. 75A-18 is amended by adding a new subsection to read:

"(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000)."

Section 3. G.S. 75A-13.2 is repealed.

Section 4. This act becomes effective December 1, 1999, and applies to acts committed on or after that date.

HOUSE BILL 331:
Sentencing Services Program/AB

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Bowie
Date:	June 14, 1999	**Summary by:**	Brenda Carter and Esther Manheimer
Version:	Second Edition		Staff Counsel

SUMMARY: House Bill 331 renames the Community Penalties Program as the Sentencing Services Program and shifts the focus of the program to provide information to the courts and to develop sentencing services plans rather than monitor offenders participating in sentencing services plans.

BILL ANALYSIS

Section 1.

- **Amends G.S. 7A-770** to rename the Community Penalties Program as the Sentencing Services Program (SSP). Changes the purpose of the Article from reducing prison overcrowding through the use of community sentences to establishing a statewide sentencing services program that will provide courts with information necessary to make effective use of resources. Specifically, the SSP will provide court officials with information regarding local correctional programs and identify the offenders best suited for those programs.
- **Amends G.S. 7A-771** to make various conforming changes. Deletes provision regarding the monitoring of offenders placed on community penalty plans. The sentencing services program would assist offenders in initially obtaining services as part of a sentencing plan if assistance is not otherwise available. Sentencing plans will provide information about the offender's past criminal activity, matching offender's needs with available resources, and recommendations for an intermediate sentence. Changes judicial district to specify superior court district. Repeals definition and eliminates use of the term "targeted offenders."
- **Amends G.S. 7A-772** to make various conforming changes. In addition, specifies that sentencing services programs receiving grants awarded by the Director of AOC shall use the funds exclusively to develop a sentencing services program that provides sentencing services information to court officials. The Director must consider, in the awarding of grants, the agencies' comprehensive sentencing services program plan and whether the senior resident superior court judge has endorsed the plan.
- **Amends G.S. 7A-773** to require the sentencing services program to identify offenders who qualify for the program (felony offenders where an active sentence is not required, who are at high risk of committing future crimes, and would benefit from a sentencing services program plan) and prepare sentencing services plans. The provision specifying offenders eligible for intermediate punishment is deleted. The current provision requiring monitoring of offenders is also deleted.
- **Adds G.S. 7A-773.1,** a new section which provides that:
  - Where the offenders meet the three criteria in G.S. 7A-773 (an active sentence is not required, offender is at high risk of committing future crimes, and would benefit from a sentencing services program plan), the judge presiding over the case, the defendant, or the prosecutor may request that

the sentencing services program provide a sentencing plan. The judge must make the request prior to the imposition of sentence. The defendant or prosecutor must make the request prior to a guilty plea or guilty verdict. In addition, the judge may also request a plan in certain misdemeanor cases. Prior to the adjudication and within a reasonable time after the sentencing plan request was made, the defendant may opt out of the plan. The comprehensive sentencing services program plan (as required by G.S. 7A-774) shall define what constitutes a reasonable time.

- Sentencing plans are presented to the court, the defendant, and the State.
- Sentencing plans may include: recommendations for use of any treatment or correctional resources available, identify resources to meet any educational, treatment, control, or other needs, and plans may report that no intermediate punishment is appropriate.
- Finally, sentencing services program staff may work with offenders before a plea is entered. No information obtained in preparing a sentencing plan may be used by the State in establishing guilt.

- **Amends G.S. 7A-774** to establish the requirement that a comprehensive sentencing services program plan be prepared and then updated annually, and that the plans be submitted to the senior resident superior court judge for advice and endorsement. Plans will be forwarded to the Director of AOC for final approval. Plans are to include: goals and objectives of the program, offenders for whom the program will provide sentencing information to the courts, procedures for identifying qualifying offenders, and strategies for ensuring that judges use the program's services. Language regarding the monitoring of offenders in the program and the number of prison commitments has been deleted.
- **Amends G.S. 7A-775** to make various conforming changes regarding boards of sentencing services programs.
- **Amends G.S. 7A-776** to require that funds not be used for any other purpose other than the operation of sentencing services programs.
- **Amends G.S. 7A-777** to remove language regarding the reduction of prison commitments. Requires that the Director evaluate each sentencing services program.

Section 2.

- **Amends G.S. 15A-1340.11(6)** to remove sentencing plans from the definition of "intermediate punishment" in the Structured Sentencing Act.

Section 3.

- **Amends G.S. 15A-1340.14(f)**, which sets out the methods for proving an offender's prior convictions, to require that a district attorney provide to the sentencing services program any information the D.A. has about the criminal record of an offender for whom the program has been requested to provide a sentencing plan.

Section 4 – EFFECTIVE DATE

Section 2 (change in definition of intermediate punishment) becomes effective October 1, 1999, and applies to offenses committed on or after that date. The remainder becomes effective October 1, 1999. Community penalties plans requested prior to October 1, 1999, shall be governed by the law in effect at the time the plan was requested.

H331-SMRV-002

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

BILL NUMBER: House Bill 331

SHORT TITLE: Sentencing Services Program

Community Penalties Programs were created to "reduce prison overcrowding by providing the judicial system with community sentences to be used in lieu of and at less cost than imprisonment." With the enactment of Structured Sentencing, North Carolina regained control over prison resources by allocating them for the most serious offenders and allocating community sentences for less serious offenders. Community Penalties Programs can better serve Structured Sentencing by providing more information to the court to identify the eligible offenders who will be best served by the various treatment and correctional programs available in the community and to match them with the appropriate programs.

Section 1.

§7A-770. Purpose.

Changes "Community Penalties Programs" to "Sentencing Services Programs." Changes the purpose of the programs to providing the court with information which will assist in sentencing.

§7A-771. Definitions.

Changes "Community Penalties" to "Sentencing Services." Expands the definition of a "Sentencing Plan" to include prior record information, matching the needs of the offender with available resources, and a recommended intermediate sentence if appropriate. Changes the "district" definition from district court districts to superior court districts.

§7A-772. Allocation of funds.

Changes "Community Penalties" to "Sentencing Services." Requires the Director of the Administrative Office of the Courts to consider the comprehensive sentencing services program plan when making decisions about grants to local programs.

§7A-773. Responsibilities of a sentencing services program.

Changes the offenders targeted by the program to offenders:

a. charged with or offered a plea to a felony offense who are in an "I/A" or "C/I/A" cell,

b. who have a high risk of committing future crimes without appropriate sanctions and interventions, and

c. who would benefit from the preparation of a sentencing plan.

Deletes the subsection which required the program to monitor the progress of offenders under community penalty plans.

§7A-773.1. Who may request plans; disposition of plans; contents of plans.

Allows the judge to request a sentencing plan for felony offenders any time prior to sentencing. The judge may also request a sentencing plan for misdemeanor offenders in Classes A1 and 1, Prior Conviction Level III, any time prior to sentencing. Allows the defendant or the prosecutor

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

BILL NUMBER: Senate Bill 339

SHORT TITLE: Sentencing Services Program

Community Penalties Programs were created to "reduce prison overcrowding by providing the judicial system with community sentences to be used in lieu of and at less cost than imprisonment." With the enactment of Structured Sentencing, North Carolina regained control over prison resources by allocating them for the most serious offenders and allocating community sentences for less serious offenders. Community Penalties Programs can better serve Structured Sentencing by providing more information to the court to identify the eligible offenders who will be best served by the various treatment and correctional programs available in the community and to match them with the appropriate programs.

Section 1.

§7A-770. Purpose.

Changes "Community Penalties Programs" to "Sentencing Services Programs." Changes the purpose of the programs to providing the court with information which will assist in sentencing.

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Changes "Community Penalties" to "Sentencing Services." Expands the definition of a "Sentencing Plan" to include prior record information, matching the needs of the offender with available resources, and a recommended intermediate sentence if appropriate. Changes the "district" definition from district court districts to superior court districts.

§7A-772. Allocation of funds.

Changes "Community Penalties" to "Sentencing Services." Requires the Director of the Administrative Office of the Courts to consider the comprehensive sentencing services program plan when making decisions about grants to local programs.

§7A-773. Responsibilities of a sentencing services program.

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b. who have a high risk of committing future crimes without appropriate sanctions and interventions, and

c. who would benefit from the preparation of a sentencing plan.

Deletes the subsection which required the program to monitor the progress of offenders under community penalty plans.

§7A-773.1. Who may request plans; disposition of plans; contents of plans.

Allows the judge to request a sentencing plan for felony offenders any time prior to sentencing. The judge may also request a sentencing plan for misdemeanor offenders in Classes A1 and 1, Prior Conviction Level III, any time prior to sentencing. Allows the defendant or the prosecutor

to request a sentencing plan prior to an adjudication of guilt. The defendant may decline to participate in the preparation of a plan prior to being adjudicated guilty. If he or she declines to participate, a plan is not prepared until after adjudication.
Requires the program to present the plan to the court, the defendant, and the state.
Allows the program to report that no intermediate punishment is appropriate under the circumstances of the case.

§7A-774. Requirements for a comprehensive sentencing services program plan.
Requires the program to update its comprehensive sentencing services program plan annually. The plan must be submitted to a senior resident superior court judge for advice and written endorsement. The Director of the AOC must approve the plan.
Deletes the requirement that the plan include procedures for monitoring the progress of offenders on community penalty plans and procedures for returning offenders who do not comply with their plan to court.

§7A-775. Sentencing services board.
Changes "Community Penalties" to "Sentencing Services." Adds the requirement that the sentencing services board prepare and submit a comprehensive annual plan to the senior resident superior court judge and the Director of the AOC.

§7A-776. Limitation on use of funds.
Limits the use of funds to the operating of a sentencing services program.

§7A-777. Evaluation.
Requires the Director of the AOC to evaluate each program annually to determine how well they are meeting the needs of the courts by providing sentencing information.

Section 2.
§15A-1340.11. Definitions.
Deletes a Community Penalty Plan from the statutory list of intermediate punishments.

Section 3.
§15A-1340.14. Prior record level for felony sentencing.
Requires the district attorney to provide prior record information to the sentencing services program upon their request.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

COMMUNITY CORRECTIONS ISSUES SUBCOMMITTEE: FINAL REPORT

Subcommittee Activities

The Community Corrections Issues Subcommittee met on November 20, 1998, January 8 and January 22, 1999. It addressed two issues: first, the Community Penalties Division of the Administrative Office of the Courts asked the Sentencing Commission to review proposed changes to update the Community Penalties statutes. Second, the Department of Correction asked the Sentencing Commission to review the statutory definitions of Day Reporting Centers and Residential Programs and to further define them in terms of Intermediate Sanctions. Because Day Reporting Centers and Residential Programs have recently been moved to the Division of Community Corrections and are currently being reviewed, the Department of Correction subsequently withdrew its request. The Subcommittee reviewed and amended the proposed changes to the Community Penalties statutes.

Community Penalties' Proposed Legislation

In 1997 a task force comprised of Division of Community Corrections and Community Penalties staff were convened to discuss several issues including role ambiguity, particularly with the Community Penalties Program, duplication of responsibilities, and improving information provided to the courts for the purposes of sentencing.

The task force agreed that by providing better offender information to the court prior to sentencing, Structured Sentencing would be more effective. In particular, the group agreed that this information would help improve the use of intermediate sanctions. Through its discussions, the task force decided that one agency should be responsible for providing sentencing information to the court. Although the group worked for over a year on this issue, it could not come to an agreement about which agency should be assigned this task and eventually dissolved.

Community Penalties staff continued their efforts to clarify the program's role and responsibilities. They developed draft legislation which would, among other changes, make the program more court-oriented by ensuring that sentencing plans are always presented to the court and allowing program staff to recommend incarceration if it is not, in the opinion of staff, appropriate to recommend a sentence in the community. The name "Community Penalties" would be changed to "Sentencing Services."

The proposed legislation does not repeal current law which allows judges to order probation officers to prepare pre-sentence investigations, address the single agency concept, or consider the resources necessary to undertake this responsibility.

Recommendations

Listed below are the substantive changes made to the Community Penalties statutes. The Subcommittee recommends that the Sentencing Commission (support/adopt) the proposed legislation shown in the Appendix.

1. Community Penalties Programs are changed to Sentencing Services Programs. These programs provide the judicial system with information which will assist that system in imposing sentences that make the most effective use of available resources.

> *Commentary: Community Penalties Programs were created to "reduce prison overcrowding by providing the judicial system with community sentences to be used in lieu of and at less cost than imprisonment." With the enactment of Structured Sentencing, North Carolina regained control over prison resources by allocating them for the most serious offenders and allocating community sentences for less serious offenders. Sentencing Services Programs can better serve Structured Sentencing by providing more information to the court to identify the eligible offenders who will be best served by the various treatment and correctional programs available in the community and to match them with the appropriate programs.*

2. A Sentencing Services Program will identify offenders who are charged with or have been offered a plea by the state for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so, who have a high risk of committing future crimes without appropriate sanctions and interventions, and who would benefit from the preparation of an intensive and comprehensive sentencing plan.

> *Commentary: Community Penalties Programs targeted offenders who were charged with or convicted of misdemeanors or felonies who were eligible to receive an intermediate punishment and who faced an imminent and substantial threat of imprisonment. One of the principles of Structured Sentencing is to target limited resources to their most appropriate use. Judges need as much information as possible to appropriately sentence serious and repeat felons because of their potential use of prison or intermediate resources. Sentencing Services Programs will focus on felons who are in "I/A" or "C/I/A" cells who have not been convicted yet.*

3. The judge, defendant, or prosecutor may request a plan be prepared for an offender who is charged with or offered a plea by the state for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so.

> *Commentary: A community penalty plan was primarily requested by the defendant and reported back to the defendant for presentation to the court. Because the Sentencing Services Program will be serving the court directly, the judge and the prosecutor will*

also be able to request a sentencing plan.

4. The judge may request a plan be prepared for an offender who is charged with, offered a plea by the state for, or convicted of a Class A1 or Class 1 misdemeanor if the prior conviction level is Level III and if the court determines that the preparation of such a plan is in the interest of justice.

Commentary: One of the principles of Structured Sentencing is to target limited resources to their most appropriate use. Sentencing Services Programs will focus on felons in "I/A" and "C/I/A" cells. Judges may request a sentencing plan for an offender who has committed a serious misdemeanor and could potentially be sentenced to prison.

5. The judge may request a plan for a felon or misdemeanant at any time prior to the imposition of sentence. The defendant and the prosecutor may only request a plan for a felon and must do it prior to a plea of guilty being accepted by, or a verdict of guilty being received by the court.

Commentary: One of the principles of Structured Sentencing is to target limited resources to their most appropriate use. Sentencing Services Programs will focus on pre-conviction felons (See #2 above), but the judge retains the discretion to request a plan for any offender post-conviction if the circumstances are such that additional information is needed and a plan has not previously been requested.

6. Sentencing Services Programs will prepare sentencing plans. A sentencing plan will include a detailed assessment and description of the offender's background, including available information about past criminal activity, a matching of the specific offender's needs with available resources, and, if appropriate, the program's recommendations regarding an intermediate sentence. The plan will be presented to the sentencing judge, the defendant, and the prosecutor.

Commentary: Community Penalties Programs prepared community penalty plans. A community penalty plan described the targeted offender's proposed community sentence. In keeping with the change to providing the court with information, the sentencing plan may include prior criminal record. The prosecutor will provide any prior record information to the program. The program also has the option of not recommending any sanction if it finds an intermediate sentence is not appropriate.

A community penalty plan was given to the judge only if he or she requested it, otherwise the plan was given to the defense attorney to present. Since the sentencing services program will be serving the court, the program will provide the plan to the court, defendant and prosecutor directly.

7. A sentencing plan prepared by a Sentencing Services Program is not an intermediate punishment.

Commentary: A community penalty plan was considered an intermediate punishment if it at least recommended supervised probation and was accepted by the court. The purpose of the Sentencing Services Program is to provide information to the court. A program is not required to monitor the progress of offenders under a sentencing plan, it does not even deal with offenders post-conviction unless a judge specifically requests a sentencing plan. Intermediate punishments provide a level of control for sentenced offenders in the community.

8. Each sentencing services program will establish a sentencing services board. The board will prepare a comprehensive sentencing services program plan and submit it to the senior resident superior court judge for advice and written endorsement. The plan will then be forwarded to the Director of the Administrative Office of the Courts for approval. The plan will be updated annually.

Commentary: A Sentencing Services Program is designed to meet local needs. The annual plan will describe how the Program is going to meet those needs. The senior resident superior court judge will review the plan and may comment and endorse it if he or she so chooses. The Director of the Administrative Office of the Courts will consider the plan in making funding decisions and will subsequently use the goals and objective established in the plan in evaluating the Program.

WORKLOAD TRENDS

	1993-94	1995-96	1997-98
# Programs	20	30	39
Clients Contacted	3,374	7,876	10,761
Cases Opened	1,466	2,480	3,594
Plans Presented	830	1,171	1,823
Plans Accepted	676	924	1,367

PLANS PRESENTED--Types of Crime 1997-98

Crime Class	# Plans	%
Felony H	1,095	60.1%
Felony G	164	9.0%
Felony I	161	8.8%
Felony E	96	5.3%
Felony F	92	5.0%
Misdemeanor 1	63	3.5%
Felony D	42	2.3%
Misdemanor A1	32	1.8%
Felony C	23	1.3%
Other	55	3.0%
TOTAL	1,823	

PLAN COST --RANGE OF ESTIMATES (1997-98)

Total Program Costs/ Plans Presented	$2,690
Non Administrative Costs/Plans Presented	$2,396
Total Program Costs/Cases Opened	$1,365
Non Administrative Costs/Cases Opened	$1,216
20 Hours per Plan with Average Salary	$341
Avg Sent Spec Salary/Avg Cases Opened	$589

HOUSE BILL 685:
Arrest Warrants/Copies.

BILL ANALYSIS

Committee:	House Judiciary III	**Introduced by:**	Rep. Bridgeman.
Date:	April 8, 1999	**Summary by:**	William R. Gilkeson & Ed Rossi Legislative Counsel
Version:	2nd Ed.		

SUMMARY: ***House bill 685 would allow a law enforcement officer to enter a private premises or car to arrest a person using a copy of a warrant or order in place of the original warrant. The officer could use the copy only if the original warrant or order is in the possession of a member of the officer's employing law enforcement agency.***

CURRENT LAW: Currently, an officer may enter a private premises or vehicle to make an arrest only if the officer meets all parts of a 3-part test:

1. Is holding a warrant or order for the person's arrest, or is authorized to arrest the person without a warrant or order;
2. Has reasonable cause to believe that the person to be arrested is present; and
3. Has given or reasonably tried to give notice of authority and purpose, unless there is a reasonable cause to believe that giving notice would be a clear danger to human life.

BILL ANALYSIS: House bill 685 changes the first part of the test by allowing the officer to have in his/her possession not only the warrant or order but a copy of the warrant or order. The officer could use a copy only if the original is in the possession of a member of the officer's law enforcement agency.

BACKGROUND: The Charlotte-Mecklenburg police department, whose jurisdiction is a large county, wanted to be able to fax arrest warrants to officers in the field rather than hand-delivering them. A fax is a type of copy.

The bill as introduced simply allowed the officer to use copies. Concerns were raised by law enforcement groups that the use of copies should be restricted within the same law enforcement agency, which could establish procedures to coordination its internal operations. They felt that copying and faxing warrants should not be conducted between law enforcement agencies, since this practice could lead to confusion.

H685-SMRR-001

HOUSE BILL 1022:
Unlawful Use of Drivers License

BILL ANALYSIS

Committee:	House Judiciary I	**Introduced by:**	Rep. Allen
Date:	April 20, 1999	**Summary by:**	Susan L. Hayes & Ed Rossi Legislative Counsel
Version:	1st Edition		

SUMMARY: ***House Bill 1022 prohibits the unlawful use of a drivers license, a learner's permit, or a special identification card.***

BILL ANALYSIS: House Bill 1022 increases the punishment for using a false or fictitious name or address, or giving false information when applying for a drivers license, learner's permit or special identification card, and also for the presentation, display, or use of a drivers license, learner's permit or special identification card in connection with the commission or attempted commission of a felony. The punishment is increased from a Class 2 misdemeanor to a Class I felony.

BACKGROUND: As introduced, the bill provided that the unlawful use of drivers license, permit, or special identification card constituted a Class H felony. The House Judiciary I Committee Substitute changed the punishment provisions to provide for Class I felonies.

This act becomes effective December 1, 1999.

VISITOR REGISTRATION SHEET

Ct #2 10:AM. June 15. 1999
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Tracy Benfield	Appropriate Punishment Option: Commun. Penalties - 224 Water St.
Pamela Raney	22nd Jud. Dist./Comm. Penalties Statesville, NC Appropriate Punishment Options Inc. 224 Water St. Statesville, NC 28677
Jim Loftin	NCAFT
Lisa Stahl	DOC
Lorrin Freeman	NC Sentencing Commission
John Madden	Sentencing Commission
LeAnn Wallace	AOC
Paul Bo	AOC
Louise A. Davis	Re Entry - CPP
Pam Knuckles	Repay Inc. Community Penalties
Kimbra Pendley	Repay Inc., - Community Penalties
Lisa Rubert	CYPC
Terry Hinton	9th District Community Penalties
Dianne Jones	4+5th District Community Penalties
Dot Ehlers	11th District Community Penalties

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Christopher McPhatter	7th & 9th District Community Penalties Rocky Mt. NC & Kinston / Goldsboro, NC
Susie Inamo	FASC, 310 Green St #110, Fayetteville NC
John Phelps	NCLM
Tony Gibbons	17-A / 17-B District Community Penalties ReDirections, Inc.
Kathy Bragg	Southern Piedmont Community Corrections 22nd District Community Penalties, 1038 E. Franklin Monroe NC
Amy Anderson	Community Penalties - Mecklenburg, Cabarrus and Rowan Counties
Amy Milten	Community Penalties - Mecklenburg, Cabarrus & Rowan Counties
Doug Lance	Alternative Community Penalties Program, Inc. P.O. Box 370 Gastonia, NC 28053-0370 (Serves Gaston, Cleveland, Lincoln
Eddie Caldwell	NC Law Enf Off Assn / NC Sheriffs Assn
Jim Speed	Bond & Assoc.
Mel Lockley	GAL volunteer
Bill Alexander	NC PBA
Woody Long	CCCR of N.C.
Sharon Collins	CCCR of NC
Ivor Collins	Continuing Care Community Residents of N.C., 237 Carol Woods, Chapel Hill

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	N.C.A.C.C.

SENATE JUDICIARY II COMMITTEE

JUNE 22, 1999

ROOM 1124

HB 160	Increase Child Abuse Penalty	Representative Goodwin
HB 290	Amend Crime Victims Comp. Act	Representative Baddour
HB 331	Sentencing Services Program	Representative Bowie

Adjournment

SENATE JUDICIARY II COMMITTEE

JUNE 22, 1999

MINUTES

The Senate Judiciary II Committee met on June 22, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Fifteen members were present, including Senator Brad Miller, who presided.

HB 160, Increase Child Abuse Penalty, was explained by Representative Goodwin. Senator Ballance moved to adopt a proposed committee substitute. The motion carried unanimously.

Senator Hagan moved to amend the bill on page 1, lines 9 to 11, by deleting the underlined language, and on page 2, lines 8 to 14, by deleting those lines in their entirety. The motion carried.

Speaking in support of the amendment from the public was Anne Winner, with the NC Coalition Against Domestic Violence.

Senator Miller adjourned the meeting at 11:00 a.m. with the understanding that the discussion of HB 160 would continue at the next meeting.

Brad Eb
Senator Brad Miller, Chairman

Cornelia McMillan
Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 160
Committee Substitute Favorable 3/15/99
Third Edition Engrossed 3/22/99

Short Title: Increase Child Abuse Penalty. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CHILD ABUSE THAT RESULTS IN EXTREME DEBILITATING INJURY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E felony.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts or intentionally permits any extreme debilitating injury upon or to the child or who intentionally commits or intentionally permits an assault upon the child which results in any extreme debilitating injury to

the child is guilty of a Class C felony. For the purpose of this section, "extreme debilitating injury" means injury that creates or causes one or more of the following:

(1) A substantial risk of death;
(2) Serious permanent disfigurement;
(3) Coma;
(4) A permanent or protracted condition resulting in extreme pain;
(5) Permanent or protracted loss or impairment of the function of any bodily member or organ or any mental or emotional function; or
(6) Prolonged hospitalization.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 290
Second Edition Engrossed 4/8/99

Short Title: Amend Crime Victims Comp. Act/AB. (Public)

Sponsors: Representatives Baddour; Haire (Primary Sponsors), Alexander, and Wainwright.

Referred to: Judiciary IV.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS' COMPENSATION ACT BY INCREASING THE MEMBERSHIP OF THE CRIME VICTIMS' COMPENSATION COMMISSION, BY INCREASING THE SIZE OF INITIAL CLAIMS THAT MAY BE AWARDED BY THE DIRECTOR OF THE COMMISSION, AND BY PROVIDING THE COMMISSION WITH THE DISCRETION TO PAY CERTAIN CLAIMS PREVIOUSLY DENIED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15B-3(a) reads as rewritten:

"(a) There is established the Crime Victims Compensation Commission of the Department of Crime Control and Public Safety, consisting of ~~five~~ seven members as follows:

(1) One member to be appointed by the Governor;

(2) One member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121;

(3) One member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121;

(4) The Attorney General or ~~his~~ the Attorney General's designee; ~~and~~

(5) The Secretary of the Department of Crime Control and Public Safety or ~~his designee.~~ the Secretary's designee; and

(6) Two members to be appointed by the Secretary of the Department of Crime Control and Public Safety."

Section 2. G.S. 15B-10 reads as rewritten:

"**§ 15B-10. Awarding claims.**

(a) The Director shall decide the award of compensation for an initial claim or follow-up claim when the claim does not exceed ~~five thousand dollars ($5,000)~~ seven thousand five hundred dollars ($7,500) and does not include future economic loss. The Director shall report all awards under this subsection to the Commission.

(b) The Director shall recommend the award of compensation for an initial claim or follow-up claim when the claim exceeds ~~five thousand dollars ($5,000)~~ seven thousand five hundred dollars ($7,500) or involves future economic loss. The Commission shall decide the award of compensation for a claim based on a review of written evidence submitted to the Commission by the Director.

(c) In reporting a decision under subsection (a) or recommending a decision under subsection (b), the Director shall submit to the Commission documentation to establish the economic loss of the claimant by substantial evidence.

(d) The Director shall send each claimant a written statement of a decision made under subsection (a) or (b) that gives the reasons for the decision. A claimant who is dissatisfied with a decision may commence a contested case under Article 3 of Chapter 150B of the General Statutes."

Section 3. G.S. 15B-11(a) reads as rewritten:

"**§ 15B-11. Grounds for denial of claim or reduction of award.**

(a) An award of compensation shall be denied if:

(1) The claimant fails to file an application for an award within two years after the date of the criminally injurious conduct that caused the injury or death for which the claimant seeks the award;

(2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;

(3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;

(4) The award would benefit the offender or the offender's accomplice, unless a determination is made that the interests of justice require that an award be approved in a particular case;

(5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility; or

(6) The victim was participating in a felony ~~or a nontraffic misdemeanor~~ at or about the time that the victim's injury occurred.

(b) A claim may be denied ~~and~~ or an award of compensation may be reduced ~~upon a finding of contributory misconduct by the claimant or a victim through whom the claimant claims.~~ if:

(1) The victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred; or

(2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.

The Commission shall use its discretion in determining whether to deny a claim under this subsection. In exercising its discretion, the Commission may consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct.

(c) A claim may be denied, an award of compensation may be reduced, and a claim that has already been decided may be reconsidered upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies with regard to the criminally injurious conduct that is the basis for the award.

(c1) A claim may be denied upon a finding that the claimant has been convicted of any felony classified as a Class A, B1, B2, C, D, or E felony under the laws of the State of North Carolina and that such felony was committed within 3 years of the time the victim's injury occurred.

(d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Director shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission.

An award that has been approved shall nevertheless be denied or reduced to the extent that the economic loss upon which the claim is based is or will be recouped from a collateral source. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitations set forth in subsections (f) and (g). The existence of a collateral source that would pay expenses directly related to a funeral, cremation, and burial, including transportation of a body, shall not constitute grounds for the denial or reduction of an award of compensation.

(e) Repealed by Session Laws 1998-212, s. 19.4(m).

(f) Compensation for replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed two hundred dollars ($200.00) per week. Compensation for work loss and household support loss may not exceed three hundred dollars ($300.00) per week.

(g) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to, or the death of, that victim may not exceed thirty thousand dollars ($30,000) in the aggregate in addition to allowable funeral, cremation, and burial expenses.

(h) The right to reconsider or reopen a claim does not affect the finality of its decision for the purpose of judicial review."

Section 4. This act becomes effective July 1, 1999. Section 2 of this act applies to all claims filed on or after July 1, 1999. Section 3 of this act applies to claims filed or pending on or after July 1, 1999. For claims denied prior to that date because the victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred, the Commission shall reconsider denial of the claim upon the written request of the claimant, provided that the claimant's written request is received by the Commission within two years of the date of the criminally injurious conduct that caused the injury or death for which the claimant seeks the reward.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 331*
Committee Substitute Favorable 3/23/99

Short Title: Sentencing Services Program/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REDESIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIII of Chapter 7A of the General Statutes reads as rewritten:

"SUBCHAPTER XIII. COMMUNITY PENALTIES PROGRAM.

"ARTICLE 61.

"~~Community Penalties Program Act of 1983.~~
Sentencing Services Programs.

"**§ 7A-770. Purpose.**

This Article shall be known and may be cited as the ~~"Community Penalties Act of 1983."~~ "Sentencing Services Act." The purpose of this Article is to ~~reduce prison overcrowding by providing~~ establish a statewide sentencing services program that will provide the judicial system with ~~community sentences to be used in lieu of and at less cost than imprisonment.~~ information that will assist that system in imposing sentences that make the most effective use of available resources. In furtherance of this purpose, this Article provides for the following:

(1) Establishment of local ~~sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.~~ programs that can provide judges and other

court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services.

(2) Increased opportunities for certain felons to make restitution to victims of crime through financial reimbursement or community service.

(3) Local involvement in the development of ~~community penalties~~ sentencing services to assure that they are specifically designed to meet local needs.

(4) ~~Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added.~~ Effective use of available community corrections programs by advising judges and other court officials of the offenders most suited for a particular program.

"**§ 7A-771. Definitions.**

As used in this Article:

(1) ~~"Community penalties~~ "Sentencing services program" means an agency or State-run office within the ~~judicial~~ superior court district which shall (i) prepare ~~community penalty~~ sentencing plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) ~~monitor the progress of offenders placed on community penalty plans.~~ assist offenders in initially obtaining services ordered as part of a sentence entered pursuant to a sentencing plan, if the assistance is not available otherwise.

(2) ~~"Community penalty~~ "Sentencing plan" means a plan presented in writing to the sentencing judge which provides a detailed assessment and description of the ~~targeted offender's proposed community penalty.~~ offender's background, including available information about past criminal activity, a matching of the specific offender's needs with available resources, and, if appropriate, the program's recommendations regarding an intermediate sentence.

(2a) "Director" means the Director of the Administrative Office of the Courts.

(2b) "Superior court district" means a superior court district established by G.S. 7A-41 for those districts consisting of one or more entire counties, and otherwise means the applicable set of districts as that term is defined in G.S. 7A-41.1.

~~(3) "Judicial district" means a district court district as defined in G.S. 7A-133.~~

(4) Repealed by Session Laws 1991, c. 566, s. 4.

~~(5) "Targeted offenders" means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior~~

~~record level and who are facing an imminent and substantial threat of imprisonment.~~

"§ 7A-772. Allocation of funds.

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of ~~community penalties~~ sentencing services programs. ~~Community penalties~~ Sentencing services programs that are grantees shall use ~~such~~ the funds ~~to develop, implement, and monitor community penalty plans.~~ exclusively to develop a sentencing services program that provides sentencing information to judges and other court officials. Grants shall be awarded by the Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein. The Director shall consider the plan required by G.S. 7A-774 in making funding decisions. If a senior resident superior court judge has not formally endorsed the plan, the Director shall consider that fact in making grant decisions, but the Director may, if appropriate, award grants to a program in which the judge has not endorsed the plan as submitted.

(b) The Director may establish local ~~community penalties~~ sentencing services programs and appoint those staff as the Director deems necessary. These personnel may serve as full-time or part-time State employees or may be hired on a contractual basis when determined appropriate by the director. Contracts entered under the authority of this subsection shall be exempt from the competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of ~~community penalties~~ sentencing services programs under this Article shall be administered by the Administrative Office of the Courts.

"§ 7A-773. Responsibilities of a ~~community penalties~~ sentencing services program.

A ~~community penalties~~ sentencing services program shall be responsible for:

(1) ~~Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.~~ Identifying offenders who:

a. Are charged with or have been offered a plea by the State for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so;

b. Have a high risk of committing future crimes without appropriate sanctions and interventions; and

c. Would benefit from the preparation of an intensive and comprehensive sentencing plan of the type prepared by sentencing services programs.

(2) Preparing detailed ~~community penalty~~ sentencing services plans requested pursuant to G.S. 7A-773.1 for presentation to the

sentencing ~~judge by the offender's attorney or at the request of the sentencing judge.~~ judge.

(3) Contracting or arranging with public or private agencies for services described in the ~~community penalty~~ sentencing plan.

~~(4) Monitoring the progress of offenders under community penalty plans.~~

"§ 7A-773.1. **Who may request plans; disposition of plans; contents of plans.**

(a) A judge presiding over a case in which the offender meets the criteria set forth in G.S. 7A-773(1) may request, at any time prior to the imposition of sentence, that the sentencing services program provide a sentencing plan. The court may also request, at any time prior to the imposition of sentence, that the program provide a sentencing plan in misdemeanor cases in which the class of offense is Class A1 or Class 1 and the prior conviction level is Level III, if the court determines that the preparation of such a plan is in the interest of justice. In addition, in cases in which the offender meets the criteria set forth in G.S. 7A-773, the defendant or a prosecutor, at any time before the court has accepted a guilty plea or received a guilty verdict, may request that the program provide a plan. However, prior to an adjudication of guilt, a defendant may decline to participate in the preparation of a plan within a reasonable time after the request is made. In that case, no plan shall be prepared or presented to the court by the sentencing services program prior to an adjudication of guilt. A defendant's decision not to participate shall be made in writing and filed with the court. The comprehensive sentencing services program plan prepared pursuant to G.S. 7A-774 shall define what constitutes a reasonable time within the meaning of this subsection.

(b) Any sentencing plan prepared by a sentencing services program shall be presented to the court, the defendant, and the State in an appropriate manner.

(c) Sentencing plans prepared by sentencing services programs may include recommendations for use of any treatment or correctional resources available, unless the sentencing court instructs otherwise. Sentencing plans that identify an offender's needs for education, treatment, control, or other services shall, to the extent feasible, also identify resources to meet those needs. Plans may report that no intermediate punishment is appropriate under the circumstances of the case.

(d) To the extent allowed by law, the sentencing services program shall develop procedures to ensure that the program staff may work with offenders before a plea is entered. To that end, no information obtained in the course of preparing a sentencing plan may be used by the State for the purpose of establishing guilt.

"§ 7A-774. **Requirements for a comprehensive ~~community penalties~~ sentencing services program plan.**

Agencies applying for grants shall prepare a comprehensive ~~community penalties~~ sentencing services program plan for the development, implementation, operation, and improvement of a ~~community penalties~~ sentencing services program for the ~~judicial~~ superior court district, as prescribed by the Director. The plan shall be updated annually and shall be submitted to the senior resident superior court judge for the superior court district for the judge's advice and written endorsement. The

plan shall then be forwarded to the Director for approval. The ~~Such~~ plan shall include:

(1) ~~Objectives~~ Goals and objectives of the ~~community penalties~~ sentencing services program.

(2) ~~Goals for reduction of offenders committed to prison for each county within the district, and a system of monitoring the number of commitments to prison.~~ Specification of the kinds or categories of offenders for whom the programs will provide sentencing information to the courts.

(3) ~~Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program.~~ Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in G.S. 7A-773(1).

(4) Procedures for preparing and presenting ~~community penalty~~ plans to the court.

(4a) Strategies for ensuring that judges and court officials who are possible referral sources use the program's services in appropriate cases.

(5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs.

~~(6) Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender.~~

~~(7) Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.~~

~~(8) Procedures for evaluating the program's effect on numbers of prison commitments.~~

"§ 7A-775. ~~Community penalties~~ Sentencing services board.

(a) Each ~~community penalties~~ sentencing services program shall establish a ~~community penalties~~ sentencing services board to provide direction and assistance to the ~~community penalties~~ sentencing services program in the implementation and evaluation of the plan. ~~Community penalties~~ Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The ~~community penalties~~ sentencing services board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The ~~community penalties~~ sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:

(1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. 7A-772(a);

~~(1)~~ (1a) Development of an annual budget for the program;

(2) Hiring, firing, and evaluation of program personnel;

(3) Selection of board members;
(4) Arranging for ~~a private and independent~~ an annual ~~audit;~~ audit, in accordance with G.S. 143-6.1;
(5) Development of procedures for contracting for services.

(b) If the board serves as an advisory board to a sentencing services program located in a local or State agency, the board's duties do not include budgeting and personnel decisions.

"§ 7A-776. Limitation on use of funds.

Funds provided for use under the provisions of this Article shall not be used for the operating costs, construction, or any other costs associated with local jail ~~confinement.~~ confinement, or for any purpose other than the operation of a sentencing services program that complies with this Article.

"§ 7A-777. Evaluation.

The Director shall evaluate each ~~community penalties~~ sentencing services program on an annual basis to determine the degree to which the ~~prison commitments have been reduced or have kept from increasing as a result of the community penalties program. The Director shall not renew or continue a program that has failed to affect commitments and that shows no promise of doing so in the future, after allowing for changes in the number of convictions.~~ program effectively meets the needs of the courts in its judicial district by providing them with sentencing information. In conducting the evaluation, the Director shall consider the goals and objectives established in the program's plan, as well as the extent to which the program is able to ensure that the offenders served by the plan meet the criteria established in G.S. 7A-773(1)."

Section 2. G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:
a. Special probation as defined in G.S. 15A-1351(a).
b. Assignment to a residential program.
c. House arrest with electronic monitoring.
d. Intensive probation.
e. Assignment to a day-reporting center.
~~In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.~~"

Section 3. G.S. 15A-1340.14(f) reads as rewritten:

"(f) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:
(1) Stipulation of the parties.
(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

Section 4. Section 2 of this act becomes effective October 1, 1999, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1999, except that community penalties plans requested for offenders prior to that date shall be governed by the law in effect at the time the plan was requested.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 160 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 9-11

( ) WHICH CHANGES THE TITLE

by deleting the underlined language

~~and on page 1, line 9-11 by~~

and on page 2, lines 8-14 by deleting those lines in their entirety.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 160
Committee Substitute Favorable 3/15/99
Third Edition Engrossed 3/22/99
Proposed Senate Judiciary I Committee Substitute H160-PCSSA-003

Short Title: Increase Child Abuse Penalty. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CHILD ABUSE THAT RESULTS IN A PERMANENT AND DEBILITATING INJURY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts or intentionally permits any serious physical injury upon or to the child or who intentionally commits or intentionally permits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E ~~felony.~~ felony, except as otherwise provided by subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

(a3) If a person commits an offense under subsection (a) of this section, and the serious physical injury is a permanent and debilitating injury, then the person is guilty of a Class C felony.

(a4) Any person charged with a violation of this section for permitting, encouraging, or allowing the commission of any of the acts prohibited by this section, may assert as an affirmative defense that the person is a victim of domestic violence and that the failure to take action to prevent the child abuse was necessary to protect that person from further acts of domestic violence.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

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

HOUSE BILL 160:
Increase Child Abuse Penalty

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Goodwin
Date:	June 22, 1999	**Summary by:**	Brenda Carter & Bill Gilkeson
Version:	3rd Edition		Staff Counsel

SUMMARY: House Bill 160 creates a higher level of felony child abuse for those cases where the offense results in "extreme debilitating injury" as defined by statute. These cases would be punished as a Class C felony rather than a Class E felony.

CURRENT LAW: A parent or other person providing care to a child under 16 is guilty of felony child abuse if that person:

- Intentionally inflicts serious injury on the child, or intentionally commits an assault on the child that results in serious injury;
- Commits, permits, or encourages prostitution with or by the child.
- Commits or allows any sexual act on the child.

Felony child abuse is a Class E felony. The presumptive minimum sentence for an offender with no prior record is 20-25 months intermediate or active punishment.

BILL ANALYSIS: House Bill 160 would create a new, more severe penalty for certain cases of child abuse. If the defendant intentionally *commits or permits* an injury or assault resulting in an "extreme debilitating injury," the penalty would be a Class C felony rather than Class E. "Extreme debilitating injury" as defined in the bill is any injury that creates or causes any one of the following:

1. A substantial risk of death;
2. Serious permanent disfigurement;
3. Coma;
4. A permanent or protracted condition that causes extreme pain;
5. Permanent or protracted loss or impairment of the function of any bodily member or organ or any mental or emotional function; or
6. Prolonged hospitalization

The presumptive minimum sentence for an offender with no prior record is 58-73 months active punishment.

The bill would become effective December 1, 1999 and apply to offense committed on or after that date.

H160-SMRV-002

HOUSE BILL 290:
Amend Crime Victims Compensation Act

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Baddour
Date:	June 22, 1999	**Summary by:**	Brenda Carter and Tim Hovis
Version:	2nd Edition		Staff Counsel

SUMMARY: ***House Bill 290 amends the Crime Victims Compensation Act by increasing the membership of the Crime Victims Compensation Commission from five to seven, adding two members appointed by the Secretary of Crime Control and Public Safety. The bill increases the dollar limit on the size of the initial claims that may be awarded by the director of the Commission. The bill also provides the Commission with the discretion to award a when the victim was participating in a nontraffic misdemeanor at the time of the injury.***

BILL ANALYSIS: The bill makes several changes to Chapter 15B of the General Statutes, the Crime Victims Compensation Act. The Act provides for payment of compensation to victims who suffer economic loss as a result of criminal conduct that occurs or is attempted in this State.

- Under current law the Governor, the President Pro Tempore of the Senate, and the Speaker of the House each appoint one member to the Crime Victims Compensation Commission. The Attorney General and the Secretary of Crime Control and Public Safety, or their designees, also serve as members. **House Bill 290 authorizes the Secretary of Crime Control and Public Safety to appoint two additional members to the Commission.**
- Pursuant to G.S. 15B-10, the Director of the Commission is authorized to award compensation, without the approval of the Commission, for a claim that does not exceed $5,000. The Direct must report all such awards to the Commission. Claims in excess of $5,000 are evaluated and awarded by the Commission, and decisions are based upon the Director's recommendation and a review of the evidence. In 1998, the total amount of compensation that may be awarded to a victim or claimant under the Act was increased from $20,000 to $30,000; there was no corresponding increase in the director's authority to grant awards. **House Bill 290 extends the authority of the Director for awarding claims by increasing the maximum amount that can be awarded by the Director from $5,000 to $7,500.**
- Under current law, denial of a claim is permissible upon a finding that the claimant or a victim through whom the claim is made engaged in contributory misconduct. Denial of a victim's claim is mandatory if the victim was participating in a felony or nontraffic misdemeanor at or about the time that the victim's injury occurred. This provision was enacted in the 1994 Special Session on Crime in response to a decision of an Administrative Law Judge allowing benefits to a person who was shot by the owner of a convenience store in the course of committing a robbery. Since that time there have been cases where this provision has generated some concern – one widely publicized case involved cohabitation, which is a criminal offense in this State. **House Bill 290 extends the Commission's discretion to award a claim to include cases where the victim was participating in a nontraffic misdemeanor at the time of the injury as well as those cases where the victim has engaged in**

contributory misconduct. In exercising its discretion, the Commission may consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct.

EFFECTIVE DATE: The bill would become effective July 1, 1999. The provisions regarding the award of claims to victims participating in nontraffic misdemeanors or engaging in contributory misconduct apply to pending claims as well as those filed after the effective date. Claims denied prior to that date because the victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred must be reconsidered upon request of the claimant, if the request is made within two years of the date of the injury that was the basis of the claim.

H290-SMRV-002

HOUSE BILL 331:
Sentencing Services Program/AB

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Bowie
Date:	June 14, 1999	**Summary by:**	Brenda Carter and Esther Manheimer
Version:	Second Edition		Staff Counsel

SUMMARY: House Bill 331 renames the Community Penalties Program as the Sentencing Services Program and shifts the focus of the program to provide information to the courts and to develop sentencing services plans rather than monitor offenders participating in sentencing services plans.

BILL ANALYSIS

Section 1.

- **Amends G.S. 7A-770** to rename the Community Penalties Program as the Sentencing Services Program (SSP). Changes the purpose of the Article from reducing prison overcrowding through the use of community sentences to establishing a statewide sentencing services program that will provide courts with information necessary to make effective use of resources. Specifically, the SSP will provide court officials with information regarding local correctional programs and identify the offenders best suited for those programs.
- **Amends G.S. 7A-771** to make various conforming changes. Deletes provision regarding the monitoring of offenders placed on community penalty plans. The sentencing services program would assist offenders in initially obtaining services as part of a sentencing plan if assistance is not otherwise available. Sentencing plans will provide information about the offender's past criminal activity, matching offender's needs with available resources, and recommendations for an intermediate sentence. Changes judicial district to specify superior court district. Repeals definition and eliminates use of the term "targeted offenders."
- **Amends G.S. 7A-772** to make various conforming changes. In addition, specifies that sentencing services programs receiving grants awarded by the Director of AOC shall use the funds exclusively to develop a sentencing services program that provides sentencing services information to court officials. The Director must consider, in the awarding of grants, the agencies' comprehensive sentencing services program plan and whether the senior resident superior court judge has endorsed the plan.
- **Amends G.S. 7A-773** to require the sentencing services program to identify offenders who qualify for the program (felony offenders where an active sentence is not required, who are at high risk of committing future crimes, and would benefit from a sentencing services program plan) and prepare sentencing services plans. The provision specifying offenders eligible for intermediate punishment is deleted. The current provision requiring monitoring of offenders is also deleted.
- **Adds G.S. 7A-773.1,** a new section which provides that:
  - Where the offenders meet the three criteria in G.S. 7A-773 (an active sentence is not required, offender is at high risk of committing future crimes, and would benefit from a sentencing services program plan), the judge presiding over the case, the defendant, or the prosecutor may request that

the sentencing services program provide a sentencing plan. The judge must make the request prior to the imposition of sentence. The defendant or prosecutor must make the request prior to a guilty plea or guilty verdict. In addition, the judge may also request a plan in certain misdemeanor cases. Prior to the adjudication and within a reasonable time after the sentencing plan request was made, the defendant may opt out of the plan. The comprehensive sentencing services program plan (as required by G.S. 7A-774) shall define what constitutes a reasonable time.

- Sentencing plans are presented to the court, the defendant, and the State.
- Sentencing plans may include: recommendations for use of any treatment or correctional resources available, identify resources to meet any educational, treatment, control, or other needs, and plans may report that no intermediate punishment is appropriate.
- Finally, sentencing services program staff may work with offenders before a plea is entered. No information obtained in preparing a sentencing plan may be used by the State in establishing guilt.

- **Amends G.S. 7A-774** to establish the requirement that a comprehensive sentencing services program plan be prepared and then updated annually, and that the plans be submitted to the senior resident superior court judge for advice and endorsement. Plans will be forwarded to the Director of AOC for final approval. Plans are to include: goals and objectives of the program, offenders for whom the program will provide sentencing information to the courts, procedures for identifying qualifying offenders, and strategies for ensuring that judges use the program's services. Language regarding the monitoring of offenders in the program and the number of prison commitments has been deleted.
- **Amends G.S. 7A-775** to make various conforming changes regarding boards of sentencing services programs.
- **Amends G.S. 7A-776** to require that funds not be used for any other purpose other than the operation of sentencing services programs.
- **Amends G.S. 7A-777** to remove language regarding the reduction of prison commitments. Requires that the Director evaluate each sentencing services program.

Section 2.

- **Amends G.S. 15A-1340.11(6)** to remove sentencing plans from the definition of "intermediate punishment" in the Structured Sentencing Act.

Section 3.

- **Amends G.S. 15A-1340.14(f)**, which sets out the methods for proving an offender's prior convictions, to require that a district attorney provide to the sentencing services program any information the D.A. has about the criminal record of an offender for whom the program has been requested to provide a sentencing plan.

Section 4 – EFFECTIVE DATE

Section 2 (change in definition of intermediate punishment) becomes effective October 1, 1999, and applies to offenses committed on or after that date. The remainder becomes effective October 1, 1999. Community penalties plans requested prior to October 1, 1999, shall be governed by the law in effect at the time the plan was requested.

H331-SMRV-002

VISITOR REGISTRATION SHEET

J-2 — Name of Committee

6-22-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

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Robert Reives	V&J CCPS 733-7974
JENNIFER CRAWLEY	PFIZER
Karen Pdinka	Pfizer
Annie CARNEGIE	Pfizer
Emily Carter	Pfizer
Roslyn Sawtt	NC Child Care Coalition
LeAnn Wallace	AOC
Marilee Wein	Pfizer
Joel Wilson	Sen Lee
Elbert Boyd	Pfizer
Mark Cordell	Pfizer
Aaron Green	Pfizer
MIKE ARGOSTEGUI	PFIZER
Terence Freeman	Pfizer - Atl
Jennifer G. Pittman	Pfizer Inc.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

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Elizabeth Gray	Pfizer / Alta
William T. Leibert	Pfizer Labs
Lisa Shick	Pfizer Steere
Carol Clark	Pfizer / Pediatrics / OB Gyn
Eric Rudolph	Pfizer
Pamela Best	AOC
Susie Gmann	Community Penalties
Julie Kim	Sentencing Commission
John Madler	Sentencing Commission
Norvin Freeman	Sentencing Commission
NIALL ANGHIE	PFIZER LABS
Carol Simpson	Pfizer
Kyle Kirby	Pfizer
Lee Rubens	CYPC

VISITOR REGISTRATION SHEET

Name of Committee | Date

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Bill Hall	Pfizer
Lenora McQuillan	Pfizer
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Louise Davis	Pfizer Inc Wake Co.
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Vicki Clark	Pfizer
Crystal Hewett	Pfizer
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Kim Watson	Pfizer, Inc.
Justin Kozalt	Pfizer, Inc.
Mike Powell	Pfizer, Inc.
Gabriella Carsten	Pfizer Inc.
Julie French	Pfizer

VISITOR REGISTRATION SHEET

Name of Committee | Date

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Michelle Mattox	Pfizer Inc
Laurel Senglaub	Pfizer, Inc
Jodee Humble	Pfizer
David Adamson	Pfizer
Chris Behrmann	Pfizer
Jim Dotson	Pfizer

SENATE JUDICIARY II COMMITTEE

JUNE 24, 1999

ROOM 1124

HB 160	Increase Child Abuse Penalty	Representative Goodwin
HB 290	Amend Crime Victims Comp. Act	Representative Baddour
HB 331	Sentencing Services Program	Representative Bowie
HB 958	Confid. Medical Info./Clarification	Representative Edwards
HB 1074	Election Law Changes – 1	Representative Alexander

Adjournment

SENATE JUDICIARY II COMMITTEE

JUNE 24, 1999

MINUTES

The Senate Judiciary II Committee met on June 24, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Ten members were present, including Senator Brad Miller, who presided.

Senator Miller announced that HB 160, Increase Child Abuse Penalty, would be assigned to the subcommittee chaired by Senator Hagan.

HB 331, Sentencing Services Program, was explained by Representative Bowie and John Madler, Sentencing Services Commission. Senator Moore moved to amend the bill by changing the effective date from October 1, 1999 to January 1, 2000. The motion carried unanimously. Senator Moore moved to engross the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to committee substitute #1, but favorable as to Senate committee substitute.**

Representative Edwards was recognized to explain HB 958, Confid. Medical Info./Clarification. Senator Hagan moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

HB 1074, Election Law Changes – 1, was explained by Representative Alexander. Senator Kinnaird moved to adopt a proposed committee substitute. The motion carried. Evonne Sutherland, with the NC State Board of Elections, clarified the corporate contributions section and explained that the bill clarified opinions and procedures that have been in effect since 1994. Senator Hagan moved to amend the bill on page 5, line 10, by deleting the word "shall" and substituting the word "may." The motion carried unanimously. Zee Lambe, NC State Board of Elections, answered questions concerning procedures for registration forms. Senator Miller announced that HB 1074 would be displaced.

HB 290, Amend Crime Victims Comp. Act, was explained by Senator Miller. Senator Miller moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Thursday, June 24, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **290** Amend Crime Victims Comp. Act/AB.
Sequential Referral: None
Recommended Referral: None

H.B. **958** Confid. Medical Info./Clarification.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 160
Committee Substitute Favorable 3/15/99
Third Edition Engrossed 3/22/99

Short Title: Increase Child Abuse Penalty. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CHILD ABUSE THAT RESULTS IN EXTREME DEBILITATING INJURY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E felony.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts or intentionally permits any extreme debilitating injury upon or to the child or who intentionally commits or intentionally permits an assault upon the child which results in any extreme debilitating injury to

the child is guilty of a Class C felony. For the purpose of this section, "extreme debilitating injury" means injury that creates or causes one or more of the following:

(1) A substantial risk of death;
(2) Serious permanent disfigurement;
(3) Coma;
(4) A permanent or protracted condition resulting in extreme pain;
(5) Permanent or protracted loss or impairment of the function of any bodily member or organ or any mental or emotional function; or
(6) Prolonged hospitalization.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 290
Second Edition Engrossed 4/8/99

Short Title: Amend Crime Victims Comp. Act/AB. (Public)

Sponsors: Representatives Baddour; Haire (Primary Sponsors), Alexander, and Wainwright.

Referred to: Judiciary IV.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS' COMPENSATION ACT BY INCREASING THE MEMBERSHIP OF THE CRIME VICTIMS' COMPENSATION COMMISSION, BY INCREASING THE SIZE OF INITIAL CLAIMS THAT MAY BE AWARDED BY THE DIRECTOR OF THE COMMISSION, AND BY PROVIDING THE COMMISSION WITH THE DISCRETION TO PAY CERTAIN CLAIMS PREVIOUSLY DENIED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15B-3(a) reads as rewritten:

"(a) There is established the Crime Victims Compensation Commission of the Department of Crime Control and Public Safety, consisting of ~~five~~ seven members as follows:

(1) One member to be appointed by the Governor;

(2) One member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121;

(3) One member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121;

(4) The Attorney General or ~~his~~ the Attorney General's designee; ~~and~~

(5) The Secretary of the Department of Crime Control and Public Safety or ~~his designee.~~ the Secretary's designee; and

(6) Two members to be appointed by the Secretary of the Department of Crime Control and Public Safety."

Section 2. G.S. 15B-10 reads as rewritten:

"**§ 15B-10. Awarding claims.**

(a) The Director shall decide the award of compensation for an initial claim or follow-up claim when the claim does not exceed ~~five thousand dollars ($5,000)~~ seven thousand five hundred dollars ($7,500) and does not include future economic loss. The Director shall report all awards under this subsection to the Commission.

(b) The Director shall recommend the award of compensation for an initial claim or follow-up claim when the claim exceeds ~~five thousand dollars ($5,000)~~ seven thousand five hundred dollars ($7,500) or involves future economic loss. The Commission shall decide the award of compensation for a claim based on a review of written evidence submitted to the Commission by the Director.

(c) In reporting a decision under subsection (a) or recommending a decision under subsection (b), the Director shall submit to the Commission documentation to establish the economic loss of the claimant by substantial evidence.

(d) The Director shall send each claimant a written statement of a decision made under subsection (a) or (b) that gives the reasons for the decision. A claimant who is dissatisfied with a decision may commence a contested case under Article 3 of Chapter 150B of the General Statutes."

Section 3. G.S. 15B-11(a) reads as rewritten:

"**§ 15B-11. Grounds for denial of claim or reduction of award.**

(a) An award of compensation shall be denied if:

(1) The claimant fails to file an application for an award within two years after the date of the criminally injurious conduct that caused the injury or death for which the claimant seeks the award;

(2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;

(3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;

(4) The award would benefit the offender or the offender's accomplice, unless a determination is made that the interests of justice require that an award be approved in a particular case;

(5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility; or

(6) The victim was participating in a felony ~~or a nontraffic misdemeanor~~ at or about the time that the victim's injury occurred.

(b) A claim may be denied ~~and~~ or an award of compensation may be reduced ~~upon a finding of contributory misconduct by the claimant or a victim through whom the claimant claims.~~ if:

(1) The victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred; or

(2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.

The Commission shall use its discretion in determining whether to deny a claim under this subsection. In exercising its discretion, the Commission may consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct.

(c) A claim may be denied, an award of compensation may be reduced, and a claim that has already been decided may be reconsidered upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies with regard to the criminally injurious conduct that is the basis for the award.

(c1) A claim may be denied upon a finding that the claimant has been convicted of any felony classified as a Class A, B1, B2, C, D, or E felony under the laws of the State of North Carolina and that such felony was committed within 3 years of the time the victim's injury occurred.

(d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Director shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission.

An award that has been approved shall nevertheless be denied or reduced to the extent that the economic loss upon which the claim is based is or will be recouped from a collateral source. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitations set forth in subsections (f) and (g). The existence of a collateral source that would pay expenses directly related to a funeral, cremation, and burial, including transportation of a body, shall not constitute grounds for the denial or reduction of an award of compensation.

(e) Repealed by Session Laws 1998-212, s. 19.4(m).

(f) Compensation for replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed two hundred dollars ($200.00) per week. Compensation for work loss and household support loss may not exceed three hundred dollars ($300.00) per week.

(g) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to, or the death of, that victim may not exceed thirty thousand dollars ($30,000) in the aggregate in addition to allowable funeral, cremation, and burial expenses.

(h) The right to reconsider or reopen a claim does not affect the finality of its decision for the purpose of judicial review."

Section 4. This act becomes effective July 1, 1999. Section 2 of this act applies to all claims filed on or after July 1, 1999. Section 3 of this act applies to claims filed or pending on or after July 1, 1999. For claims denied prior to that date because the victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred, the Commission shall reconsider denial of the claim upon the written request of the claimant, provided that the claimant's written request is received by the Commission within two years of the date of the criminally injurious conduct that caused the injury or death for which the claimant seeks the reward.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 331*
Committee Substitute Favorable 3/23/99

Short Title: Sentencing Services Program/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REDESIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIII of Chapter 7A of the General Statutes reads as rewritten:

"SUBCHAPTER XIII. COMMUNITY PENALTIES PROGRAM.

"ARTICLE 61.

"~~Community Penalties Program Act of 1983.~~
Sentencing Services Programs.

"**§ 7A-770. Purpose.**

This Article shall be known and may be cited as the ~~"Community Penalties Act of 1983."~~ "Sentencing Services Act." The purpose of this Article is to ~~reduce prison overcrowding by providing~~ establish a statewide sentencing services program that will provide the judicial system with ~~community sentences to be used in lieu of and at less cost than imprisonment.~~ information that will assist that system in imposing sentences that make the most effective use of available resources. In furtherance of this purpose, this Article provides for the following:

(1) Establishment of local ~~sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.~~ programs that can provide judges and other

court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services.

(2) Increased opportunities for certain felons to make restitution to victims of crime through financial reimbursement or community service.

(3) Local involvement in the development of ~~community penalties~~ sentencing services to assure that they are specifically designed to meet local needs.

(4) ~~Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added.~~ Effective use of available community corrections programs by advising judges and other court officials of the offenders most suited for a particular program.

"§ 7A-771. Definitions.

As used in this Article:

(1) ~~"Community penalties~~ "Sentencing services program" means an agency or State-run office within the ~~judicial~~ superior court district which shall (i) prepare ~~community penalty~~ sentencing plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) ~~monitor the progress of offenders placed on community penalty plans.~~ assist offenders in initially obtaining services ordered as part of a sentence entered pursuant to a sentencing plan, if the assistance is not available otherwise.

(2) ~~"Community penalty~~ "Sentencing plan" means a plan presented in writing to the sentencing judge which provides a detailed assessment and description of the ~~targeted offender's proposed community penalty.~~ offender's background, including available information about past criminal activity, a matching of the specific offender's needs with available resources, and, if appropriate, the program's recommendations regarding an intermediate sentence.

(2a) "Director" means the Director of the Administrative Office of the Courts.

(2b) "Superior court district" means a superior court district established by G.S. 7A-41 for those districts consisting of one or more entire counties, and otherwise means the applicable set of districts as that term is defined in G.S. 7A-41.1.

~~(3) "Judicial district" means a district court district as defined in G.S. 7A-133.~~

(4) Repealed by Session Laws 1991, c. 566, s. 4.

~~(5) "Targeted offenders" means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior~~

~~record level and who are facing an imminent and substantial threat of imprisonment.~~

"§ 7A-772. Allocation of funds.

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of ~~community penalties~~ sentencing services programs. ~~Community penalties~~ Sentencing services programs that are grantees shall use ~~such~~ the funds ~~to develop, implement, and monitor community penalty plans.~~ exclusively to develop a sentencing services program that provides sentencing information to judges and other court officials. Grants shall be awarded by the Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein. The Director shall consider the plan required by G.S. 7A-774 in making funding decisions. If a senior resident superior court judge has not formally endorsed the plan, the Director shall consider that fact in making grant decisions, but the Director may, if appropriate, award grants to a program in which the judge has not endorsed the plan as submitted.

(b) The Director may establish local ~~community penalties~~ sentencing services programs and appoint those staff as the Director deems necessary. These personnel may serve as full-time or part-time State employees or may be hired on a contractual basis when determined appropriate by the director. Contracts entered under the authority of this subsection shall be exempt from the competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of ~~community penalties~~ sentencing services programs under this Article shall be administered by the Administrative Office of the Courts.

"§ 7A-773. Responsibilities of a ~~community penalties~~ sentencing services program.

A ~~community penalties~~ sentencing services program shall be responsible for:

(1) ~~Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.~~ Identifying offenders who:

a. Are charged with or have been offered a plea by the State for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so;

b. Have a high risk of committing future crimes without appropriate sanctions and interventions; and

c. Would benefit from the preparation of an intensive and comprehensive sentencing plan of the type prepared by sentencing services programs.

(2) Preparing detailed ~~community penalty~~ sentencing services plans requested pursuant to G.S. 7A-773.1 for presentation to the

sentencing ~~judge by the offender's attorney or at the request of the sentencing judge.~~ judge.

(3) Contracting or arranging with public or private agencies for services described in the ~~community penalty~~ sentencing plan.

~~(4) Monitoring the progress of offenders under community penalty plans.~~

"§ 7A-773.1. Who may request plans; disposition of plans; contents of plans.

(a) A judge presiding over a case in which the offender meets the criteria set forth in G.S. 7A-773(1) may request, at any time prior to the imposition of sentence, that the sentencing services program provide a sentencing plan. The court may also request, at any time prior to the imposition of sentence, that the program provide a sentencing plan in misdemeanor cases in which the class of offense is Class A1 or Class 1 and the prior conviction level is Level III, if the court determines that the preparation of such a plan is in the interest of justice. In addition, in cases in which the offender meets the criteria set forth in G.S. 7A-773, the defendant or a prosecutor, at any time before the court has accepted a guilty plea or received a guilty verdict, may request that the program provide a plan. However, prior to an adjudication of guilt, a defendant may decline to participate in the preparation of a plan within a reasonable time after the request is made. In that case, no plan shall be prepared or presented to the court by the sentencing services program prior to an adjudication of guilt. A defendant's decision not to participate shall be made in writing and filed with the court. The comprehensive sentencing services program plan prepared pursuant to G.S. 7A-774 shall define what constitutes a reasonable time within the meaning of this subsection.

(b) Any sentencing plan prepared by a sentencing services program shall be presented to the court, the defendant, and the State in an appropriate manner.

(c) Sentencing plans prepared by sentencing services programs may include recommendations for use of any treatment or correctional resources available, unless the sentencing court instructs otherwise. Sentencing plans that identify an offender's needs for education, treatment, control, or other services shall, to the extent feasible, also identify resources to meet those needs. Plans may report that no intermediate punishment is appropriate under the circumstances of the case.

(d) To the extent allowed by law, the sentencing services program shall develop procedures to ensure that the program staff may work with offenders before a plea is entered. To that end, no information obtained in the course of preparing a sentencing plan may be used by the State for the purpose of establishing guilt.

"§ 7A-774. Requirements for a comprehensive ~~community penalties~~ sentencing services program plan.

Agencies applying for grants shall prepare a comprehensive ~~community penalties~~ sentencing services program plan for the development, implementation, operation, and improvement of a ~~community penalties~~ sentencing services program for the ~~judicial~~ superior court district, as prescribed by the Director. The plan shall be updated annually and shall be submitted to the senior resident superior court judge for the superior court district for the judge's advice and written endorsement. The

plan shall then be forwarded to the Director for approval. The ~~Such~~ plan shall include:

(1) ~~Objectives~~ Goals and objectives of the ~~community penalties~~ sentencing services program.

(2) ~~Goals for reduction of offenders committed to prison for each county within the district, and a system of monitoring the number of commitments to prison.~~ Specification of the kinds or categories of offenders for whom the programs will provide sentencing information to the courts.

(3) ~~Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program.~~ Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in G.S. 7A-773(1).

(4) Procedures for preparing and presenting ~~community penalty~~ plans to the court.

(4a) Strategies for ensuring that judges and court officials who are possible referral sources use the program's services in appropriate cases.

(5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs.

~~(6) Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender.~~

~~(7) Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.~~

~~(8) Procedures for evaluating the program's effect on numbers of prison commitments.~~

"**§ 7A-775. ~~Community penalties~~ Sentencing services board.**

(a) Each ~~community penalties~~ sentencing services program shall establish a ~~community penalties~~ sentencing services board to provide direction and assistance to the ~~community penalties~~ sentencing services program in the implementation and evaluation of the plan. ~~Community penalties~~ Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The ~~community penalties~~ sentencing services board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The ~~community penalties~~ sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:

(1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. 7A-772(a);

~~(1)~~ (1a) Development of an annual budget for the program;

(2) Hiring, firing, and evaluation of program personnel;

(3) Selection of board members;
(4) Arranging for ~~a private and independent~~ an annual ~~audit;~~ audit, in accordance with G.S. 143-6.1;
(5) Development of procedures for contracting for services.

(b) If the board serves as an advisory board to a sentencing services program located in a local or State agency, the board's duties do not include budgeting and personnel decisions.

"§ 7A-776. Limitation on use of funds.

Funds provided for use under the provisions of this Article shall not be used for the operating costs, construction, or any other costs associated with local jail ~~confinement.~~ confinement, or for any purpose other than the operation of a sentencing services program that complies with this Article.

"§ 7A-777. Evaluation.

The Director shall evaluate each ~~community penalties~~ sentencing services program on an annual basis to determine the degree to which the ~~prison commitments have been reduced or have kept from increasing as a result of the community penalties program. The Director shall not renew or continue a program that has failed to affect commitments and that shows no promise of doing so in the future, after allowing for changes in the number of convictions.~~ program effectively meets the needs of the courts in its judicial district by providing them with sentencing information. In conducting the evaluation, the Director shall consider the goals and objectives established in the program's plan, as well as the extent to which the program is able to ensure that the offenders served by the plan meet the criteria established in G.S. 7A-773(1)."

Section 2. G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:
a. Special probation as defined in G.S. 15A-1351(a).
b. Assignment to a residential program.
c. House arrest with electronic monitoring.
d. Intensive probation.
e. Assignment to a day-reporting center.
~~In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.~~"

Section 3. G.S. 15A-1340.14(f) reads as rewritten:

"(f) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:
(1) Stipulation of the parties.
(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

Section 4. Section 2 of this act becomes effective October 1, 1999, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1999, except that community penalties plans requested for offenders prior to that date shall be governed by the law in effect at the time the plan was requested.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 958

Short Title: Confid. Medical Info./ Clarification. (Public)

Sponsors: Representative Edwards.

Referred to: Select Committee on Health Care Delivery.

April 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT CONFIDENTIAL INFORMATION OBTAINED BY HEALTH MAINTENANCE ORGANIZATIONS OR PROVIDER SPONSORED ORGANIZATIONS MAY BE DISCLOSED PURSUANT TO COURT ORDER FOR CERTAIN PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-67-180 reads as rewritten:

"**§ 58-67-180. Confidentiality of medical information.**

Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Article; or upon the express consent of the enrollee or applicant; or pursuant to ~~statute or~~ statute; or pursuant to court order for the production of evidence or the discovery thereof; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the health maintenance organization is entitled to claim."

Section 2. G.S. 131E-310 reads as rewritten:

"**§ 131E-310. Confidentiality of medical information.**

Any data or information pertaining to the diagnosis, treatment, or health of any beneficiary or applicant obtained from the person or from any provider by any provider sponsored organization or by any provider acting pursuant to its provider

contract with a provider sponsored organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Article; or upon the express consent of the beneficiary or applicant; or pursuant to ~~statute or~~ statute; or pursuant to court order for the production of evidence or the discovery thereof; or in the event of claim or litigation between such person and the provider sponsored organization wherein such data or information is pertinent. A provider sponsored organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the provider sponsored organization is entitled to claim.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1074
Committee Substitute Reported Without Prejudice 4/21/99
Committee Substitute #2 Favorable 4/23/99

Short Title: Election Law Changes -- 1. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY AND MAKE VIOLATION A CLASS 2 MISDEMEANOR; TO ESTABLISH THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION; AND TO ALLOW COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

The General Assembly of North Carolina enacts:

-- REQUIRING THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY.

Section 1.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.5A. Duty to deliver form executed by another to county board of elections.**

Any person who has been delegated the responsibility of submitting a signed voter registration application form pursuant to G.S. 163-82.6(a) shall deliver that form to the county board of elections not later than five calendar days after gaining possession of the signed form. No person shall sell or attempt to sell completed voter registration forms or to condition their delivery on payment. A violation of this section is a Class 2 misdemeanor."

Section 1.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ESTABLISHING THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION.

Section 2.(a) G.S. 163-274 is amended by adding a new subdivision to read:

"(1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without the written authorization of the applicant or voter;".

Section 2.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ALLOWING COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

Section 3.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-130A. Out-of-precinct voting places.**

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the State Board of Elections. The county board shall submit its proposal in writing to the State Board. Approval by the State Board of Elections of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;

(2) Adequate notification and publicity is provided to notify voters in the precinct of the new polling location;

(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation; and

(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters.

Any approval granted by the State Board of Elections for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the State Board of Elections annually to determine whether it is still the only available alternative for that precinct."

Section 3.(b) This section is effective when this act becomes law and expires January 1, 2002.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 685*
Committee Substitute Favorable 4/12/99
Proposed Committee Substitute H685-PCS7252-SD

Short Title: Arrest Warrants/Copies. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A LAW ENFORCEMENT OFFICER MAY ARREST A PERSON ON PRIVATE PREMISES OR IN A VEHICLE IN ACCORDANCE WITH STATE LAW WITH A COPY OF THE ORIGINAL ARREST WARRANT OR ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-401(e) reads as rewritten:

"(e) Entry on Private Premises or Vehicle; Use of Force. --

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a ~~person~~ person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of the officer's employing law enforcement agency and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued,

b. The officer has reasonable cause to believe the person to be arrested is present, and

c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

(2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2nd

H. B. No. 331 DATE 6-15-99

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 7, lines 28 and 30

( ) WHICH CHANGES THE TITLE

by deleting "October 1, 1999" and substituting "January 1, 2000".

SIGNED _____ 6/24

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1022
Committee Substitute Favorable 4/23/99
Proposed Committee Substitute H1022-PCS4267-SD

Short Title: Unlawful Use of Drivers License. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE UNLAWFUL USE OF A DRIVERS LICENSE, A LEARNER'S PERMIT, OR A SPECIAL IDENTIFICATION CARD ISSUED BY THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-30 reads as rewritten:

"**§ 20-30. Violations of license or learner's permit provisions.**

It shall be unlawful for any person to commit any of the following acts:

(1) To display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.

(2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license or learner's permit.

(3) To display or to represent as one's own a license or learner's permit not issued to the person so displaying same.

(4) To fail or refuse to surrender to the Division upon demand any driver's license or learner's permit that has been suspended, canceled or revoked as provided by law.

(5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license or learner's permit, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise

commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license or learner's permit procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State.

(6) To photostat or otherwise reproduce a driver's license or learner's permit or to possess a driver's license or learner's permit which has been photostated or otherwise reproduced, unless such photostat or other reproduction was authorized by the Commissioner.

(7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. Any person, firm or corporation violating the provisions of this subsection shall be guilty of a Class I felony.

(8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

(9) To present, display, or use a drivers license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony. Any person violating the provisions of this subdivision shall be guilty of a Class I felony."

Section 2. G.S. 20-37.8 reads as rewritten:

"**§ 20-37.8. Fraudulent use prohibited.**

(a) It shall be unlawful for any person to use a false or fictitious name or give a false or fictitious address in any application for a special identification card or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application or to obtain or possess more than one such card for a fraudulent purpose or knowingly to permit or allow another to commit any of the foregoing acts.

(b) It shall be unlawful for any person to present, display, or use a special identification card which contains a false or fictitious name in the commission or attempted commission of a felony.

(c) A violation of subsection (a) of this section shall constitute a Class 2 misdemeanor. A violation of subsection (b) of this section shall constitute a Class I felony."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1074 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.)
) _____
Sen.)

moves to amend the bill on page 5, line 10

( ) WHICH CHANGES THE TITLE

by deleting the word "shall" and substituting the word "may".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1074 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 9

( ) WHICH CHANGES THE TITLE

by ~~and p. 4, line 31~~

deleting the term "REQUIRE" and substituting the term "ALLOW COUNTIES TO REQUIRE"; and

on p. 4, line 31, by deleting the term "REQUIRING" and substituting the term "ALLOWING COUNTIES TO REQUIRE"; and

on p. 5, line 10, by deleting the word "shall" and substituting the word "may".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1074
Committee Substitute Reported Without Prejudice 4/21/99
Committee Substitute #2 Favorable 4/23/99
Proposed Senate Committee Substitute -- H1074-PCSRR-013

Short Title: Election Law Changes -- 1. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY AND TO MAKE VIOLATION A CLASS 2 MISDEMEANOR; TO ESTABLISH THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION; TO ALLOW COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT; TO CREATE A PILOT PROGRAM TO ALLOW THE TEMPORARY USE OF TWO VOTING PLACES FOR THE SAME PRECINCT; TO REQUIRE THAT ADEQUATE PARKING BE PROVIDED AT VOTING PLACES THAT ARE PUBLIC BUILDINGS; TO ABOLISH MUNICIPAL BOARDS OF ELECTIONS, REQUIRING THAT ALL ELECTIONS BE CONDUCTED BY COUNTY BOARDS OF ELECTIONS; TO INCREASE MINIMUM COMPENSATION FOR COUNTY ELECTION DIRECTORS; TO LOWER THE THRESHOLD FOR A FULL-TIME ELECTIONS OFFICE; TO PROVIDE FOR CERTAIN DONATIONS TO POLITICAL PARTY HEADQUARTERS BUILDING FUNDS; AND TO CHANGE THE STATUTE CONCERNING A CANDIDATE'S SIGNATURE ON A FINANCE REPORT TO REFLECT TRADITIONAL PRACTICE.

The General Assembly of North Carolina enacts:

-- REQUIRING THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY.

Section 1.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.5A. Duty to deliver form executed by another to county board of elections.**

Any person who has been delegated the responsibility of submitting a signed voter registration application form pursuant to G.S. 163-82.6(a), and who has communicated to the applicant acceptance of that delegated responsibility, shall deliver that form to the county board of elections not later than five calendar days after gaining possession of the signed form. No person shall sell or attempt to sell completed voter registration forms or to condition their delivery on payment. A violation of this section is a Class 2 misdemeanor."

Section 1.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ESTABLISHING THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION.

Section 2.(a) G.S. 163-274 is amended by adding a new subdivision to read:

"(1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without either the written authorization of the applicant or voter or the written authorization of the State Board of Elections;".

Section 2.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ALLOWING COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

Section 3.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-130A. Out-of-precinct voting places.**

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the Executive Secretary-Director of the State Board of Elections. The county board shall submit its

proposal in writing to the Executive Secretary-Director. Approval by the Executive Secretary-Director of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;

(2) Adequate notification and publicity is provided to notify voters in the precinct of the new polling location;

(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation; and

(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters.

(5) The proposal provides adequately for security against fraud.

Any approval granted by the Executive Secretary-Director for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the Executive Secretary-Director annually to determine whether it is still the only available alternative for that precinct."

Section 3.(b) This section is effective when this act becomes law and expires January 1, 2002.

-- CREATING A PILOT PROGRAM TO ALLOW THE TEMPORARY USE OF TWO VOTING PLACES FOR THE SAME PRECINCT.

Section 4.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-130B. Temporary use of two voting places for certain precincts; pilot program.**

A county board of elections, by unanimous vote of all its members, may propose to designate two voting places to be used temporarily for the same precinct. The temporary designation of a voting place shall continue only for the term of office of the county board of elections making the designation. For any precinct that is temporarily given two voting places, the county board shall assign every voter to one or the other of those voting places.

The county board's proposal is subject to approval by the Executive Secretary-Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Secretary-Director. The Executive Secretary-Director may approve a proposal under this section in not more than three counties, to be a pilot program. The Executive Secretary-Director

shall approve that proposal only if it finds all of the following:

(1) That the precinct has more registered voters than can adequately be accommodated by any single potential voting place available for the precinct.

(2) That no boundary line that complies with Article 12A of this Chapter can be identified that adequately divides the precinct.

(3) That the county board can account for, by street address number, the location of every registered voter in the precinct and fix that voter's residence with certainty on a map.

(4) That no more than three other precincts in the same county will have two voting places.

(5) That both voting places for the precinct would have adequate facilities for the elderly and disabled.

(6) That the proposal provides adequately for security against fraud.

(7) That the proposal does not unfairly favor or disfavor voters with regard to race or party affiliation.

The county board shall designate a full set of precinct officials, in the manner set forth in Article 5 of this Chapter, for each voting place designated for the precinct."

Section 4.(b) This section becomes effective January 2, 2000, and expires January 2, 2002. The Executive Secretary-Director of the State Board of Elections shall study the operation and consequences of the pilot program created by this section and report findings and recommendations to the 2001 General Assembly by February 1, 2001.

-- REQUIRING THAT ADEQUATE PARKING BE PROVIDED AT VOTING PLACES THAT ARE PUBLIC BUILDINGS.

Section 5.(a) G.S. 163-129 reads as rewritten:

"**§ 163-129. Structure at voting place; marking off limits of voting place.**

At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues provided, however, that this

section shall not be construed to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

If a county board of elections requires that a tax-supported building be used as a voting place, that county board of elections shall require that those in control of that building provide parking that is adequate for voters at the precinct, as determined by the county board of elections.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the chief judge and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place."

Section 5.(b) This section becomes effective January 1, 2000.

-- ABOLISHING MUNICIPAL BOARDS OF ELECTIONS, REQUIRING THAT ALL ELECTIONS BE CONDUCTED BY COUNTY BOARDS OF ELECTIONS.

Section 6.(a) G.S. 163-280 is repealed.

Section 6.(b) Article 23 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-280.1. Municipal boards of elections abolished.

Municipal boards of elections, whether created by General Statute or by local act, are abolished. The terms of all members of municipal boards of elections and all precinct officials appointed by municipal board of elections, if those terms have not expired prior to January 1, 2000, expire January 1, 2000."

Section 6.(c) G.S. 163-281 is repealed.

Section 6.(d) G.S. 163-284 is repealed.

Section 6.(e) G.S. 163-284.1 is repealed.

Section 6.(f) G.S. 163-285 reads as rewritten:

"§ 163-285. Administration by county board of ~~elections; optional by municipality.~~ elections.

(a) ~~Any city, town or incorporated village which conducts its elections on a nonpartisan basis may conduct its own elections, or it may request the county board of elections of the county in~~

~~which it is located to conduct its elections.~~ A county board of elections shall have authority for the registration of voters for and shall conduct the elections of each ~~city, town or incorporated village so requesting~~ municipality and special district in that county and the ~~city, town or incorporated village~~ municipality or special district shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the city ~~council.~~ council or special district governing authority. If a mutual agreement cannot be reached, then the State Board of Elections shall prescribe the agreement, to which both parties are ~~bound, or, in its discretion, the State Board of Elections shall have authority to instruct the county board of elections to decline the administration of the elections for such city, town or incorporated village.~~ bound.

(1) The elections of ~~cities, towns or incorporated villages~~ municipalities or special districts which lie in more than one county shall be conducted either (i) by the county in which the greater number of the city's ~~citizens~~ residents or special district's residents reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such ~~city, town or incorporated village~~ municipality or special district is located, as may be mutually agreed upon by the county boards of elections so ~~affected, or (iii) by a municipal board of elections appointed by the governing body of the municipality.~~ affected. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of municipal or special district elections by county ~~or municipal~~ boards of elections for cities or special districts situated in more than one county.

~~(2) Any city, town or incorporated village electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days' notice prior to the effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of~~

~~all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to permit any city, town or incorporated village to exercise the options under this Article subsequent to the deadline stated in this section.~~

(3) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 63.

(b) The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting any municipality or special district whose elections that county board administers and shall be immediately advised of any change or relocation of such boundaries.

(c) Any contested election or allegations of irregularities in a municipal or special district election shall be made to the county board of elections and appeals from such rulings may be made to the State Board of Elections under existing statutory provisions and rules or regulations adopted by the State Board of Elections.

(d) The term 'special district' includes a sanitary district, fire district, or school administrative unit, notwithstanding the fact that the taxes of the special district may be levied by a city."

Section 6.(g) G.S. 163-286(b) is repealed.

Section 6.(h) G.S. 163-287 reads as rewritten:

"**§ 163-287. Special elections; procedure for calling.**

Any ~~city, whether its elections are conducted by the county board of elections or the municipal board of elections,~~ city or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 45 days prior to the special election. The appropriate board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This paragraph shall not apply to bond elections."

Section 6.(i) G.S. 163-288 reads as rewritten:

"**§ 163-288. Registration for city ~~elections; county and municipal boards of~~ elections.**

~~Regardless of whether the municipal election is conducted by the county board of elections or by a municipal board of elections, the~~ The registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national."

Section 6.(j) G.S. 163-288.1 reads as rewritten:

"**§163-288.1. Activating voters for newly annexed or incorporated areas.**

(a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county ~~or municipal~~ board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly or when activating voters after an annexation of new

territory by a city or special district under Chapter 160A, Article 4A, or other general or local law.

(b) Each voter whose registration is changed by the county ~~or municipal~~ board of elections in any manner pursuant to any annexation or expunction under this subsection shall be so notified by mail.

(c) The State Board of Elections shall have authority to adopt regulations for the more detailed administration of this section."

Section 6.(k) G.S. 163-289(c) is repealed.

Section 6.(l) G.S. 163-298 reads as rewritten:

"**§163-298. Municipal primaries and elections.**

~~The phrases 'county board of elections,' and 'chairman of the board of elections' as used in this Article, with respect to all municipal primaries and elections, shall mean the municipal board of elections and its chairman in those cities and towns which conduct their own elections, and the county board of elections and its chairman in those cities and towns whose elections are conducted by the county board of elections.~~ The words 'general election,' as used in this Article, shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries."

Section 6.(m) G.S. 163-299(g) reads as rewritten:

"(g) The county ~~or municipal~~ board of elections shall, in addition to the requirements contained in G.S. 163-175 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office."

Section 6.(n) G.S. 163-300 reads as rewritten:

"**§163-300. Disposition of duplicate abstracts in municipal elections.**

Within five days after a primary or election is held in any municipality, the chairman of the county ~~or municipal~~ board of elections shall mail to the chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163-176. One copy shall be retained by the county ~~or municipal~~ board of elections as a permanent record and one copy shall be filed with the city clerk. (1971, c. 835, s. 1.)

Section 6.(o) G.S. 163-301 reads as rewritten:

"**§163-301. Chairman of election board to furnish certificate of elections.**

Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163-175 and G.S. 163-179, the chairman of the county ~~or municipal~~ board of elections shall issue certificates of election, under his hand and seal, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163-181."

Section 6.(p) G.S. 163-304 reads as rewritten:

"**§163-304. State Board of Elections to have jurisdiction over municipal elections ~~and election officials,~~ and to advise.**

The State Board of Elections shall have the same authority over municipal elections ~~and election officials~~ as it has over county and State ~~elections and election officials.~~ elections. ~~The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.~~

The county ~~and municipal~~ boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections."

Section 6.(q) G.S. 163-22 reads as rewritten:

"**§ 163-22. Powers and duties of State Board of Elections.**

(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the Board shall publish and furnish to the county ~~and municipal~~ boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them ~~and municipal election board members~~ as to the proper methods of conducting primaries and elections. The Board

shall require such reports from the county ~~and municipal~~ boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county ~~and municipal~~ boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county ~~or municipal~~ board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county ~~or municipal~~ board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county ~~or municipal~~ board member affected and give him an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections. ~~When any municipal board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the city council of the city appointing members of that board.~~

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county ~~and municipal~~ boards of elections the registration application forms required pursuant to G.S. 163-67. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the

State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms.

(f) The State Board of Elections shall prepare, print, distribute to the county ~~and municipal~~ boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

(g) The State Board of Elections shall certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the Board and whose names are required to be printed on county ballots.

(h) It shall be the duty of the State Board of Elections to tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the Board.

(i) The State Board of Elections shall make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable.

(j) Notwithstanding the provisions of any other section of this Chapter, the State Board of Elections is empowered to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct, county, municipality or electoral district over whose elections it has jurisdiction or for whose elections it has responsibility.

(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election.

(l) Notwithstanding any other provision of law, in order to obtain judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking

review must file his petition in the Superior Court of Wake County.

(m) The State Board of Elections shall issue rules to regulate recounts held under the provisions of G.S. 163-179.1 or G.S. 163-192.1.

(n) The State Board of Elections shall provide specific training to county boards of elections regarding rules for registering students.

(o) The State Board of Elections shall promulgate minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct, such that more of such will be available at general elections and a sufficient number will be available to allow voting without excessive delay. The State Board of Elections shall provide for a training and screening program for chief judges and judges. The State Board of Elections shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots.

The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting."

Section 6.(r) G.S. 163-22.1(a) reads as rewritten:

"(a) State Board's Authority. -- If the State Board of Elections, acting upon the agreement of at least four of its members, and after holding public hearings on election contests, alleged election irregularities or fraud, or violations of elections laws, determines that a new primary, general or special election should be held, the Board may order that a new primary, general or special election be held, either statewide, or in any counties, electoral districts, special districts, or municipalities over whose elections it has jurisdiction. The State Board shall be authorized to order a new election without conducting a public hearing provided a public hearing on the allegations was held by the county ~~or municipal~~ board of elections and the State Board is satisfied that such hearing gave sufficient opportunity for presentation of evidence and provided further that the State Board adopts the findings of the county ~~or municipal~~ board of elections.

Any new primary, general or special election so ordered shall be conducted under applicable constitutional and statutory authority and shall be supervised by the State Board of Elections and conducted by the appropriate elections officials.

The State Board of Elections has authority to adopt rules and regulations and to issue orders to carry out its authority under this section."

Section 6.(s) G.S. 163-25 reads as rewritten:

"**§163-25. Authority of State Board to assist in litigation.**

The State Board of Elections shall possess authority to assist any county ~~or municipal~~ board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county ~~or municipal~~ board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of Chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in his discretion, recommend that private counsel be employed.

If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor."

Section 6.(t) G.S. 163-42 reads as rewritten:

"**§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.**

Each county ~~and municipal~~ board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within the county.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163-47(a).

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each

precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

Section 6.(u) G.S. 163-135(e) reads as rewritten:

"(e) Municipal Primaries and Elections. -- This Article shall apply to and control all elections held in and for cities, towns, incorporated villages and all special districts, whether conducted by the county board of ~~elections or a duly appointed municipal board of~~ elections."

Section 6.(v) G.S. 163-140(d) reads as rewritten:

"(d) Municipal Primary and Election Ballots. -- In all municipal elections there shall be an official ballot on which shall be printed the names of all candidates for offices in the municipality. The municipal ballot shall conform as nearly as possible to the provisions of subsections (a) through (c) of this section, but on the bottom of the municipal ballot shall be printed an identified facsimile of the signature of the chairman of the county ~~or municipal~~ board of elections, as appropriate."

Section 6.(w) G.S. 163-161 reads as rewritten:

"(d) Municipalities. -- The governing board of the municipality shall have the same authority with respect to the acquisition and use of a voting system for municipal primaries and elections that boards of county commissioners are granted in subsection (a) with respect to other primaries and elections.

The decision of the governing board of the municipality shall be subject to approval of the county board of elections, as described in subsection ~~(a), if the county board of elections administers the elections of the municipality, or by the approval of the municipal board of elections if the municipal board of elections administers the elections of the unit.~~ (a). Before approving the adoption and purchase or lease of a voting system, the county ~~or municipal~~ board of elections shall be subject to all the requirements of subsection ~~(b), except that in the case of a municipal board of elections, the financial statement shall be sent to the municipal attorney and the chief municipal finance officer, the demonstration shall be conducted in the municipality or at a site designated by the State Board of Elections, and the testing shall be done in a precinct of the municipality.~~ (b).

When a municipal governing body has decided to adopt and purchase a voting system for voting places under the provisions

of this subsection, that governing body shall have all the duties parallel to those imposed by subsection (c) on a board of county commissioners and a county board of elections: that is, the municipal governing body shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system or, if that is impractical, provide the available equipment of the approved voting system in the places it chooses, and shall appoint the necessary number of voting-system custodians. In the case that equipment of the approved system for every voting place is impractical, the municipal governing board shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for every voter."

Section 6.(x) G.S. 163-278.6(1) reads as rewritten:

"(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county ~~or municipal~~ board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county ~~or municipal~~ board of elections conducting all local referenda."

Section 6.(y) G.S. 62A-4(b) reads as rewritten:

"(b) The ordinance authorized in subsection (a) of this section may be adopted after one of the following procedures is followed:

(1) The governing authority by resolution requests the county ~~or municipal~~ board of ~~elections, as appropriate,~~ elections to conduct a special election on a date certain, in which a majority of those voting who are residents of the political subdivision vote to authorize the ordinance.

(2) After a public hearing held upon not less than 10 days public notice."

Section 6.(z) G.S. 120-30.9F reads as rewritten:

"**§ 120-30.9F. Municipalities; municipal attorney.**

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the municipal governing body ~~or municipal board of elections~~ or any other municipal agency which constitutes a 'change

affecting voting' under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition."

Section 6.(aa) This section prevails over local acts.

Section 6.(bb) This section becomes effective January 1, 2000, and applies to all primaries and elections held on and after that date.

-- INCREASING MINIMUM COMPENSATION FOR COUNTY ELECTION DIRECTORS.

Section 7.(a) G.S. 163-35(c) reads as rewritten:

"(c) Compensation of Directors of Elections. -- Compensation paid to directors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of County Commissioners and shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters.

~~Beginning July 1, 1991, in any county operating under modified registration PLAN A, B, C, or D, the~~ The Board of County Commissioners in each county, whether or not the county maintains full-time or modified full-time registration, shall compensate the director of elections at a minimum rate of ~~eight~~ twelve dollars ~~($8.00)~~ ($12.00) per hour for hours worked in attendance to his or her duties as prescribed by law, including rules and regulations adopted by the State Board of Elections. In addition, the county shall pay to the director an hourly wage of at least ~~eight~~ twelve dollars ~~($8.00)~~ ($12.00) per hour for all hours worked in excess of those prescribed in rules and regulations adopted by the State Board of Elections, when such additional hours have been approved by the county board of elections and such approval has been recorded in the official minutes of the county board of elections.

In addition to the compensation provided for herein, the director of elections to the county board of elections shall be granted the same vacation leave, sick leave, and petty leave as granted to all other county employees. It shall also be the responsibility of the Board of County Commissioners to

appropriate sufficient funds to compensate a replacement for the director of elections when authorized leave is taken."

Section 7.(b) This section becomes effective July 1, 2000.

-- LOWERING THE THRESHOLD FOR A FULL-TIME COUNTY ELECTIONS OFFICE.

Section 8.(a) G.S. 163-36 reads as rewritten:

"**§ 163-36. Modified full-time offices.**

The State Board of Elections shall promulgate rules permitting counties that have fewer than ~~14,001~~ 6,501 registered voters to operate a modified full-time elections office to the extent that the operation of a full-time office is not necessary. Nothing in this section shall preclude any county from keeping an elections office open at hours consistent with the hours observed by other county offices."

Section 8.(b) This section becomes effective July 1, 2000.

-- PROVIDING FOR GIFTS TO POLITICAL PARTY HEADQUARTERS BUILDING FUNDS.

Section 9.(a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.19B. Political party headquarters building funds.

Notwithstanding the provisions of G.S. 163-278.19, a person prohibited by that section from making a contribution may donate to political parties and political parties may accept from such a person money and other things of value donated to a political party headquarters building fund. Donations to the political party headquarters building fund shall be subject to all the following rules:

(1) The donations solicited and accepted are designated to the political party headquarters building fund.

(2) Potential donors to that fund are advised that all donations will be exclusively for the political party headquarters building fund.

(3) The political party establishes a separate segregated bank account into which shall be deposited only donations for the political party headquarters building fund from persons prohibited by G.S. 163-278.19 from making contributions.

(4) The donations deposited in the separate segregated bank account for the political party headquarters building fund will be spent only to purchase a headquarters building, to construct a headquarters building, to renovate a headquarters building, to

pay a mortgage on a headquarters building, or to repay donors if a headquarters building is not purchased, constructed, or renovated. Donations deposited into that account shall not be used for headquarters rent, utilities, or equipment other than fixtures.

(5) If accepted from persons prohibited by G.S. 163-278.19 from making contributions, donations shall not be used, directly or indirectly, to support or oppose the nomination or election of one or more clearly identified candidates or ballot measures.

(6) The political party executive committee shall report donations to and spending by a political party headquarters building fund on every report required to be made by G.S. 163-278.9. If a committee is excused from making general campaign finance reports under G.S. 163-278.10A, that committee shall nonetheless report donations in any amount to and spending in any amount by the political party headquarters building fund at the times required for reports in G.S. 163-278.9.

If all the criteria set forth in subdivisions (1) through (6) of this section are complied with, then donations to and spending by a political party headquarters building fund do not constitute contributions or expenditures as defined in G.S. 163-278.6. If those criteria are complied with, then donations may be made to a political party headquarters building fund."

Section 9.(b) This section is effective when this act becomes law.

-- CHANGING THE STATUTE CONCERNING A CANDIDATE'S SIGNATURE ON A FINANCE REPORT TO REFLECT TRADITIONAL PRACTICE.

Section 10.(a) G.S. 163-278.32 reads as rewritten:

"**§163-278.32. Statements under oath.**

Any statement required to be filed under this Article shall be signed and certified as true and correct by the individual, media, candidate, treasurer or others required to file it, and shall be verified by the oath or affirmation of the individual, media, candidate, treasurer or others filing the statement, taken before any officer authorized to administer oaths; provided further that the candidate shall certify as true and correct to the best of his knowledge ~~each report~~ the organizational report and appointment of treasurer filed ~~by a treasurer appointed by him or by his~~ for the candidate or the candidate's principal campaign committee."

Section 10.(b) This section is effective when it becomes law.

Section 11. This act is effective when it becomes law.

HOUSE BILL 160:
Increase Child Abuse Penalty

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Goodwin
Date:	June 22, 1999	**Summary by:**	Brenda Carter & Bill Gilkeson
Version:	3rd Edition		Staff Counsel

SUMMARY: House Bill 160 creates a higher level of felony child abuse for those cases where the offense results in "extreme debilitating injury" as defined by statute. These cases would be punished as a Class C felony rather than a Class E felony.

CURRENT LAW: A parent or other person providing care to a child under 16 is guilty of felony child abuse if that person:

- Intentionally inflicts serious injury on the child, or intentionally commits an assault on the child that results in serious injury;
- Commits, permits, or encourages prostitution with or by the child.
- Commits or allows any sexual act on the child.

Felony child abuse is a Class E felony. The presumptive minimum sentence for an offender with no prior record is 20-25 months intermediate or active punishment.

BILL ANALYSIS: House Bill 160 would create a new, more severe penalty for certain cases of child abuse. If the defendant intentionally *commits or permits* an injury or assault resulting in an "extreme debilitating injury," the penalty would be a Class C felony rather than Class E. "Extreme debilitating injury" as defined in the bill is any injury that creates or causes any one of the following:

1. A substantial risk of death;
2. Serious permanent disfigurement;
3. Coma;
4. A permanent or protracted condition that causes extreme pain;
5. Permanent or protracted loss or impairment of the function of any bodily member or organ or any mental or emotional function; or
6. Prolonged hospitalization

The presumptive minimum sentence for an offender with no prior record is 58-73 months active punishment.

The bill would become effective December 1, 1999 and apply to offense committed on or after that date.

H160-SMRV-002

HOUSE BILL 290:
Amend Crime Victims Compensation Act

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Baddour
Date:	June 22, 1999	**Summary by:**	Brenda Carter and Tim Hovis
Version:	2nd Edition		Staff Counsel

SUMMARY: ***House Bill 290 amends the Crime Victims Compensation Act by increasing the membership of the Crime Victims Compensation Commission from five to seven, adding two members appointed by the Secretary of Crime Control and Public Safety. The bill increases the dollar limit on the size of the initial claims that may be awarded by the director of the Commission. The bill also provides the Commission with the discretion to award a when the victim was participating in a nontraffic misdemeanor at the time of the injury.***

BILL ANALYSIS: The bill makes several changes to Chapter 15B of the General Statutes, the Crime Victims Compensation Act. The Act provides for payment of compensation to victims who suffer economic loss as a result of criminal conduct that occurs or is attempted in this State.

- Under current law the Governor, the President Pro Tempore of the Senate, and the Speaker of the House each appoint one member to the Crime Victims Compensation Commission. The Attorney General and the Secretary of Crime Control and Public Safety, or their designees, also serve as members. **House Bill 290 authorizes the Secretary of Crime Control and Public Safety to appoint two additional members to the Commission.**
- Pursuant to G.S. 15B-10, the Director of the Commission is authorized to award compensation, without the approval of the Commission, for a claim that does not exceed $5,000. The Direct must report all such awards to the Commission. Claims in excess of $5,000 are evaluated and awarded by the Commission, and decisions are based upon the Director's recommendation and a review of the evidence. In 1998, the total amount of compensation that may be awarded to a victim or claimant under the Act was increased from $20,000 to $30,000; there was no corresponding increase in the director's authority to grant awards. **House Bill 290 extends the authority of the Director for awarding claims by increasing the maximum amount that can be awarded by the Director from $5,000 to $7,500.**
- Under current law, denial of a claim is permissible upon a finding that the claimant or a victim through whom the claim is made engaged in contributory misconduct. Denial of a victim's claim is mandatory if the victim was participating in a felony or nontraffic misdemeanor at or about the time that the victim's injury occurred. This provision was enacted in the 1994 Special Session on Crime in response to a decision of an Administrative Law Judge allowing benefits to a person who was shot by the owner of a convenience store in the course of committing a robbery. Since that time there have been cases where this provision has generated some concern – one widely publicized case involved cohabitation, which is a criminal offense in this State. **House Bill 290 extends the Commission's discretion to award a claim to include cases where the victim was participating in a nontraffic misdemeanor at the time of the injury as well as those cases where the victim has engaged in**

contributory misconduct. In exercising its discretion, the Commission may consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct.

EFFECTIVE DATE: The bill would become effective July 1, 1999. The provisions regarding the award of claims to victims participating in nontraffic misdemeanors or engaging in contributory misconduct apply to pending claims as well as those filed after the effective date. Claims denied prior to that date because the victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred must be reconsidered upon request of the claimant, if the request is made within two years of the date of the injury that was the basis of the claim.

H290-SMRV-002

HOUSE BILL 331:
Sentencing Services Program/AB

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Bowie
Date:	June 14, 1999	**Summary by:**	Brenda Carter and Esther Manheimer
Version:	Second Edition		Staff Counsel

SUMMARY: ***House Bill 331 renames the Community Penalties Program as the Sentencing Services Program and shifts the focus of the program to provide information to the courts and to develop sentencing services plans rather than monitor offenders participating in sentencing services plans.***

BILL ANALYSIS

Section 1.

- **Amends G.S. 7A-770** to rename the Community Penalties Program as the Sentencing Services Program (SSP). Changes the purpose of the Article from reducing prison overcrowding through the use of community sentences to establishing a statewide sentencing services program that will provide courts with information necessary to make effective use of resources. Specifically, the SSP will provide court officials with information regarding local correctional programs and identify the offenders best suited for those programs.
- **Amends G.S. 7A-771** to make various conforming changes. Deletes provision regarding the monitoring of offenders placed on community penalty plans. The sentencing services program would assist offenders in initially obtaining services as part of a sentencing plan if assistance is not otherwise available. Sentencing plans will provide information about the offender's past criminal activity, matching offender's needs with available resources, and recommendations for an intermediate sentence. Changes judicial district to specify superior court district. Repeals definition and eliminates use of the term "targeted offenders."
- **Amends G.S. 7A-772** to make various conforming changes. In addition, specifies that sentencing services programs receiving grants awarded by the Director of AOC shall use the funds exclusively to develop a sentencing services program that provides sentencing services information to court officials. The Director must consider, in the awarding of grants, the agencies' comprehensive sentencing services program plan and whether the senior resident superior court judge has endorsed the plan.
- **Amends G.S. 7A-773** to require the sentencing services program to identify offenders who qualify for the program (felony offenders where an active sentence is not required, who are at high risk of committing future crimes, and would benefit from a sentencing services program plan) and prepare sentencing services plans. The provision specifying offenders eligible for intermediate punishment is deleted. The current provision requiring monitoring of offenders is also deleted.
- **Adds G.S. 7A-773.1,** a new section which provides that:
  - Where the offenders meet the three criteria in G.S. 7A-773 (an active sentence is not required, offender is at high risk of committing future crimes, and would benefit from a sentencing services program plan), the judge presiding over the case, the defendant, or the prosecutor may request that

the sentencing services program provide a sentencing plan. The judge must make the request prior to the imposition of sentence. The defendant or prosecutor must make the request prior to a guilty plea or guilty verdict. In addition, the judge may also request a plan in certain misdemeanor cases. Prior to the adjudication and within a reasonable time after the sentencing plan request was made, the defendant may opt out of the plan. The comprehensive sentencing services program plan (as required by G.S. 7A-774) shall define what constitutes a reasonable time.

- Sentencing plans are presented to the court, the defendant, and the State.
- Sentencing plans may include: recommendations for use of any treatment or correctional resources available, identify resources to meet any educational, treatment, control, or other needs, and plans may report that no intermediate punishment is appropriate.
- Finally, sentencing services program staff may work with offenders before a plea is entered. No information obtained in preparing a sentencing plan may be used by the State in establishing guilt.

- **Amends G.S. 7A-774** to establish the requirement that a comprehensive sentencing services program plan be prepared and then updated annually, and that the plans be submitted to the senior resident superior court judge for advice and endorsement. Plans will be forwarded to the Director of AOC for final approval. Plans are to include: goals and objectives of the program, offenders for whom the program will provide sentencing information to the courts, procedures for identifying qualifying offenders, and strategies for ensuring that judges use the program's services. Language regarding the monitoring of offenders in the program and the number of prison commitments has been deleted.
- **Amends G.S. 7A-775** to make various conforming changes regarding boards of sentencing services programs.
- **Amends G.S. 7A-776** to require that funds not be used for any other purpose other than the operation of sentencing services programs.
- **Amends G.S. 7A-777** to remove language regarding the reduction of prison commitments. Requires that the Director evaluate each sentencing services program.

Section 2.

- **Amends G.S. 15A-1340.11(6)** to remove sentencing plans from the definition of "intermediate punishment" in the Structured Sentencing Act.

Section 3.

- **Amends G.S. 15A-1340.14(f),** which sets out the methods for proving an offender's prior convictions, to require that a district attorney provide to the sentencing services program any information the D.A. has about the criminal record of an offender for whom the program has been requested to provide a sentencing plan.

Section 4 – EFFECTIVE DATE

Section 2 (change in definition of intermediate punishment) becomes effective October 1, 1999, and applies to offenses committed on or after that date. The remainder becomes effective October 1, 1999. Community penalties plans requested prior to October 1, 1999, shall be governed by the law in effect at the time the plan was requested.

H331-SMRV-002

H958:
Confid. Medical Info./Clarification

BILL ANALYSIS

Committee:	Senate JII	**Introduced by:**	Rep. Edwards
Date:	June 23, 1999	**Summary by:**	Ed Rossi
Version:	1st. Ed.		Committee Co-Counsel

SUMMARY: House bill 958 makes a technical correction to two specific medical information confidentiality provisions in Chapters 58 and 131E of the General Statutes. This correction is intended clarify that when G.S. §§ 58-67-180 and 131E-310 permit the release of medical information pursuant to statute, the term "statute" should not be limited only to those statutes that govern the production and discovery of evidence.

CURRENT LAW: Chapters 58 and 131E of the General Statutes regulate Health Maintenance Organizations ("HMOs") and Provider Sponsored Organizations ("PSOs"). Both of these Chapters contain similar provisions that allow these organizations to release medical information pursuant to statute.[1]

Chapter 58 also contains a provision that is known as the Insurance Information Privacy Act.[2] Under the provisions of this act, no patient authorization is required to release medical information to insurers, HMOs, insurance agents, or "insurance support organizations" – a term that could encompass credit reporting agencies. These organizations may then, under certain circumstances, re-release this information without patient authorization to:

1. The police or other government agencies.
2. Persons conducting "research studies" – a term that is not defined in the act.
3. To ***anyone*** other than an insurer, HMO, agent, etc., provided the release is made by a credit-reporting agency.

BILL ANALYSIS: House bill 958 attempts to clarify that statutes that govern the release of medical information, such as the Insurance Information Privacy Act or statutes governing the release of medical information for public health purposes, are not pre-empted by the confidentiality provisions found in G.S. § 58-67-180 and G.S. § 131E-310.

BACKGROUND: This bill was prompted by concerns raised by the Department of Health and Human Services that the confidentiality provisions found in G.S. § 58-67-180 and G.S. § 131E-310 could be interpreted to suggest a preemption of sorts if the term "statute" were interpreted to refer to statutes related to the production and discovery of evidence.

[1] See G.S. § 58-67-180 & G.S. § 131E-310.
[2] See Article 39 of Chapter 58.

HOUSE BILL 1074:
Election Law Changes-1.

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 24, 1999
Version: H1074-PCSRR-013

Introduced by: Representative Alexander
Summary by: William R. Gilkeson
Staff Attorney

SUMMARY: The Proposed Committee Substitute for House Bill 1074 would:

1. *Clarify that anyone who has accepted responsibility for someone else's signed voter registration form must turn it in to the board of elections within 5 days on pain of a Class 2 misdemeanor.* (p.2)
2. *Make it a misdemeanor to alter a voter registration record without written authorization from the voter.* (p.2)
3. *Allow county boards of elections to designate voting places outside a precinct.* (pp.2-3)
4. *Create a pilot program in up to 3 counties to allow those counties to temporarily use two voting places in the same precinct.* (pp. 3-4)
5. *Require county boards of elections to insist that public buildings chosen as voting places provide voters with adequate parking.* (pp.4-5)
6. *Abolish municipal boards of elections and provide that county boards conduct city elections in all municipalities.* (pp. 5-18)
7. *Increase the minimum compensation for county election directors from $8 per hour to $12 per hour.* (pp. 18-19)
8. *Lower the registered-voter threshold for a county to have a full-time board of election from 14,001 to 6,501.* (p. 19)
9. *Allow corporations and unions to make donations to a political party headquarters building fund.* (pp. 19-20)
10. *Change the existing statute concerning a candidate's signature on a campaign finance report to conform to what has been enforced: instead of signing every report, the candidate would sign only an organizational statement and the appointment of a treasurer.* (pp. 20-21)

CURRENT LAW and BILL ANALYSIS: The numbered paragraphs correspond to sections of the bill.

1. Misdemeanor: Failure to Deliver Registration Forms. Voter registration forms are self-executing. Unless the registration is conducted at a designated agency such as the DMV or ESC, the law places responsibility on the applicant to get the application to the county board of elections so the applicant can be registered for the next election. The law allows the applicant to delegate to another person the duty to get the application to the board, but it doesn't say what happens if the person to whom that duty is delegated doesn't follow through. There have been reports of people who have conducted voter registration drives discarding application rather than turning them in. There have also been reports of people offering to sell registration applications of a certain kind to candidates or political parties. ***The***

PCS states that if someone has accepted the job of delivering someone else's voter registration application form to the board of elections, that person has a legal duty to turn it in to the county board of elections within 5 calendar days. (That is the time an agency is given to deliver a form.) A violation of the duty would be a Class I felony. Effective October 1, 1999. *(p. 2)*

2. Misdemeanor: Altering Records Without Written Authorization. Changes in a voter's registration records, such as party affiliation, address, or name, must be made by the voter on a voter registration form. There have been reports of elections officials making changes based on such informal triggers as a phone conversation with the voter, a relayed request by a relative of the voter, etc. Although a Class I felony already exists for an election official knowingly to make a false or fraudulent entry on the registration books, and a Class 2 misdemeanor already exists for an election official to fail to perform any legal duty in the manner required by law, there is no specific crime for the offense of making a change to registration without written authorization. ***The PCS states specifically that it is a Class 2 misdemeanor for a member or employee of a board of elections to alter someone's voter registration records without written authorization from the voter or from the State Board of Elections. Effective October 1, 1999.*** *(p. 2)*

3. Out-of-Precinct Voting Place. A voting place is now required to be in a precinct or on a lot adjacent to a precinct. Some county election boards have said they cannot find a suitable building in some precincts and could serve the voters there well if they could designate a voting place outside the precinct. ***The PCS allows a county board of elections, by unanimous vote, to apply to the Executive Secretary-Director of the State Board of Elections to designate a voting place outside a precinct. Effective when the act becomes law, but sunset January 1, 2001.*** *(pp. 2-3)*

4. Pilot: Two Voting Places Per Precinct. The only provision for multiple voting places in the same precinct is a statute allowing a county to designate a satellite voting place only for elderly or disabled voters. ***The PCS would create a pilot program in up to three counties whereby the county board of elections could designate two voting places per precinct for up to three precincts in that county. The counties could apply to the State Election Director, who would report to the General Assembly by February 2001 on the program's results. Effective January 2, 2000, but sunset January 2, 2002.*** *(pp. 3-4)*

5. Parking at the Polls. The county board of elections has the authority to press into service any public, tax-supported building it needs as a precinct. Reports have surfaced of officials at schools or other public buildings, unhappy about being a voting place, stinting on the parking that voters and precinct officials could use. Current law says nothing about the provision of parking at a voting place. ***The PCS would direct the county board to require that adequate parking be provided around a tax-supported voting place. Effective January 1, 2000.*** *(pp. 4-5)*

6. Abolish Municipal Boards of Elections. In additional to the 100 county boards of elections, there are now 57 municipal boards of elections. They are appointed by the city council in the city they serve. Their function is to conduct the elections for city council. They generally exist in small towns. The State Board of Elections has for several years advocated their abolition, arguing that the State Board's duty to supervise the conduct of local elections is thwarted by the existence of so many different entities. ***The PCS would abolish municipal boards of elections, effective January 1, 2000. Elections in all city and special district elections would be conducted by the county board of elections.*** *(pp. 5-18)*

7. Increase Minimum Pay for County Directors. There are 16 part-time county boards of elections offices in small counties. The statutes require that the election directors in those offices be paid $8 an hour for regular time and $8 for overtime. Full-time directors must be paid a salary "commensurate

with the salary paid to directors in counties similarly situated and similar in population and number of registered voters." ***The bill would set $12 full-time and $12 overtime as the minimum hourly rate for all election directors. Effective July 1, 2000.*** *(pp. 18-19)*

8. More Full-Time County Elections Offices. Every county that has more than 14,000 registered voters must have a full-time elections office. Counties with fewer registered voters may operate a "modified full-time" (or part-time) office. The State Board of Elections has promulgated rules for the operation of the part-time offices. According to the rules, Plans A and B call for the office to be open 9-5 three days a week, and Plans C and D 9-1 three days a week. Only counties with 6,500 or fewer registered voters may use Plans C and D, the half-day plans. ***The PCS would lower the threshold for the requirement of a full-time board of elections from 14,001 to 6,501. Effective July 1, 2000. The effect appears to be that 12 offices that are now part-time would become full-time.*** *(p. 19)*

9. Gifts by Corporations, etc., to Party HQ Building Funds. Although the statutes prohibit contributions by business corporations to any candidate or political committee, including a political party, the State Board of Elections permits business entities to give to party headquarters building funds. Those funds must be separate segregated funds and may be used only for acquiring a headquarters building. The State Board decided it must allow those gifts contrary to State statute because of advisory opinions written by the Federal Elections Commission. Those opinions indicated that federal law allowing such gifts pre-empted State law. ***The PCS would allow corporations, other business entities, unions, and professional associations to donate to political party headquarters building funds. (Those givers are treated like corporations under current law in being prohibited to make political contributions.) The PCS would more or less codify the State Board's ruling on the matter. Parties would be strictly limited in how they could spend the money in the fund. They could use it only to purchase, construct, renovate, or pay a mortgage on a headquarters building. They could also use it to repay donor if the building were not purchased, etc. They could NOT use the money to pay building rent or utilities. Effective when the bill becomes law.*** *(pp. 19-20)*

10. Candidate's Signature on Campaign Reports. A statute, unchanged since 1974, says that every campaign finance report must be signed under oath by the treasurer of the campaign as being true and correct. If the treasurer was appointed by a candidate or by a candidate's principal campaign committee, the report must be "certified as true and correct to the best of his knowledge" by the candidate. Although that language seems to call for a candidate's signature, the practice of the State Board of Elections has been to provide for a candidate's signature only on the form for an organization statement and the appointment of treasurer. The State Board's basic quarterly reporting form for contributions and expenditures has not had a space a for candidate to sign. As the State Board was reviewing its forms recently in preparation for redesign, it determined that to comply with the law it must include a space for candidate to sign. The State Board staff was concerned that legislators should be made aware that enforcing the old law would result in this change in practice. They wanted legislators to have the opportunity to review the law and make the policy decision of whether the law should be changed or enforced. ***The PCS would change the statute to conform to traditional practice. It would require a candidate's signature only on the organization statement and the appointment of treasurer, not on every report. Effective when it becomes law.*** *(pp. 20-21)*

BACKGROUND Sections 1 through 3, minus some later refinements, were in the version of House Bill 1074 that passed the House before crossover. The rest of the PCS is new.

VISITOR REGISTRATION SHEET

9th 11 — June 24, 99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Susie Gmann	Community Penalties
Pamela Best	AOC
Takeeta Tyson	AOC
LeAnn Wallace	AOC
John Madler	Sentencing Commission
Deborah Ross	ACLU
Anne Winner	NCCADV
Christina P. Medlin	NC Equity
Ruth Cobb	Cont Corporate Counsel
Roslyn Sawtt	NCCCC
Patricia Reeder	NCACC
Zee B. Lamb	SBoE
Yvonne Southerland	SBoE
John Rustin	NCFPC
John Phelps	NCLM
Lisa Bessinger	NCANA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Robin Ellerbe	Smith Anderson Blount
Katherine Miller	Henry Kaplan
[illegible]	DHHS
Indira Moses	CP&L, Dal, NC
Andy Romano	NCLM
Jacob Kline	citizen

SENATE JUDICIARY II COMMITTEE

JUNE 29, 1999

ROOM 1124

HB 885	Self-Serve Storage/Late Payments	Representative Leubke
HB 1074	Election Law Changes – 1	Representative Alexander

Adjournment

SENATE JUDICIARY II COMMITTEE

JUNE 29, 1999

MINUTES

The Senate Judiciary II Committee met on June 29, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Twelve members were present, including Senator Brad Miller who presided.

Representative Alexander was called on to continue the discussion of HB 1074, Election Law Changes – 1. Senator Moore moved to amend the bill on page 1, lines 11 and 12, by deleting the following: "TO ABOLISH MUNICIPAL BOARDS OF ELECTIONS, REQUIRING THAT ALL ELECTIONS BE CONDUCTED BY COUNTY BOARDS OF ELECTIONS;" and on page 5, line 25, through page 18, line 13, by deleting all the language on those lines; and by numbering the subsequent sections of the bill accordingly. The motion carried unanimously.

Speaking to the bill from the NC State Board of Elections were Zee Lambe and Johnnie McLean. Barry Hayes, Mayor of Granite Falls, and Mr. Settlemeyer, City Attorney and Assistant City Manager of Morganton, spoke in opposition.

Senator Miller displaced HB 1074 until the next meeting and adjourned at 11:00 a.m.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Tuesday, June 29, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**331** Sentencing Services Program/AB.

Draft Number:	PCS1297
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1)**1022** Unlawful Use of Drivers License.

Draft Number:	PCS4267
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED:2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 885
Committee Substitute Favorable 4/21/99

Short Title: Self-Serve Storage/Late Payments. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Self-Service Storage Rental Agreements.

"**§ 66-280. Definitions.**

The definitions set forth in Article 4 of Chapter 44A of the General Statutes apply to this Article.

"**§ 66-281. Contract requirements.**

The rental agreement for the storage of personal property in a self-service storage facility shall state, in bold type of a minimum size of 10 points and conspicuously placed, the terms regarding the imposition of late fees, the terms regarding any consequences of a late payment, and the terms, if any, that pertain to the payment of court costs, attorneys' fees, and any other costs associated with the payment of late fees or with judgment against the consumer for late rental payments or late fees.

"**§ 66-282. Late fees.**

(a) In all rental agreements in which a definite time for the payment of the rent is fixed, the late fee shall not exceed fifteen dollars ($15.00) or fifteen percent (15%) of

the rental payment, whichever is less, and shall not be imposed by the self-service storage business until the rental payment is five days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

"**§ 66-283. Violations.**

(a) If a self-service storage business fails to comply with the requirements of this Article or fails to comply with the terms of the contract or any obligation arising from this Article, then, upon written notice to the self-service storage business, the consumer may void the contract.

(b) Any waiver by a consumer of any of the provisions of this Article shall be deemed void and unenforceable by a self-service storage business.

(c) The remedies provided in this section are in addition to any other remedies provided for by law or in equity."

Section 2. This act becomes effective October 1, 1999, and applies to rental agreements for self-service storage entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1074
Committee Substitute Reported Without Prejudice 4/21/99
Committee Substitute #2 Favorable 4/23/99

Short Title: Election Law Changes -- 1. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY AND MAKE VIOLATION A CLASS 2 MISDEMEANOR; TO ESTABLISH THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION; AND TO ALLOW COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

The General Assembly of North Carolina enacts:

-- REQUIRING THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY.

Section 1.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.5A. Duty to deliver form executed by another to county board of elections.**

Any person who has been delegated the responsibility of submitting a signed voter registration application form pursuant to G.S. 163-82.6(a) shall deliver that form to the county board of elections not later than five calendar days after gaining possession of the signed form. No person shall sell or attempt to sell completed voter registration forms or to condition their delivery on payment. A violation of this section is a Class 2 misdemeanor."

Section 1.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ESTABLISHING THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION.

Section 2.(a) G.S. 163-274 is amended by adding a new subdivision to read:

"(1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without the written authorization of the applicant or voter;".

Section 2.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ALLOWING COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

Section 3.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-130A. Out-of-precinct voting places.**

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the State Board of Elections. The county board shall submit its proposal in writing to the State Board. Approval by the State Board of Elections of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;

(2) Adequate notification and publicity is provided to notify voters in the precinct of the new polling location;

(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation; and

(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters.

Any approval granted by the State Board of Elections for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the State Board of Elections annually to determine whether it is still the only available alternative for that precinct."

Section 3.(b) This section is effective when this act becomes law and expires January 1, 2002.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-007 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
H1074-PCSRR-013

Senator

moves to amend the bill on page 1, lines 11 and 12, by deleting the following language on those lines:

"TO ABOLISH MUNICIPAL BOARDS OF ELECTIONS, REQUIRING THAT ALL ELECTIONS BE CONDUCTED BY COUNTY BOARDS OF ELECTIONS;" and

on page 5, line 25, through page 18, line 13, by deleting all the language on those lines; and

by renumbering subsequent sections of the bill accordingly.

SIGNED _____ 6/29/99
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-004 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title [YES]
H1074-PCSRR-013

Senator

moves to amend the bill on page 1, line 9,
by inserting before the term "REQUIRE" the term "ALLOW COUNTIES TO";
and

on page 4, line 31,
by deleting the term "REQUIRING" and substituting the term "ALLOWING
COUNTIES TO REQUIRE"; and

on page 5, line 10,
by deleting the word "shall" and substituting the word "may".

SIGNED Kay R Haga
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 331*
Committee Substitute Favorable 3/23/99
Proposed Senate Committee Substitute H331-PCS1297-RV

Short Title: Sentencing Services Program/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REDESIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIII of Chapter 7A of the General Statutes reads as rewritten:

"SUBCHAPTER XIII. COMMUNITY PENALTIES PROGRAM.

"ARTICLE 61.

"~~Community Penalties Program Act of 1983.~~

"Sentencing Services Programs.

"§ 7A-770. Purpose.

This Article shall be known and may be cited as the ~~"Community Penalties Act of 1983."~~ "Sentencing Services Act." The purpose of this Article is to ~~reduce prison overcrowding by providing~~ establish a statewide sentencing services program that will provide the judicial system with ~~community sentences to be used in lieu of and at less cost than imprisonment.~~ information that will assist that system in imposing sentences that make the most effective use of available resources. In furtherance of this purpose, this Article provides for the following:

(1) Establishment of local ~~sentencing alternatives for felons who require less than institutional custody but more than regular~~

~~probation supervision.~~ programs that can provide judges and other court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services.

(2) Increased opportunities for certain felons to make restitution to victims of crime through financial reimbursement or community service.

(3) Local involvement in the development of ~~community penalties~~ sentencing services to assure that they are specifically designed to meet local needs.

(4) ~~Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added.~~ Effective use of available community corrections programs by advising judges and other court officials of the offenders most suited for a particular program.

"§ 7A-771. Definitions.

As used in this Article:

(1) ~~"Community penalties~~ "Sentencing services program" means an agency or State-run office within the ~~judicial~~ superior court district which shall (i) prepare ~~community penalty~~ sentencing plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) ~~monitor the progress of offenders placed on community penalty plans.~~ assist offenders in initially obtaining services ordered as part of a sentence entered pursuant to a sentencing plan, if the assistance is not available otherwise.

(2) ~~"Community penalty~~ "Sentencing plan" means a plan presented in writing to the sentencing judge which provides a detailed assessment and description of the ~~targeted offender's proposed community penalty.~~ offender's background, including available information about past criminal activity, a matching of the specific offender's needs with available resources, and, if appropriate, the program's recommendations regarding an intermediate sentence.

(2a) "Director" means the Director of the Administrative Office of the Courts.

(2b) "Superior court district" means a superior court district established by G.S. 7A-41 for those districts consisting of one or more entire counties, and otherwise means the applicable set of districts as that term is defined in G.S. 7A-41.1.

~~(3) "Judicial district" means a district court district as defined in G.S. 7A-133.~~

(4) Repealed by Session Laws 1991, c. 566, s. 4.

~~(5) "Targeted offenders" means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an~~

~~intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment.~~

"§ 7A-772. Allocation of funds.

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of ~~community penalties~~ sentencing services programs. ~~Community penalties~~ Sentencing services programs that are grantees shall use ~~such~~ the funds ~~to develop, implement, and monitor community penalty plans.~~ exclusively to develop a sentencing services program that provides sentencing information to judges and other court officials. Grants shall be awarded by the Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein. The Director shall consider the plan required by G.S. 7A-774 in making funding decisions. If a senior resident superior court judge has not formally endorsed the plan, the Director shall consider that fact in making grant decisions, but the Director may, if appropriate, award grants to a program in which the judge has not endorsed the plan as submitted.

(b) The Director may establish local ~~community penalties~~ sentencing services programs and appoint those staff as the Director deems necessary. These personnel may serve as full-time or part-time State employees or may be hired on a contractual basis when determined appropriate by the director. Contracts entered under the authority of this subsection shall be exempt from the competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of ~~community penalties~~ sentencing services programs under this Article shall be administered by the Administrative Office of the Courts.

"§ 7A-773. Responsibilities of a ~~community penalties~~ sentencing services program.

A ~~community penalties~~ sentencing services program shall be responsible for:

(1) ~~Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.~~ Identifying offenders who:

a. Are charged with or have been offered a plea by the State for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so;

b. Have a high risk of committing future crimes without appropriate sanctions and interventions; and

c. Would benefit from the preparation of an intensive and comprehensive sentencing plan of the type prepared by sentencing services programs.

(2) Preparing detailed ~~community penalty~~ sentencing services plans requested pursuant to G.S. 7A-773.1 for presentation to the sentencing ~~judge by the offender's attorney or at the request of the sentencing judge.~~ judge.

(3) Contracting or arranging with public or private agencies for services described in the ~~community penalty~~ sentencing plan.

~~(4) Monitoring the progress of offenders under community penalty plans.~~

"§ 7A-773.1. Who may request plans; disposition of plans; contents of plans.

(a) A judge presiding over a case in which the offender meets the criteria set forth in G.S. 7A-773(1) may request, at any time prior to the imposition of sentence, that the sentencing services program provide a sentencing plan. The court may also request, at any time prior to the imposition of sentence, that the program provide a sentencing plan in misdemeanor cases in which the class of offense is Class A1 or Class 1 and the prior conviction level is Level III, if the court determines that the preparation of such a plan is in the interest of justice. In addition, in cases in which the offender meets the criteria set forth in G.S. 7A-773, the defendant or a prosecutor, at any time before the court has accepted a guilty plea or received a guilty verdict, may request that the program provide a plan. However, prior to an adjudication of guilt, a defendant may decline to participate in the preparation of a plan within a reasonable time after the request is made. In that case, no plan shall be prepared or presented to the court by the sentencing services program prior to an adjudication of guilt. A defendant's decision not to participate shall be made in writing and filed with the court. The comprehensive sentencing services program plan prepared pursuant to G.S. 7A-774 shall define what constitutes a reasonable time within the meaning of this subsection.

(b) Any sentencing plan prepared by a sentencing services program shall be presented to the court, the defendant, and the State in an appropriate manner.

(c) Sentencing plans prepared by sentencing services programs may include recommendations for use of any treatment or correctional resources available, unless the sentencing court instructs otherwise. Sentencing plans that identify an offender's needs for education, treatment, control, or other services shall, to the extent feasible, also identify resources to meet those needs. Plans may report that no intermediate punishment is appropriate under the circumstances of the case.

(d) To the extent allowed by law, the sentencing services program shall develop procedures to ensure that the program staff may work with offenders before a plea is entered. To that end, no information obtained in the course of preparing a sentencing plan may be used by the State for the purpose of establishing guilt.

"§ 7A-774. Requirements for a comprehensive ~~community penalties~~ sentencing services program plan.

Agencies applying for grants shall prepare a comprehensive ~~community penalties~~ sentencing services program plan for the development, implementation, operation, and improvement of a ~~community penalties~~ sentencing services program for the ~~judicial~~ superior court district, as prescribed by the Director. The plan shall be

updated annually and shall be submitted to the senior resident superior court judge for the superior court district for the judge's advice and written endorsement. The plan shall then be forwarded to the Director for approval. The ~~Such~~ plan shall include:

(1) ~~Objectives~~ Goals and objectives of the ~~community penalties~~ sentencing services program.

(2) ~~Goals for reduction of offenders committed to prison for each county within the district, and a system of monitoring the number of commitments to prison.~~ Specification of the kinds or categories of offenders for whom the programs will provide sentencing information to the courts.

(3) ~~Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program.~~ Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in G.S. 7A-773(1).

(4) Procedures for preparing and presenting ~~community penalty~~ plans to the court.

(4a) Strategies for ensuring that judges and court officials who are possible referral sources use the program's services in appropriate cases.

(5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs.

~~(6) Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender.~~

~~(7) Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.~~

~~(8) Procedures for evaluating the program's effect on numbers of prison commitments.~~

"§ 7A-775. ~~Community penalties~~ Sentencing services board.

(a) Each ~~community penalties~~ sentencing services program shall establish a ~~community penalties~~ sentencing services board to provide direction and assistance to the ~~community penalties~~ sentencing services program in the implementation and evaluation of the plan. ~~Community penalties~~ Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The ~~community penalties~~ sentencing services board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The ~~community penalties~~ sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:

(1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. 7A-772(a);

~~(1)~~ (1a) Development of an annual budget for the program;
(2) Hiring, firing, and evaluation of program personnel;
(3) Selection of board members;
(4) Arranging for ~~a private and independent~~ an annual ~~audit;~~ audit, in accordance with G.S. 143-6.1;
(5) Development of procedures for contracting for services.

(b) If the board serves as an advisory board to a sentencing services program located in a local or State agency, the board's duties do not include budgeting and personnel decisions.

"**§ 7A-776. Limitation on use of funds.**

Funds provided for use under the provisions of this Article shall not be used for the operating costs, construction, or any other costs associated with local jail ~~confinement.~~ confinement, or for any purpose other than the operation of a sentencing services program that complies with this Article.

"**§ 7A-777. Evaluation.**

The Director shall evaluate each ~~community penalties~~ sentencing services program on an annual basis to determine the degree to which the ~~prison commitments have been reduced or have kept from increasing as a result of the community penalties program. The Director shall not renew or continue a program that has failed to affect commitments and that shows no promise of doing so in the future, after allowing for changes in the number of convictions.~~ program effectively meets the needs of the courts in its judicial district by providing them with sentencing information. In conducting the evaluation, the Director shall consider the goals and objectives established in the program's plan, as well as the extent to which the program is able to ensure that the offenders served by the plan meet the criteria established in G.S. 7A-773(1)."

Section 2. G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:
a. Special probation as defined in G.S. 15A-1351(a).
b. Assignment to a residential program.
c. House arrest with electronic monitoring.
d. Intensive probation.
e. Assignment to a day-reporting center.
~~In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.~~"

Section 3. G.S. 15A-1340.14(f) reads as rewritten:

"(f) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:
(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.
(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

Section 4. Section 2 of this act becomes effective January 1, 2000, and applies to offenses committed on or after that date. The remainder of this act becomes effective January 1, 2000, except that community penalties plans requested for offenders prior to that date shall be governed by the law in effect at the time the plan was requested.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-002

Date_____,1999

Comm. Sub. [YES]
Amends Title []
H1074-PCSRR-013

Senator Shaw

moves to amend the bill on page 2, lines 6 through 19, by deleting the language on those lines and substituting the following:

Section 1.(a) G.S. 163-82.6(a) reads as rewritten:

'(a) How the Form May Be Submitted. -- The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections no later than five days after the delegatee gained possession of that form. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and fail to make a good faith effort to deliver the form so that it is received by the county board of elections no later than five days after the acceptance of the delegation. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.'

Section 1.(b) G.S. 163-82.6(c) reads as rewritten:

'(c) Registration Deadlines for an Election. -- In order to be valid for an election, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

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(2) If submitted in person (by the applicant or another person), must be received by the county board of elections by 5:00 p.m. on the twenty-fifth day before the election,

(3) If submitted by a person to whom the applicant has delegated the task of submitting the form pursuant to subsection (a) of this section, must have been signed by the applicant and given to the delegatee at least 25 days before the election,

except as provided in subsection (d) of this section.'

Section 1.(c) This section becomes effective January 1, 2000, and applies to all offenses occurring and all applications signed after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1074
Committee Substitute Reported Without Prejudice 4/21/99
Committee Substitute #2 Favorable 4/23/99
Proposed Senate Committee Substitute -- H1074-PCSRR-013

Short Title: Election Law Changes -- 1. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY AND TO MAKE VIOLATION A CLASS 2 MISDEMEANOR; TO ESTABLISH THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION; TO ALLOW COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT; TO CREATE A PILOT PROGRAM TO ALLOW THE TEMPORARY USE OF TWO VOTING PLACES FOR THE SAME PRECINCT; TO REQUIRE THAT ADEQUATE PARKING BE PROVIDED AT VOTING PLACES THAT ARE PUBLIC BUILDINGS; TO ABOLISH MUNICIPAL BOARDS OF ELECTIONS, REQUIRING THAT ALL ELECTIONS BE CONDUCTED BY COUNTY BOARDS OF ELECTIONS; TO INCREASE MINIMUM COMPENSATION FOR COUNTY ELECTION DIRECTORS; TO LOWER THE THRESHOLD FOR A FULL-TIME ELECTIONS OFFICE; TO PROVIDE FOR CERTAIN DONATIONS TO POLITICAL PARTY HEADQUARTERS BUILDING FUNDS; AND TO CHANGE THE STATUTE CONCERNING A CANDIDATE'S SIGNATURE ON A FINANCE REPORT TO REFLECT TRADITIONAL PRACTICE.

The General Assembly of North Carolina enacts:

-- REQUIRING THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY.

Section 1.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-82.5A. Duty to deliver form executed by another to county board of elections.

Any person who has been delegated the responsibility of submitting a signed voter registration application form pursuant to G.S. 163-82.6(a), and who has communicated to the applicant acceptance of that delegated responsibility, shall deliver that form to the county board of elections not later than five calendar days after gaining possession of the signed form. No person shall sell or attempt to sell completed voter registration forms or to condition their delivery on payment. A violation of this section is a Class 2 misdemeanor."

Section 1.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ESTABLISHING THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION.

Section 2.(a) G.S. 163-274 is amended by adding a new subdivision to read:

"(1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without either the written authorization of the applicant or voter or the written authorization of the State Board of Elections;".

Section 2.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ALLOWING COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

Section 3.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-130A. Out-of-precinct voting places.

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the Executive Secretary-Director of the State Board of Elections. The county board shall submit its

proposal in writing to the Executive Secretary-Director. Approval by the Executive Secretary-Director of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;

(2) Adequate notification and publicity is provided to notify voters in the precinct of the new polling location;

(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation; and

(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters.

(5) The proposal provides adequately for security against fraud.

Any approval granted by the Executive Secretary-Director for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the Executive Secretary-Director annually to determine whether it is still the only available alternative for that precinct."

Section 3.(b) This section is effective when this act becomes law and expires January 1, 2002.

-- CREATING A PILOT PROGRAM TO ALLOW THE TEMPORARY USE OF TWO VOTING PLACES FOR THE SAME PRECINCT.

Section 4.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-130B. Temporary use of two voting places for certain precincts; pilot program.

A county board of elections, by unanimous vote of all its members, may propose to designate two voting places to be used temporarily for the same precinct. The temporary designation of a voting place shall continue only for the term of office of the county board of elections making the designation. For any precinct that is temporarily given two voting places, the county board shall assign every voter to one or the other of those voting places.

The county board's proposal is subject to approval by the Executive Secretary-Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Secretary-Director. The Executive Secretary-Director may approve a proposal under this section in not more than three counties, to be a pilot program. The Executive Secretary-Director

shall approve that proposal only if it finds all of the following:

(1) That the precinct has more registered voters than can adequately be accommodated by any single potential voting place available for the precinct.

(2) That no boundary line that complies with Article 12A of this Chapter can be identified that adequately divides the precinct.

(3) That the county board can account for, by street address number, the location of every registered voter in the precinct and fix that voter's residence with certainty on a map.

(4) That no more than three other precincts in the same county will have two voting places.

(5) That both voting places for the precinct would have adequate facilities for the elderly and disabled.

(6) That the proposal provides adequately for security against fraud.

(7) That the proposal does not unfairly favor or disfavor voters with regard to race or party affiliation.

The county board shall designate a full set of precinct officials, in the manner set forth in Article 5 of this Chapter, for each voting place designated for the precinct."

Section 4.(b) This section becomes effective January 2, 2000, and expires January 2, 2002. The Executive Secretary-Director of the State Board of Elections shall study the operation and consequences of the pilot program created by this section and report findings and recommendations to the 2001 General Assembly by February 1, 2001.

-- REQUIRING THAT ADEQUATE PARKING BE PROVIDED AT VOTING PLACES THAT ARE PUBLIC BUILDINGS.

Section 5.(a) G.S. 163-129 reads as rewritten:

"**§ 163-129. Structure at voting place; marking off limits of voting place.**

At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues provided, however, that this

section shall not be construed to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

If a county board of elections requires that a tax-supported building be used as a voting place, that county board of elections shall require that those in control of that building provide parking that is adequate for voters at the precinct, as determined by the county board of elections.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the chief judge and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place."

Section 5.(b) This section becomes effective January 1, 2000.

-- ABOLISHING MUNICIPAL BOARDS OF ELECTIONS, REQUIRING THAT ALL ELECTIONS BE CONDUCTED BY COUNTY BOARDS OF ELECTIONS.

Section 6.(a) G.S. 163-280 is repealed.

Section 6.(b) Article 23 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-280.1. Municipal boards of elections abolished.

Municipal boards of elections, whether created by General Statute or by local act, are abolished. The terms of all members of municipal boards of elections and all precinct officials appointed by municipal board of elections, if those terms have not expired prior to January 1, 2000, expire January 1, 2000."

Section 6.(c) G.S. 163-281 is repealed.

Section 6.(d) G.S. 163-284 is repealed.

Section 6.(e) G.S. 163-284.1 is repealed.

Section 6.(f) G.S. 163-285 reads as rewritten:

"§ 163-285. Administration by county board of ~~elections; optional by municipality.~~ elections.

(a) ~~Any city, town or incorporated village which conducts its elections on a nonpartisan basis may conduct its own elections, or it may request the county board of elections of the county in~~

~~which it is located to conduct its elections.~~ A county board of elections shall have authority for the registration of voters for and shall conduct the elections of each ~~city, town or incorporated village so requesting~~ municipality and special district in that county and the ~~city, town or incorporated village~~ municipality or special district shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the city ~~council.~~ council or special district governing authority. If a mutual agreement cannot be reached, then the State Board of Elections shall prescribe the agreement, to which both parties are ~~bound, or, in its discretion, the State Board of Elections shall have authority to instruct the county board of elections to decline the administration of the elections for such city, town or incorporated village.~~ bound.

(1) The elections of ~~cities, towns or incorporated villages~~ municipalities or special districts which lie in more than one county shall be conducted either (i) by the county in which the greater number of the city's ~~citizens~~ residents or special district's residents reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such ~~city, town or incorporated village~~ municipality or special district is located, as may be mutually agreed upon by the county boards of elections so ~~affected, or (iii) by a municipal board of elections appointed by the governing body of the municipality.~~ affected. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of municipal or special district elections by county ~~or municipal~~ boards of elections for cities or special districts situated in more than one county.

~~(2) Any city, town or incorporated village electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days' notice prior to the effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of~~

~~all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to permit any city, town or incorporated village to exercise the options under this Article subsequent to the deadline stated in this section.~~

(3) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 63.

(b) The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting any municipality or special district whose elections that county board administers and shall be immediately advised of any change or relocation of such boundaries.

(c) Any contested election or allegations of irregularities in a municipal or special district election shall be made to the county board of elections and appeals from such rulings may be made to the State Board of Elections under existing statutory provisions and rules or regulations adopted by the State Board of Elections.

(d) The term 'special district' includes a sanitary district, fire district, or school administrative unit, notwithstanding the fact that the taxes of the special district may be levied by a city."

Section 6.(g) G.S. 163-286(b) is repealed.

Section 6.(h) G.S. 163-287 reads as rewritten:

"**§ 163-287. Special elections; procedure for calling.**

Any ~~city, whether its elections are conducted by the county board of elections or the municipal board of elections,~~ city or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 45 days prior to the special election. The appropriate board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This paragraph shall not apply to bond elections."

Section 6.(i) G.S. 163-288 reads as rewritten:

"**§ 163-288. Registration for city ~~elections; county and municipal boards of~~ elections.**

~~Regardless of whether the municipal election is conducted by the county board of elections or by a municipal board of elections, the~~ The registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national."

Section 6.(j) G.S. 163-288.1 reads as rewritten:

"**§163-288.1. Activating voters for newly annexed or incorporated areas.**

(a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county ~~or municipal~~ board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly or when activating voters after an annexation of new

territory by a city or special district under Chapter 160A, Article 4A, or other general or local law.

(b) Each voter whose registration is changed by the county ~~or municipal~~ board of elections in any manner pursuant to any annexation or expunction under this subsection shall be so notified by mail.

(c) The State Board of Elections shall have authority to adopt regulations for the more detailed administration of this section."

Section 6.(k) G.S. 163-289(c) is repealed.

Section 6.(l) G.S. 163-298 reads as rewritten:

"**§163-298. Municipal primaries and elections.**

~~The phrases 'county board of elections,' and 'chairman of the board of elections' as used in this Article, with respect to all municipal primaries and elections, shall mean the municipal board of elections and its chairman in those cities and towns which conduct their own elections, and the county board of elections and its chairman in those cities and towns whose elections are conducted by the county board of elections.~~ The words 'general election,' as used in this Article, shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries."

Section 6.(m) G.S. 163-299(g) reads as rewritten:

"(g) The county ~~or municipal~~ board of elections shall, in addition to the requirements contained in G.S. 163-175 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office."

Section 6.(n) G.S. 163-300 reads as rewritten:

"**§163-300. Disposition of duplicate abstracts in municipal elections.**

Within five days after a primary or election is held in any municipality, the chairman of the county ~~or municipal~~ board of elections shall mail to the chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163-176. One copy shall be retained by the county ~~or municipal~~ board of elections as a permanent record and one copy shall be filed with the city clerk. (1971, c. 835, s. 1.)

Section 6.(o) G.S. 163-301 reads as rewritten:

"§163-301. Chairman of election board to furnish certificate of elections.

Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163-175 and G.S. 163-179, the chairman of the county ~~or municipal~~ board of elections shall issue certificates of election, under his hand and seal, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163-181."

Section 6.(p) G.S. 163-304 reads as rewritten:

"§163-304. State Board of Elections to have jurisdiction over municipal elections ~~and election officials,~~ and to advise.

The State Board of Elections shall have the same authority over municipal elections ~~and election officials~~ as it has over county and State ~~elections and election officials.~~ elections. ~~The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.~~

The county ~~and municipal~~ boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections."

Section 6.(q) G.S. 163-22 reads as rewritten:

"§ 163-22. Powers and duties of State Board of Elections.

(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the Board shall publish and furnish to the county ~~and municipal~~ boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them ~~and municipal elections board members~~ as to the proper methods of conducting primaries and elections. The Board

shall require such reports from the county ~~and municipal~~ boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county ~~and municipal~~ boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county ~~or municipal~~ board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county ~~or municipal~~ board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county ~~or municipal~~ board member affected and give him an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections. ~~When any municipal board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the city council of the city appointing members of that board.~~

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county ~~and municipal~~ boards of elections the registration application forms required pursuant to G.S. 163-67. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the

State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms.

(f) The State Board of Elections shall prepare, print, distribute to the county ~~and municipal~~ boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

(g) The State Board of Elections shall certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the Board and whose names are required to be printed on county ballots.

(h) It shall be the duty of the State Board of Elections to tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the Board.

(i) The State Board of Elections shall make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable.

(j) Notwithstanding the provisions of any other section of this Chapter, the State Board of Elections is empowered to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct, county, municipality or electoral district over whose elections it has jurisdiction or for whose elections it has responsibility.

(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election.

(l) Notwithstanding any other provision of law, in order to obtain judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking

review must file his petition in the Superior Court of Wake County.

(m) The State Board of Elections shall issue rules to regulate recounts held under the provisions of G.S. 163-179.1 or G.S. 163-192.1.

(n) The State Board of Elections shall provide specific training to county boards of elections regarding rules for registering students.

(o) The State Board of Elections shall promulgate minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct, such that more of such will be available at general elections and a sufficient number will be available to allow voting without excessive delay. The State Board of Elections shall provide for a training and screening program for chief judges and judges. The State Board of Elections shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots.

The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting."

Section 6.(r) G.S. 163-22.1(a) reads as rewritten:

"(a) State Board's Authority. -- If the State Board of Elections, acting upon the agreement of at least four of its members, and after holding public hearings on election contests, alleged election irregularities or fraud, or violations of elections laws, determines that a new primary, general or special election should be held, the Board may order that a new primary, general or special election be held, either statewide, or in any counties, electoral districts, special districts, or municipalities over whose elections it has jurisdiction. The State Board shall be authorized to order a new election without conducting a public hearing provided a public hearing on the allegations was held by the county ~~or municipal~~ board of elections and the State Board is satisfied that such hearing gave sufficient opportunity for presentation of evidence and provided further that the State Board adopts the findings of the county ~~or municipal~~ board of elections.

Any new primary, general or special election so ordered shall be conducted under applicable constitutional and statutory authority and shall be supervised by the State Board of Elections and conducted by the appropriate elections officials.

The State Board of Elections has authority to adopt rules and regulations and to issue orders to carry out its authority under this section."

Section 6.(s) G.S. 163-25 reads as rewritten:

"**§163-25. Authority of State Board to assist in litigation.**

The State Board of Elections shall possess authority to assist any county ~~or municipal~~ board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county ~~or municipal~~ board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of Chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in his discretion, recommend that private counsel be employed.

If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor."

Section 6.(t) G.S. 163-42 reads as rewritten:

"**§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.**

Each county ~~and municipal~~ board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within the county.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163-47(a).

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each

precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

Section 6.(u) G.S. 163-135(e) reads as rewritten:

"(e) Municipal Primaries and Elections. -- This Article shall apply to and control all elections held in and for cities, towns, incorporated villages and all special districts, whether conducted by the county board of ~~elections or a duly appointed municipal board of~~ elections."

Section 6.(v) G.S. 163-140(d) reads as rewritten:

"(d) Municipal Primary and Election Ballots. -- In all municipal elections there shall be an official ballot on which shall be printed the names of all candidates for offices in the municipality. The municipal ballot shall conform as nearly as possible to the provisions of subsections (a) through (c) of this section, but on the bottom of the municipal ballot shall be printed an identified facsimile of the signature of the chairman of the county ~~or municipal~~ board of elections, as appropriate."

Section 6.(w) G.S. 163-161 reads as rewritten:

"(d) Municipalities. -- The governing board of the municipality shall have the same authority with respect to the acquisition and use of a voting system for municipal primaries and elections that boards of county commissioners are granted in subsection (a) with respect to other primaries and elections.

The decision of the governing board of the municipality shall be subject to approval of the county board of elections, as described in subsection ~~(a), if the county board of elections administers the elections of the municipality, or by the approval of the municipal board of elections if the municipal board of elections administers the elections of the unit.~~ (a). Before approving the adoption and purchase or lease of a voting system, the county ~~or municipal~~ board of elections shall be subject to all the requirements of subsection ~~(b), except that in the case of a municipal board of elections, the financial statement shall be sent to the municipal attorney and the chief municipal finance officer, the demonstration shall be conducted in the municipality or at a site designated by the State Board of Elections, and the testing shall be done in a precinct of the municipality.~~ (b).

When a municipal governing body has decided to adopt and purchase a voting system for voting places under the provisions

of this subsection, that governing body shall have all the duties parallel to those imposed by subsection (c) on a board of county commissioners and a county board of elections: that is, the municipal governing body shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system or, if that is impractical, provide the available equipment of the approved voting system in the places it chooses, and shall appoint the necessary number of voting-system custodians. In the case that equipment of the approved system for every voting place is impractical, the municipal governing board shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for every voter."

Section 6.(x) G.S. 163-278.6(1) reads as rewritten:

"(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county ~~or municipal~~ board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county ~~or municipal~~ board of elections conducting all local referenda."

Section 6.(y) G.S. 62A-4(b) reads as rewritten:

"(b) The ordinance authorized in subsection (a) of this section may be adopted after one of the following procedures is followed:

(1) The governing authority by resolution requests the county ~~or municipal~~ board of ~~elections, as appropriate,~~ elections to conduct a special election on a date certain, in which a majority of those voting who are residents of the political subdivision vote to authorize the ordinance.

(2) After a public hearing held upon not less than 10 days public notice."

Section 6.(z) G.S. 120-30.9F reads as rewritten:

"**§ 120-30.9F. Municipalities; municipal attorney.**

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the municipal governing body ~~or municipal board of elections~~ or any other municipal agency which constitutes a 'change

affecting voting' under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition."

Section 6.(aa) This section prevails over local acts.

Section 6.(bb) This section becomes effective January 1, 2000, and applies to all primaries and elections held on and after that date.

-- INCREASING MINIMUM COMPENSATION FOR COUNTY ELECTION DIRECTORS.

Section 7.(a) G.S. 163-35(c) reads as rewritten:

"(c) Compensation of Directors of Elections. -- Compensation paid to directors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of County Commissioners and shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters.

~~Beginning July 1, 1991, in any county operating under modified registration PLAN A, B, C, or D, the~~ The Board of County Commissioners in each county, whether or not the county maintains full-time or modified full-time registration, shall compensate the director of elections at a minimum rate of ~~eight~~ twelve dollars ~~($8.00)~~ ($12.00) per hour for hours worked in attendance to his or her duties as prescribed by law, including rules and regulations adopted by the State Board of Elections. In addition, the county shall pay to the director an hourly wage of at least ~~eight~~ twelve dollars ~~($8.00)~~ ($12.00) per hour for all hours worked in excess of those prescribed in rules and regulations adopted by the State Board of Elections, when such additional hours have been approved by the county board of elections and such approval has been recorded in the official minutes of the county board of elections.

In addition to the compensation provided for herein, the director of elections to the county board of elections shall be granted the same vacation leave, sick leave, and petty leave as granted to all other county employees. It shall also be the responsibility of the Board of County Commissioners to

appropriate sufficient funds to compensate a replacement for the director of elections when authorized leave is taken."

Section 7.(b) This section becomes effective July 1, 2000.

-- LOWERING THE THRESHOLD FOR A FULL-TIME COUNTY ELECTIONS OFFICE.

Section 8.(a) G.S. 163-36 reads as rewritten:

"**§ 163-36. Modified full-time offices.**

The State Board of Elections shall promulgate rules permitting counties that have fewer than ~~14,001~~ 6,501 registered voters to operate a modified full-time elections office to the extent that the operation of a full-time office is not necessary. Nothing in this section shall preclude any county from keeping an elections office open at hours consistent with the hours observed by other county offices."

Section 8.(b) This section becomes effective July 1, 2000.

-- PROVIDING FOR GIFTS TO POLITICAL PARTY HEADQUARTERS BUILDING FUNDS.

Section 9.(a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.19B. Political party headquarters building funds.

Notwithstanding the provisions of G.S. 163-278.19, a person prohibited by that section from making a contribution may donate to political parties and political parties may accept from such a person money and other things of value donated to a political party headquarters building fund. Donations to the political party headquarters building fund shall be subject to all the following rules:

(1) The donations solicited and accepted are designated to the political party headquarters building fund.

(2) Potential donors to that fund are advised that all donations will be exclusively for the political party headquarters building fund.

(3) The political party establishes a separate segregated bank account into which shall be deposited only donations for the political party headquarters building fund from persons prohibited by G.S. 163-278.19 from making contributions.

(4) The donations deposited in the separate segregated bank account for the political party headquarters building fund will be spent only to purchase a headquarters building, to construct a headquarters building, to renovate a headquarters building, to

pay a mortgage on a headquarters building, or to repay donors if a headquarters building is not purchased, constructed, or renovated. Donations deposited into that account shall not be used for headquarters rent, utilities, or equipment other than fixtures.

(5) If accepted from persons prohibited by G.S. 163-278.19 from making contributions, donations shall not be used, directly or indirectly, to support or oppose the nomination or election of one or more clearly identified candidates or ballot measures.

(6) The political party executive committee shall report donations to and spending by a political party headquarters building fund on every report required to be made by G.S. 163-278.9. If a committee is excused from making general campaign finance reports under G.S. 163-278.10A, that committee shall nonetheless report donations in any amount to and spending in any amount by the political party headquarters building fund at the times required for reports in G.S. 163-278.9.

If all the criteria set forth in subdivisions (1) through (6) of this section are complied with, then donations to and spending by a political party headquarters building fund do not constitute contributions or expenditures as defined in G.S. 163-278.6. If those criteria are complied with, then donations may be made to a political party headquarters building fund."

Section 9.(b) This section is effective when this act becomes law.

-- CHANGING THE STATUTE CONCERNING A CANDIDATE'S SIGNATURE ON A FINANCE REPORT TO REFLECT TRADITIONAL PRACTICE.

Section 10.(a) G.S. 163-278.32 reads as rewritten:

"**§163-278.32. Statements under oath.**

Any statement required to be filed under this Article shall be signed and certified as true and correct by the individual, media, candidate, treasurer or others required to file it, and shall be verified by the oath or affirmation of the individual, media, candidate, treasurer or others filing the statement, taken before any officer authorized to administer oaths; provided further that the candidate shall certify as true and correct to the best of his knowledge ~~each report~~ the organizational report and appointment of treasurer filed ~~by a treasurer appointed by him or by his~~ for the candidate or the candidate's principal campaign committee."

Section 10.(b) This section is effective when it becomes law.

Section 11. This act is effective when it becomes law.

HOUSE BILL 1074:
Election Law Changes-1.

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 24, 1999
Version: H1074-PCSRR-013

Introduced by: Representative Alexander
Summary by: William R. Gilkeson
Staff Attorney

SUMMARY: The Proposed Committee Substitute for House Bill 1074 would:

1. *Clarify that anyone who has accepted responsibility for someone else's signed voter registration form must turn it in to the board of elections within 5 days on pain of a Class 2 misdemeanor.* (p.2)
2. *Make it a misdemeanor to alter a voter registration record without written authorization from the voter.* (p.2)
3. *Allow county boards of elections to designate voting places outside a precinct.* (pp.2-3)
4. *Create a pilot program in up to 3 counties to allow those counties to temporarily use two voting places in the same precinct.* (pp. 3-4)
5. *Require county boards of elections to insist that public buildings chosen as voting places provide voters with adequate parking.* (pp.4-5)
6. *Abolish municipal boards of elections and provide that county boards conduct city elections in all municipalities.* (pp. 5-18)
7. *Increase the minimum compensation for county election directors from $8 per hour to $12 per hour.* (pp. 18-19)
8. *Lower the registered-voter threshold for a county to have a full-time board of election from 14,001 to 6,501.* (p. 19)
9. *Allow corporations and unions to make donations to a political party headquarters building fund.* (pp. 19-20)
10. *Change the existing statute concerning a candidate's signature on a campaign finance report to conform to what has been enforced: instead of signing every report, the candidate would sign only an organizational statement and the appointment of a treasurer.* (pp. 20-21)

CURRENT LAW and BILL ANALYSIS: The numbered paragraphs correspond to sections of the bill.

1. Misdemeanor: Failure to Deliver Registration Forms. Voter registration forms are self-executing. Unless the registration is conducted at a designated agency such as the DMV or ESC, the law places responsibility on the applicant to get the application to the county board of elections so the applicant can be registered for the next election. The law allows the applicant to delegate to another person the duty to get the application to the board, but it doesn't say what happens if the person to whom that duty is delegated doesn't follow through. There have been reports of people who have conducted voter registration drives discarding application rather than turning them in. There have also been reports of people offering to sell registration applications of a certain kind to candidates or political parties. *The*

PCS states that if someone has accepted the job of delivering someone else's voter registration application form to the board of elections, that person has a legal duty to turn it in to the county board of elections within 5 calendar days. (That is the time an agency is given to deliver a form.) A violation of the duty would be a Class I felony. Effective October 1, 1999. *(p. 2)*

2. Misdemeanor: Altering Records Without Written Authorization. Changes in a voter's registration records, such as party affiliation, address, or name, must be made by the voter on a voter registration form. There have been reports of elections officials making changes based on such informal triggers as a phone conversation with the voter, a relayed request by a relative of the voter, etc. Although a Class I felony already exists for an election official knowingly to make a false or fraudulent entry on the registration books, and a Class 2 misdemeanor already exists for an election official to fail to perform any legal duty in the manner required by law, there is no specific crime for the offense of making a change to registration without written authorization. ***The PCS states specifically that it is a Class 2 misdemeanor for a member or employee of a board of elections to alter someone's voter registration records without written authorization from the voter or from the State Board of Elections. Effective October 1, 1999.*** *(p. 2)*

3. Out-of-Precinct Voting Place. A voting place is now required to be in a precinct or on a lot adjacent to a precinct. Some county election boards have said they cannot find a suitable building in some precincts and could serve the voters there well if they could designate a voting place outside the precinct. ***The PCS allows a county board of elections, by unanimous vote, to apply to the Executive Secretary-Director of the State Board of Elections to designate a voting place outside a precinct. Effective when the act becomes law, but sunset January 1, 2001.*** *(pp. 2-3)*

4. Pilot: Two Voting Places Per Precinct. The only provision for multiple voting places in the same precinct is a statute allowing a county to designate a satellite voting place only for elderly or disabled voters. ***The PCS would create a pilot program in up to three counties whereby the county board of elections could designate two voting places per precinct for up to three precincts in that county. The counties could apply to the State Election Director, who would report to the General Assembly by February 2001 on the program's results. Effective January 2, 2000, but sunset January 2, 2002.*** *(pp. 3-4)*

5. Parking at the Polls. The county board of elections has the authority to press into service any public, tax-supported building it needs as a precinct. Reports have surfaced of officials at schools or other public buildings, unhappy about being a voting place, stinting on the parking that voters and precinct officials could use. Current law says nothing about the provision of parking at a voting place. ***The PCS would direct the county board to require that adequate parking be provided around a tax-supported voting place. Effective January 1, 2000.*** *(pp. 4-5)*

6. Abolish Municipal Boards of Elections. In additional to the 100 county boards of elections, there are now 57 municipal boards of elections. They are appointed by the city council in the city they serve. Their function is to conduct the elections for city council. They generally exist in small towns. The State Board of Elections has for several years advocated their abolition, arguing that the State Board's duty to supervise the conduct of local elections is thwarted by the existence of so many different entities. ***The PCS would abolish municipal boards of elections, effective January 1, 2000. Elections in all city and special district elections would be conducted by the county board of elections.*** *(pp. 5-18)*

7. Increase Minimum Pay for County Directors. There are 16 part-time county boards of elections offices in small counties. The statutes require that the election directors in those offices be paid $8 an hour for regular time and $8 for overtime. Full-time directors must be paid a salary "commensurate

with the salary paid to directors in counties similarly situated and similar in population and number of registered voters." ***The bill would set $12 full-time and $12 overtime as the minimum hourly rate for all election directors. Effective July 1, 2000.*** *(pp. 18-19)*

8. More Full-Time County Elections Offices. Every county that has more than 14,000 registered voters must have a full-time elections office. Counties with fewer registered voters may operate a "modified full-time" (or part-time) office. The State Board of Elections has promulgated rules for the operation of the part-time offices. According to the rules, Plans A and B call for the office to be open 9-5 three days a week, and Plans C and D 9-1 three days a week. Only counties with 6,500 or fewer registered voters may use Plans C and D, the half-day plans. ***The PCS would lower the threshold for the requirement of a full-time board of elections from 14,001 to 6,501. Effective July 1, 2000. The effect appears to be that 12 offices that are now part-time would become full-time.*** *(p. 19)*

9. Gifts by Corporations, etc., to Party HQ Building Funds. Although the statutes prohibit contributions by business corporations to any candidate or political committee, including a political party, the State Board of Elections permits business entities to give to party headquarters building funds. Those funds must be separate segregated funds and may be used only for acquiring a headquarters building. The State Board decided it must allow those gifts contrary to State statute because of advisory opinions written by the Federal Elections Commission. Those opinions indicated that federal law allowing such gifts pre-empted State law. ***The PCS would allow corporations, other business entities, unions, and professional associations to donate to political party headquarters building funds. (Those givers are treated like corporations under current law in being prohibited to make political contributions.) The PCS would more or less codify the State Board's ruling on the matter. Parties would be strictly limited in how they could spend the money in the fund. They could use it only to purchase, construct, renovate, or pay a mortgage on a headquarters building. They could also use it to repay donor if the building were not purchased, etc. They could NOT use the money to pay building rent or utilities. Effective when the bill becomes law.*** *(pp. 19-20)*

10. Candidate's Signature on Campaign Reports. A statute, unchanged since 1974, says that every campaign finance report must be signed under oath by the treasurer of the campaign as being true and correct. If the treasurer was appointed by a candidate or by a candidate's principal campaign committee, the report must be "certified as true and correct to the best of his knowledge" by the candidate. Although that language seems to call for a candidate's signature, the practice of the State Board of Elections has been to provide for a candidate's signature only on the form for an organization statement and the appointment of treasurer. The State Board's basic quarterly reporting form for contributions and expenditures has not had a space a for candidate to sign. As the State Board was reviewing its forms recently in preparation for redesign, it determined that to comply with the law it must include a space for candidate to sign. The State Board staff was concerned that legislators should be made aware that enforcing the old law would result in this change in practice. They wanted legislators to have the opportunity to review the law and make the policy decision of whether the law should be changed or enforced. ***The PCS would change the statute to conform to traditional practice. It would require a candidate's signature only on the organization statement and the appointment of treasurer, not on every report. Effective when it becomes law.*** *(pp. 20-21)*

BACKGROUND Sections 1 through 3, minus some later refinements, were in the version of House Bill 1074 that passed the House before crossover. The rest of the PCS is new.

HOUSE BILL 885:
Self-Serve Storage/Late Payments

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 29, 1999
Version: Second Edition

Introduced by: Representative Leubke
Summary by: Brenda Carter & Tim Hovis
Staff Counsel

SUMMARY: ***House Bill 885 creates a new Article 35 in Chapter 66 of the General Statutes to require self serve storage rental agreements to provide in bold type and conspicuously placed the terms regarding the consequences of late payment. The bill limits late fees to $15.00 or 15% of the rental payment, whichever is less. Failure to comply with these provisions will enable the consumer to void the rental agreement.***

BILL ANALYSIS: House Bill 885 adds a new Article 35 to Chapter 66 of the General Statutes governing Self-Service Storage Rental Agreements.

The Article would require a rental agreement for the storage of personal property in a self-service storage facility to provide in bold type and conspicuously placed the terms regarding the imposition of late fees, the consequences of late payment, and the terms, if any, pertaining to the payment of court costs, attorneys fees, and any other costs.

The bill also prohibits late fees from exceeding $15.00 or 15% of the rental payment, whichever is less, and does not allow the imposition of such fees unless the rental payment is 5 days or more late. A late fee may only be imposed one time for each late payment and may not be deducted from subsequent rental payments causing the subsequent payment to be in default also.

Failure to comply with the bill's provisions will enable the consumer to void the rental agreement. Waiver by the consumer of his or her rights under the Article is void and unenforceable.

House Bill 885 becomes effective October 1, 1999 and applies to agreements entered into on or after that date.

H885-SMRV-002

HOUSE BILL 1074:
Election Law Changes-1.

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 24, 1999
Version: H1074-PCSRR-013

Introduced by: Representative Alexander
Summary by: William R. Gilkeson
Staff Attorney

SUMMARY: The Proposed Committee Substitute for House Bill 1074 would:

1. *Clarify that anyone who has accepted responsibility for someone else's signed voter registration form must turn it in to the board of elections within 5 days on pain of a Class 2 misdemeanor. (p.2)*
2. *Make it a misdemeanor to alter a voter registration record without written authorization from the voter. (p.2)*
3. *Allow county boards of elections to designate voting places outside a precinct. (pp.2-3)*
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BACKGROUND Sections 1 through 3, minus some later refinements, were in the version of House Bill 1074 that passed the House before crossover. The rest of the PCS is new.

Wednesday, June 23, 1999

NORTH CAROLINA
NCCC
CONSUMERS COUNCIL

North Carolina Consumers Council, Inc.
Post Office Box 3401
Chapel Hill, NC 27515-3401

www.rtpnet.org/~nccc

New Address (May 1999):
P.O. Box 10214
RALEIGH NC 27605-0214

Senator Brad Miller
621 LOB
Raleigh NC

Dear Senator Miller:

House Bill 885: Self-Serve Storage/Late Payments.

We write this letter in support of the above bill, which is to be considered in a committee you chair.

North Carolina Consumers Council, Inc. believes that **consumers in a free market economy deserve full information about the business practices of firms with which they deal as regards the details and implications of contracts with such firms**. This clearly includes the nature and conditions of payments and fees or penalties associated with tardy payment of rents for self-serve storage units. While such terms may be standard and well known to each business person, they are not necessarily part of the "conventional wisdom" of consumers.

Thus, when specific legislation is needed for this purpose, as it apparently is in the case of HB 885, we endorse the passage of such legislation.

Sincerely yours,

Michael v. E. Rulison

Michael v.E. Rulison, Ph.D., President
dn4nccc@mindpring.com

STATE BOARD OF ELECTIONS

133 Fayetteville Street Mall
Suite 100
Raleigh, North Carolina 27601

GARY O. BARTLETT
Executive Secretary-Director

Mailing Address:
P.O. BOX 2169
RALEIGH, NC 27602
(919) 733-7173
FAX (919) 715-0135

June 29, 1999

MEMORANDUM

To: Senator Brad Miller
Representative Martha Alexander

From: Gary O. Bartlett *Gary O. Bartlett*

Subject: Municipal Boards of Elections

Listed below is a summary of the State Board of Elections' considerations in the unanimous recommendation to abolish municipal boards of elections. As late as yesterday, the State Board received a call from a clerk in a municipality asking for the dates of this year's filing period. Filing for municipal office opens at noon Friday, July 2nd and closes at noon Friday, August 6th. The question raises concerns about the knowledge of and the availability of notice of candidacy forms, Candidate Statement of Organization and/or organizational form or threshold statement.

Currently, municipalities are permitted to establish their own board of elections and conduct their own elections. To ensure uniformity in the administration of the elections process, county boards of elections should be the administrators of all elections. County boards of elections members and staff tend to have more experience in conducting elections and are required to be educated in state and federal law and general election administration through the state certification program. Additionally, conduct of municipal elections by the state-appointed county boards would resolve any real or perceived conflict of interest that may surface when a governing body appoints the members of a board of elections responsible for its own election.

- ✓ Municipal boards of elections are not the official keepers of the voter registration records. The General Statutes assign that responsibility to the county board of elections.
- ✓ Municipal boards of elections are prohibited from conducting absentee voting without special legislation from the General Assembly.
- ✓ Municipal boards of elections were previously exempted from campaign reporting requirements, therefore, they have no experience in receiving and auditing campaign finance reports or notifying candidates of the reporting schedule. Public viewing areas for reports are generally nonexistent.
- ✓ Municipal boards of elections do not have a professional with election law expertise on staff. It is not uncommon for outdated election laws to be utilized in the conduct of a municipal election. Municipal boards of elections request information from county boards of elections and the State Board of Elections regarding the most basic election laws.
- ✓ Municipal boards of elections appointments are not known to the State Board of Elections. There is not a statutory requirement that the municipality notify anyone of the appointment of the members therefore notification of changes in law or training schedules cannot be directed to board members.
- ✓ Municipal board of elections members rarely attend State Board of Elections training seminars or other training sessions. (Generally not more than six or eight members out of approximately 180 – 200 members and supervisors attend State Board training.)
- ✓ Appeals from protests of election irregularities are usually emotional and divisive to the community.

Municipalities with Municipal Boards of Elections

County	City or Town
Alexander	Taylorsville
Allegheny	Sparta
Anson	Wadesboro Peachland Polkton Ansonville Lilesville Morven McFarlan
Bertie	Askewville
Burke	Morganton
Caldwell	Granite Falls
Caldwell/Burke	Rhodiss
Columbus	Cerro Gordo Brunswick
Craven	Cove City Vanceboro Dover
Cumberland	Falcon Stedman Godwin Wade
Haywood	Canton
Hertford	Winton Murfreesboro Harrellsville Como Cofield

Iredell	Love Valley Mooresville Harmony
Madison	Mars Hill Marshall Hot Springs
McDowell	Old Fort
Mitchell	Bakersville
Pamlico	Mesic Minnesott Beach Stonewall Vandemere Arapahoe
Pender	St. Helena Watha Atkinson
Polk	Columbus Saluda Tryon
Richmond	Norman Hoffman
Sampson	Garland
Swain	Bryson City
Warren	Warrenton Norlina Macon
Washington	Creswell Roper
Yancey	Burnsville

VISITOR REGISTRATION SHEET

J-II — 6-29-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Phelps	NCLM
ELLIS HANKINS	NCLM
Zack B. Lamb	SBoE
Johnnie McLean	" "
Fields Young	Fields Young Inc.
Margaret Young	Fields Young Inc
[illegible] Pallas	Virginia & Carolina
Michael Kidd	SSA
Milton Riley	Community Self Storage
Barry Hayes	Town of Granite Falls
W. Steve Simmons	Town of Granite Falls
Linda Story	Town of Granite Falls
Chris City	ACLU
Michael Rubison	NC Consumers Council, Inc
Stan B. Sellers	City of Morganton, N.C.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kurt Regensburger	Security Self Storage Inc
C Porter	Bone & Associates
Jim Blackburn	COUNTIES

SENATE JUDICIARY II COMMITTEE

JULY 6, 1999

ROOM 1124

HB 160	Increase Child Abuse Penalty	Representative Goodwin
HB 604	Clarify Atty-In-Fact Gifts	Representative Thomas
HB 885	Self-Serve Storage/Late Payments	Representative Leubke
HB 979	Modify Rights of Decedent's Spouse	Representative Baddour
HB 1074	Election Law Changes – 1	Representative Alexander

Adjournment

SENATE JUDICIARY II COMMITTEE

JULY 6, 1999

MINUTES

The Senate Judiciary II Committee met on July 6, 1999 at 9:00 a.m. in room 1124 of the Legislative Building. Fifteen members were present, including Senator Brad Miller, who presided.

Senator Miller called the meeting to order to continue the discussion of HB 1074, Election Law Changes – 1. Senator Moore moved to amend the bill and called on Bill Gilkeson, NC General Assembly Research Division, to explain the amendment. Mr. Gilkeson explained that the amendment leaves in place the statute allowing city councils to conduct their own elections and to appoint municipal boards of elections. Johnnie McLean, with the NC State Board of Elections, was recognized to explain voting procedures by the State Board of Elections in regards to violations committed by County Boards of Elections. Senator Moore withdrew his amendment and submitted a substitute amendment changing the voting requirement for the State Board of Elections from a unanimous vote to a vote of at least four members of the Board. (page 2, line 30, and page 3, line 11) The motion carried unanimously.

Senator Shaw moved to amend the bill on page 2, lines 6 through 19, and subsequently moved to amend the amendment by deleting the following on lines 11 and 12: "no later than five days after the delegatee gained possession of that form or"; and to delete on lines 18 and 19: "no later than five days after the acceptance of the delegation or." The motion carried unanimously.

Senator Odom moved to amend the bill on page 20, by deleting lines 7-11 in their entirety, and on page 20, lines 12 and 22, by deleting "(6)" and substituting "(5)." The motion carried unanimously.

Senator Shaw moved to engross the amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to committee substitute #2, but favorable as to Senate committee substitute bill.**

HB 604, Clarify Atty-In-Fact Gifts, was explained by Representative Thomas and Senator Hagan. Bill Scoggins, NC State Bar Association, further clarified the bill. Senator Miller displaced the bill.

HB 160, Increase Child Abuse Penalty, was explained by Representative Goodwin and Senator Hagan. Senator Hagan moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Moore moved a substitute motion

to adopt proposed committee substitute # 004 instead of proposed committee substitute #005. The motion carried. Senator Moore moved to give the proposed committee substitute a favorable report. The motion carried. **Unfavorable as to committee substitute #1, but favorable as to Senate committee substitute bill.**

HB 885, Self-Serve Storage/Late Payments, was explained by Representative Leubke. Senator Ballance moved to adopt a proposed committee substitute. The motion carried unanimously.

Senator Martin moved to amend the bill on line 13, to increase the font size from 10 points to 14 points. The motion carried unanimously.

Senator Dalton moved to amend the bill on page 2, deleting lines 21 and 22 and renumbering the subsection beginning on line 23. The motion was displaced.

Michael Rulison, NC Consumers Council, spoke in support of the bill.

Senator Miller displaced the bill until the next meeting.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Wednesday, July 07, 1999

SENATOR BRAD MILLER,
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)**1074** Election Law Changes -- 1.

Draft Number:	PCS7272
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 160
Committee Substitute Favorable 3/15/99
Third Edition Engrossed 3/22/99

Short Title: Increase Child Abuse Penalty. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CHILD ABUSE THAT RESULTS IN EXTREME DEBILITATING INJURY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E felony.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts or intentionally permits any extreme debilitating injury upon or to the child or who intentionally commits or intentionally permits an assault upon the child which results in any extreme debilitating injury to

the child is guilty of a Class C felony. For the purpose of this section, "extreme debilitating injury" means injury that creates or causes one or more of the following:

(1) A substantial risk of death;
(2) Serious permanent disfigurement;
(3) Coma;
(4) A permanent or protracted condition resulting in extreme pain;
(5) Permanent or protracted loss or impairment of the function of any bodily member or organ or any mental or emotional function; or
(6) Prolonged hospitalization.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 604

Short Title: Clarify Atty-In-Fact Gifts. (Public)

Sponsors: Representative Thomas.

Referred to: Judiciary IV.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by

the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

Section 2. G.S. 32A-2(15) reads as rewritten:

"(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of lifetime gifts."

Section 3. Section 1 of this act becomes effective July 1, 1999, and applies to all powers of attorney executed on or after October 1, 1995. Section 2 of this act becomes effective October 1, 1999, and applies to all powers of attorney executed on or after that date. Section 3 of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 885
Committee Substitute Favorable 4/21/99

Short Title: Self-Serve Storage/Late Payments. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Self-Service Storage Rental Agreements.

"**§ 66-280. Definitions.**

The definitions set forth in Article 4 of Chapter 44A of the General Statutes apply to this Article.

"**§ 66-281. Contract requirements.**

The rental agreement for the storage of personal property in a self-service storage facility shall state, in bold type of a minimum size of 10 points and conspicuously placed, the terms regarding the imposition of late fees, the terms regarding any consequences of a late payment, and the terms, if any, that pertain to the payment of court costs, attorneys' fees, and any other costs associated with the payment of late fees or with judgment against the consumer for late rental payments or late fees.

"**§ 66-282. Late fees.**

(a) In all rental agreements in which a definite time for the payment of the rent is fixed, the late fee shall not exceed fifteen dollars ($15.00) or fifteen percent (15%) of

the rental payment, whichever is less, and shall not be imposed by the self-service storage business until the rental payment is five days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

"**§ 66-283. Violations.**

(a) If a self-service storage business fails to comply with the requirements of this Article or fails to comply with the terms of the contract or any obligation arising from this Article, then, upon written notice to the self-service storage business, the consumer may void the contract.

(b) Any waiver by a consumer of any of the provisions of this Article shall be deemed void and unenforceable by a self-service storage business.

(c) The remedies provided in this section are in addition to any other remedies provided for by law or in equity."

Section 2. This act becomes effective October 1, 1999, and applies to rental agreements for self-service storage entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 979
Committee Substitute Favorable 4/20/99

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction.

"**§ 30-3.2. Definitions.**

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

(d) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code; and

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"§ 30-3.4. Procedure for determining the elective share.

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the surviving spouse, personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation

shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the

personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"**§ 30-3.5. Recovery of assets by personal representative.**

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any

Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds

that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated

and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall

promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

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

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"**§ 31C-3. Disposition of community property upon death.**

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an

elective share under Article 1A of Chapter 30 of the General Statutes.

e. Resolving questions of domicile and residence of a decedent.

f. Handling proceedings involving year's allowances of widows and children.

g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.

h. Drafting instruments releasing deeds of trust.

i. Drafting assignments of rent.

j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.

k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:

1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

3. Handling petitions to the tax court.

l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.

m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters or administration.

2. Abstracting or passing upon title to property.

3. Handling litigation relating to claims by or against the estate or trust.

4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act becomes effective October 1, 1999, and applies to estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1074
Committee Substitute Reported Without Prejudice 4/21/99
Committee Substitute #2 Favorable 4/23/99

Short Title: Election Law Changes -- 1. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY AND MAKE VIOLATION A CLASS 2 MISDEMEANOR; TO ESTABLISH THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION; AND TO ALLOW COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

The General Assembly of North Carolina enacts:

-- REQUIRING THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY.

Section 1.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-82.5A. Duty to deliver form executed by another to county board of elections.**

Any person who has been delegated the responsibility of submitting a signed voter registration application form pursuant to G.S. 163-82.6(a) shall deliver that form to the county board of elections not later than five calendar days after gaining possession of the signed form. No person shall sell or attempt to sell completed voter registration forms or to condition their delivery on payment. A violation of this section is a Class 2 misdemeanor."

Section 1.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ESTABLISHING THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION.

Section 2.(a) G.S. 163-274 is amended by adding a new subdivision to read:

"(1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without the written authorization of the applicant or voter;".

Section 2.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ALLOWING COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

Section 3.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-130A. Out-of-precinct voting places.**

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the State Board of Elections. The county board shall submit its proposal in writing to the State Board. Approval by the State Board of Elections of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;

(2) Adequate notification and publicity is provided to notify voters in the precinct of the new polling location;

(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation; and

(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters.

Any approval granted by the State Board of Elections for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the State Board of Elections annually to determine whether it is still the only available alternative for that precinct."

Section 3.(b) This section is effective when this act becomes law and expires January 1, 2002.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H160-CSRV-005
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 160
Committee Substitute Favorable 3/15/99
Third Edition Engrossed 3/22/99
THIS IS A DRAFT 6-JUL-99 08:50:35
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Increase Child Abuse Penalty. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CHILD ABUSE THAT RESULTS IN SERIOUS BODILY INJURY OR PERMANENT LOSS OR IMPAIRMENT OF ANY MENTAL OR EMOTIONAL FUNCTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E ~~felony.~~ felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class C felony.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H885-PCSSD-002.1
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL NO. 885
THIS IS A DRAFT 2-JUL-99 11:43:08
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Self-Serve Storage/Late Payments. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Self-Service Storage Rental Contracts.

"§ 66-280. Contract requirements.

A rental contract for the storage of personal property in a self-service storage business shall state, in bold type of a minimum size of 10 points and conspicuously placed, the terms regarding the imposition of late fees, the terms regarding any consequences of a late payment, and the terms, if any, that pertain to the payment of court costs, attorneys' fees, and any other costs associated with the payment of late fees or with judgment against the consumer for late rental payments or late fees.

"§ 66-281. Late fees.

(a) In all rental contracts in which a definite time for the payment of the rent is fixed, the late fee for each rental unit shall not exceed fifteen dollars ($15.00) or fifteen percent (15%) of the rental payment, whichever is less, and shall not be imposed by the self-service storage business until the rental payment for that rental unit is five days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

"§ 66-282. Violations.

(a) If a self-service storage business fails to comply with the requirements of G.S.66-281, a consumer who has entered into a rental contract with a self-service storage business may upon mailing written notice to the self-service storage business avoid the imposition of the following fees or charges:

(1) Late fees.

(2) Attorney's fees.

(3) Court costs.

(b) Any waiver of any of the provisions of this Article shall be deemed void and unenforceable.

(c) The remedies provided in this section are in addition to any other remedies provided for by law or in equity."

Section 2. This act becomes effective October 1, 1999, and applies to rental contracts for self-service storage entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 885 PCCSD-001.1 DATE _____

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

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 21-23

by deleting lines 21 and 22 and renumbering the subsection beginning on line 23.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCSRR-013

H. B. No. 1074 DATE 7-6-99

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Odom

moves to amend the bill on page 20, line 7-11

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety, and on page 20, lines 12 & 22 by deleting "(6)" and substituting "(5)"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-002

Date_____,1999

Comm. Sub. [YES]
Amends Title []
H1074-PCSRR-013

Senator Shaw

moves to amend the bill on page 2, lines 6 through 19, by deleting the language on those lines and substituting the following:

Section 1.(a) G.S. 163-82.6(a) reads as rewritten:

'(a) How the Form May Be Submitted. -- The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections no later than five days after the delegatee gained possession of that form. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and fail to make a good faith effort to deliver the form so that it is received by the county board of elections no later than five days after the acceptance of the delegation. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.'

Section 1.(b) G.S. 163-82.6(c) reads as rewritten:

'(c) Registration Deadlines for an Election. -- In order to be valid for an election, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-002

(2) If submitted in person (by the applicant or another person), must be received by the county board of elections by 5:00 p.m. on the twenty-fifth day before the election,

(3) If submitted by a person to whom the applicant has delegated the task of submitting the form pursuant to subsection (a) of this section, must have been signed by the applicant and given to the delegatee at least 25 days before the election,

except as provided in subsection (d) of this section.'

Section 1.(c) This section becomes effective January 1, 2000, and applies to all offenses occurring and all applications signed after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-007

Date_____,1999

Comm. Sub. [YES]
Amends Title []
H1074-PCSRR-013

Senator

moves to amend the bill on page 1, lines 11 and 12, by deleting the following language on those lines:

"TO ABOLISH MUNICIPAL BOARDS OF ELECTIONS, REQUIRING THAT ALL ELECTIONS BE CONDUCTED BY COUNTY BOARDS OF ELECTIONS;" and

on page 5, line 25, through page 18, line 13, by deleting all the language on those lines; and

by renumbering subsequent sections of the bill accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-014

Date_____,1999

Comm. Sub. [YES]
Amends Title [YES]
H1074-PCSRR-013

Senator

moves to amend the bill on page 1, line 11,
by inserting after the semicolon the following: "TO PROVIDE FOR SUPERVISION, ASSISTANCE, AND TRAINING BY THE STATE BOARD OF ELECTIONS FOR MUNICIPAL BOARDS OF ELECTIONS AND TO PROVIDE FOR REMEDIES;"; and

on page 5, line 24,
by inserting after that line the following:

Section 6.(a) G.S. 163-304 reads as rewritten:

"**§163-304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to ~~advise.~~ advise; emergency and ongoing administration by county board.**

(a) Authority and Duty of State Board. -- The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.

The city council shall provide written notification to the State Board of Elections of the appointment of each member of its municipal board of elections within five days after the appointment. The municipal board of elections and the city council shall provide such other information about the municipal board of elections as the State Board may require. Members of the municipal board of elections and municipal elections officials shall participate in training provided by the State Board pursuant to G.S. 163-82.24. The State

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-014 Page 2 of __

Board shall provide the same training, materials, and assistance to municipal boards of elections that it provides to county boards of elections.

The county and municipal boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections.

(b) Emergency Administration If Municipal Board Is Not Appointed. -- If a city council in a city that has elected pursuant to G.S. 163-285 to conduct its own elections has not appointed a municipal board of elections and reported the appointments to the Executive Secretary-Director by March 1 in the year in which the city election is to occur, the Executive Secretary-Director shall notify the city council that, unless a municipal board of elections is appointed and the Executive Secretary-Director notified of its appointment by April 1 of that year, the county board of elections shall be ordered to conduct that city's elections that year on an emergency basis. If the city council does not so appoint and so notify by April 1, the Executive Secretary-Director shall order the county board of elections to conduct the city's elections that year on an emergency basis.

(c) Emergency Administration Due to Serious Violations. -- If a city council or municipal board of elections has committed violations of the applicable portions of this Chapter prior to a city election and those violations are of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board of elections to conduct that election with competence and fairness, the Executive Secretary-Director of the State Board, with the approval of ~~all the~~ members of the State Board, may order the county board of elections to conduct the remainder of that election on an emergency basis. Before an order is made under this subsection, the city council and municipal board of elections shall be given an opportunity to be heard by the State Board.

(d) Ongoing County Administration. -- The State Board of Elections may designate the county board of elections as the ongoing agency to conduct a city's elections if all the following conditions are met:

(1) In more than one election conducted by that city either (i) the city's elections have been administered on an emergency basis pursuant to subsections (b) or

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-014 Page 3 of __

(c) of this section or (ii) a new election has been ordered because of irregularities in the city's administration of the election.

(2) The State Board finds that the interest of the residents of the city in fair and competent administration of elections requires that the city not conduct its own elections.

(3) The city council and municipal board of elections are given an opportunity to be heard before the State Board.

(4) The State Board by ~~unanimous~~ vote of ~~all~~ four of its members designates the county board of elections as the ongoing agency to conduct that city's elections.

The city council may not elect to conduct its own elections under G.S. 163-285 until every ~~the~~ member of the city council has been elected in a election conducted by the county board of elections after the State Board's designation.

(e) Reimbursement. -- If the county board of elections administers a city's elections pursuant to subsections (b), (c), or (d) of this section, the city shall reimburse the county board of elections in the manner set forth in G.S. 163-285."

Section 6.(b) This section becomes effective January 1, 2000, except that every city council shall provide to the State Board of Elections by August 1, 1999, a list of the members and supervisor of the municipal board of elections in its municipality. That list shall indicate who is the chair and shall provide addresses and telephone numbers for the members and supervisors."; and

by renumbering any subsequent sections of the bill accordingly.

AS REVISED BY STAFF.
Ken Moore 2/6

SIGNED Ken Moore 2/6/99
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

H1074-ARR-002.1

Date_____,1999

Comm. Sub. [YES]
Amends Title []
H1074-PCSRR-013

Senator

moves to amend the bill on page 2, lines 6 through 19, by deleting the language on those lines and substituting the following:

Section 1.(a) G.S. 163-82.6(a) reads as rewritten:

'(a) How the Form May Be Submitted. -- The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections ~~no later than five days after the delegatee gained possession of that form or~~ in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election, whichever time occurs first. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections ~~no later than five days after the acceptance of the delegation or~~ in time to satisfy the registration deadline in subsection (c) of this section for the next election, whichever time occurs first. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.'

Section 1.(b) G.S. 163-82.6(c) reads as rewritten:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1074

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

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"(c) Registration Deadlines for an Election. -- In order to be valid for an election, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in ~~person (by the applicant or another person),~~ person, must be received by the county board of elections by 5:00 p.m. on the twenty-fifth day before the election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the election,

except as provided in subsection (d) of this section."

Section 1.(c) This section becomes effective January 1, 2000, and applies to all offenses occurring and all applications signed on and after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
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AMENDMENT NO._____
(to be filled in by
Principal Clerk)

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Date_____,1999

Comm. Sub. [YES]
Amends Title [YES]
H1074-PCSRR-013

Senator

moves to amend the bill on page 1, line 16,
by inserting after the semicolon the following:
"TO CLARIFY THAT POLITICAL PARTY EXECUTIVE COMMITTEES MAY RECEIVE CERTAIN CONTRIBUTIONS WHILE THE GENERAL ASSEMBLY IS IN REGULAR SESSION;"; and

on page 20, line 29,
by inserting after that line the following:
"CLARIFYING THAT POLITICAL PARTY EXECUTIVE COMMITTEES MAY RECEIVE CERTAIN CONTRIBUTIONS WHILE THE GENERAL ASSEMBLY IS IN REGULAR SESSION.

Section 9.1.(a) G.S. 163-278.13B(a)(1) reads as rewritten:

'(2) "Limited contributee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly, or a political committee the principal purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly.'

Section 9.1.(b) G.S. 163-278.13B(d) reads as rewritten:

"(d) ~~Exception.~~ Exceptions. -- The provisions of this section do not apply with regard to a limited contributee during the three weeks prior to the day of a second primary if that limited contributee is a candidate who will be on the ballot in that second primary. The provisions of this section do not apply to a contribution made to the executive committee of a political party unless that executive committee accepts the contribution to go into a separate segregated fund the principal purpose of which is to

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(to be filled in by
Principal Clerk)

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support a candidate or candidates for Council of State or General Assembly.'

Section 9.1.(c) This section becomes effective when this act becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1074
Committee Substitute Reported Without Prejudice 4/21/99
Committee Substitute #2 Favorable 4/23/99
Proposed Senate Committee Substitute H1074-PCS7272-RR

Short Title: Election Law Changes -- 1. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY AND TO MAKE VIOLATION A CLASS 2 MISDEMEANOR; TO ESTABLISH THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION; TO ALLOW COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT; TO CREATE A PILOT PROGRAM TO ALLOW THE TEMPORARY USE OF TWO VOTING PLACES FOR THE SAME PRECINCT; TO ALLOW COUNTIES TO REQUIRE THAT ADEQUATE PARKING BE PROVIDED AT VOTING PLACES THAT ARE PUBLIC BUILDINGS; TO PROVIDE FOR SUPERVISION, ASSISTANCE, AND TRAINING BY THE STATE BOARD OF ELECTIONS FOR MUNICIPAL BOARDS OF ELECTIONS AND TO PROVIDE FOR REMEDIES; TO INCREASE MINIMUM COMPENSATION FOR COUNTY ELECTIONS DIRECTORS; TO LOWER THE THRESHOLD FOR A FULL-TIME ELECTIONS OFFICE; TO PROVIDE FOR CERTAIN DONATIONS TO POLITICAL PARTY HEADQUARTERS BUILDING FUNDS; AND TO CHANGE THE STATUTE CONCERNING A CANDIDATE'S SIGNATURE ON A FINANCE REPORT TO REFLECT TRADITIONAL PRACTICE.

The General Assembly of North Carolina enacts:

-- REQUIRING THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY.

Section 1.(a) G.S. 163-82.6(a) reads as rewritten:

"(a) How the Form May Be Submitted. -- The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment."

Section 1.(b) G.S. 163-82.6(c) reads as rewritten:

"(c) Registration Deadlines for an Election. -- In order to be valid for an election, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in ~~person (by the applicant or another person),~~ person, must be received by the county board of elections by 5:00 p.m. on the twenty-fifth day before the election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the election,

except as provided in subsection (d) of this section."

Section 1.(c) This section becomes effective January 1, 2000, and applies to all offenses occurring and all applications signed on and after that date.

-- ESTABLISHING THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION.

Section 2.(a) G.S. 163-274 is amended by adding a new subdivision to read:

"(1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration

record without either the written authorization of the applicant or voter or the written authorization of the State Board of Elections;".

Section 2.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ALLOWING COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

Section 3.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-130A. Out-of-precinct voting places.**

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the Executive Secretary-Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Secretary-Director. Approval by the Executive Secretary-Director of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;

(2) Adequate notification and publicity are provided to notify voters in the precinct of the new polling location;

(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation;

(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters; and

(5) The proposal provides adequately for security against fraud.

Any approval granted by the Executive Secretary-Director for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the Executive Secretary-Director annually to determine whether it is still the only available alternative for that precinct."

Section 3.(b) This section is effective when this act becomes law and expires January 1, 2002.

-- CREATING A PILOT PROGRAM TO ALLOW THE TEMPORARY USE OF TWO VOTING PLACES FOR THE SAME PRECINCT.

Section 4.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-130B. Temporary use of two voting places for certain precincts; pilot program.**

A county board of elections, by unanimous vote of all its members, may propose to designate two voting places to be used temporarily for the same precinct. The temporary designation of a voting place shall continue only for the term of office of the county board of elections making the designation. For any precinct that is temporarily given two voting places, the county board shall assign every voter to one or the other of those voting places.

The county board's proposal is subject to approval by the Executive Secretary-Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Secretary-Director. The Executive Secretary-Director may approve a proposal under this section in not more than three counties, to be a pilot program. The Executive Secretary-Director shall approve that proposal only if it finds all of the following:

(1) That the precinct has more registered voters than can adequately be accommodated by any single potential voting place available for the precinct.

(2) That no boundary line that complies with Article 12A of this Chapter can be identified that adequately divides the precinct.

(3) That the county board can account for, by street address number, the location of every registered voter in the precinct and fix that voter's residence with certainty on a map.

(4) That no more than three other precincts in the same county will have two voting places.

(5) That both voting places for the precinct would have adequate facilities for the elderly and disabled.

(6) That the proposal provides adequately for security against fraud.

(7) That the proposal does not unfairly favor or disfavor voters with regard to race or party affiliation.

The county board shall designate a full set of precinct officials, in the manner set forth in Article 5 of this Chapter, for each voting place designated for the precinct."

Section 4.(b) This section becomes effective January 2, 2000, and expires January 2, 2002. The Executive Secretary-Director of the State Board of Elections shall study the operation and consequences of the pilot program created by this section and report findings and recommendations to the 2001 General Assembly by February 1, 2001.

-- ALLOWING COUNTIES TO REQUIRE THAT ADEQUATE PARKING BE PROVIDED AT VOTING PLACES THAT ARE PUBLIC BUILDINGS.

Section 5.(a) G.S. 163-129 reads as rewritten:

"**§ 163-129. Structure at voting place; marking off limits of voting place.**

At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues provided, however, that this section shall not be construed to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

If a county board of elections requires that a tax-supported building be used as a voting place, that county board of elections may require that those in control of that building provide parking that is adequate for voters at the precinct, as determined by the county board of elections.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the chief judge and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place."

Section 5.(b) This section becomes effective January 1, 2000.

-- PROVIDING FOR SUPERVISION, ASSISTANCE, AND TRAINING BY THE STATE BOARD OF ELECTIONS FOR MUNICIPAL BOARDS OF ELECTIONS AND PROVIDING FOR REMEDIES.

Section 6.(a) G.S. 163-304 reads as rewritten:

"**§ 163-304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to ~~advise.~~ advise; emergency and ongoing administration by county board.**

(a) Authority and Duty of State Board. -- The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.

The city council shall provide written notification to the State Board of Elections of the appointment of each member of its municipal board of elections within five days after the appointment. The municipal board of elections and the city council shall provide such other information about the municipal board of elections as the State Board may require. Members of the municipal board of elections and municipal elections officials shall participate in training provided by the State Board pursuant to G.S. 163-82.24. The State Board shall provide the same training, materials, and assistance to municipal boards of elections that it provides to county boards of elections.

The county and municipal boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections.

(b) Emergency Administration if Municipal Board Is Not Appointed. -- If a city council in a city that has elected pursuant to G.S. 163-285 to conduct its own elections has not appointed a municipal board of elections and reported the appointments to the Executive Secretary-Director by March 1 in the year in which the city election is to occur, the Executive Secretary-Director shall notify the city council that, unless a municipal board of elections is appointed and the Executive

Secretary-Director notified of its appointment by April 1 of that year, the county board of elections shall be ordered to conduct that city's elections that year on an emergency basis. If the city council does not so appoint and so notify by April 1, the Executive Secretary-Director shall order the county board of elections to conduct the city's elections that year on an emergency basis.

(c) Emergency Administration Due to Serious Violations. -- If a city council or municipal board of elections has committed violations of the applicable portions of this Chapter prior to a city election and those violations are of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board of elections to conduct that election with competence and fairness, the Executive Secretary-Director of the State Board, with the approval of at least four members of the State Board, may order the county board of elections to conduct the remainder of that election on an emergency basis. Before an order is made under this subsection, the city council and municipal board of elections shall be given an opportunity to be heard by the State Board.

(d) Ongoing County Administration. -- The State Board of Elections may designate the county board of elections as the ongoing agency to conduct a city's elections if all the following conditions are met:

(1) In more than one election conducted by that city either (i) the city's elections have been administered on an emergency basis pursuant to subsection (b) or (c) of this section or (ii) a new election has been ordered because of irregularities in the city's administration of the election.

(2) The State Board finds that the interest of the residents of the city in fair and competent administration of elections requires that the city not conduct its own elections.

(3) The city council and municipal board of elections are given an opportunity to be heard before the State Board.

(4) The State Board by a vote of at least four of its members designates the county board of elections as the ongoing agency to conduct that city's elections.

The city council may not elect to conduct its own elections under G.S. 163-285 until every member of the city council has been elected in a election conducted by the county board of elections after the State Board's designation.

(e) Reimbursement. -- If the county board of elections administers a city's elections pursuant to subsection (b), (c), or (d) of this section, the city shall reimburse the county board of elections in the manner set forth in G.S. 163-285."

Section 6.(b) This section becomes effective January 1, 2000, except that every city council shall provide to the State Board of Elections by August 1, 1999, a list of the members and supervisor of the municipal board of elections in its municipality. That list shall indicate who is the chair and shall provide addresses and telephone numbers for the members and supervisors.

-- INCREASING MINIMUM COMPENSATION FOR COUNTY ELECTIONS DIRECTORS.

Section 7.(a) G.S. 163-35(c) reads as rewritten:

"(c) Compensation of Directors of Elections. -- Compensation paid to directors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of County Commissioners and shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters.

~~Beginning July 1, 1991, in any county operating under modified registration PLAN A, B, C, or D, the~~ The Board of County Commissioners in each county, whether or not the county maintains full-time or modified full-time registration, shall compensate the director of elections at a minimum rate of ~~eight~~ twelve dollars ~~($8.00)~~ ($12.00) per hour for hours worked in attendance to his or her duties as prescribed by law, including rules and regulations adopted by the State Board of Elections. In addition, the county shall pay to the director an hourly wage of at least ~~eight~~ twelve dollars ~~($8.00)~~ ($12.00) per hour for all hours worked in excess of those prescribed in rules and regulations adopted by the State Board of Elections, when such additional hours have been approved by the county board of elections and such approval has been recorded in the official minutes of the county board of elections.

In addition to the compensation provided for herein, the director of elections to the county board of elections shall be granted the same vacation leave, sick leave, and petty leave as granted to all other county employees. It shall also be the responsibility of the Board of County Commissioners to appropriate sufficient funds to compensate a replacement for the director of elections when authorized leave is taken."

Section 7.(b) This section becomes effective July 1, 2000.

-- LOWERING THE THRESHOLD FOR A FULL-TIME COUNTY ELECTIONS OFFICE.

Section 8.(a) G.S. 163-36 reads as rewritten:

"**§ 163-36. Modified full-time offices.**

The State Board of Elections shall promulgate rules permitting counties that have fewer than ~~14,001~~ 6,501 registered voters to operate a modified full-time elections office to the extent that the operation of a full-time office is not necessary. Nothing in this section shall preclude any county from keeping an elections office open at hours consistent with the hours observed by other county offices."

Section 8.(b) This section becomes effective July 1, 2000.

-- PROVIDING FOR GIFTS TO POLITICAL PARTY HEADQUARTERS BUILDING FUNDS.

Section 9.(a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.19B. Political party headquarters building funds.**

Notwithstanding the provisions of G.S. 163-278.19, a person prohibited by that section from making a contribution may donate to political parties and political parties may accept from such a person money and other things of value donated to a

political party headquarters building fund. Donations to the political party headquarters building fund shall be subject to all the following rules:

(1) The donations solicited and accepted are designated to the political party headquarters building fund.

(2) Potential donors to that fund are advised that all donations will be exclusively for the political party headquarters building fund.

(3) The political party establishes a separate segregated bank account into which shall be deposited only donations for the political party headquarters building fund from persons prohibited by G.S. 163-278.19 from making contributions.

(4) The donations deposited in the separate segregated bank account for the political party headquarters building fund will be spent only to purchase a headquarters building, to construct a headquarters building, to renovate a headquarters building, to pay a mortgage on a headquarters building, or to repay donors if a headquarters building is not purchased, constructed, or renovated. Donations deposited into that account shall not be used for headquarters rent, utilities, or equipment other than fixtures.

(5) The political party executive committee shall report donations to and spending by a political party headquarters building fund on every report required to be made by G.S. 163-278.9. If a committee is excused from making general campaign finance reports under G.S. 163-278.10A, that committee shall nonetheless report donations in any amount to and spending in any amount by the political party headquarters building fund at the times required for reports in G.S. 163-278.9.

If all the criteria set forth in subdivisions (1) through (5) of this section are complied with, then donations to and spending by a political party headquarters building fund do not constitute contributions or expenditures as defined in G.S. 163-278.6. If those criteria are complied with, then donations may be made to a political party headquarters building fund."

Section 9.(b) This section is effective when this act becomes law.

-- CHANGING THE STATUTE CONCERNING A CANDIDATE'S SIGNATURE ON A FINANCE REPORT TO REFLECT TRADITIONAL PRACTICE.

Section 10.(a) G.S. 163-278.32 reads as rewritten:

"**§ 163-278.32. Statements under oath.**

Any statement required to be filed under this Article shall be signed and certified as true and correct by the individual, media, candidate, treasurer or others required to file it, and shall be verified by the oath or affirmation of the individual, media, candidate, treasurer or others filing the statement, taken before any officer authorized to administer oaths; provided further that the candidate shall certify as true and correct to the best of his knowledge ~~each report~~ the organizational report and appointment of treasurer filed ~~by a treasurer appointed by him or by his~~ for the candidate or the candidate's principal campaign committee."

Section 10.(b) This section is effective when this act becomes law.

Section 11. This act is effective when it becomes law.

HOUSE BILL 604:
Clarify Atty-In-Fact Gifts

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representative Thomas
Date:	April 8, 1999	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 604 clarifies that the attorney-in-fact named in a short form power of attorney may make gifts in favor of himself or herself if such gifts are expressly authorized by the power of attorney. The bill also clarifies that gifts by the attorney-in-fact to the attorney-in-fact must be made in accordance with the principal's history of making or joining in the making of gifts.***

BACKGROUND: Article 1 of Chapter 32, *Statutory Short Form Power of Attorney*, provides a form to be used when creating a short form power of attorney and describes the various powers which may be conferred by the short form, including the power of the attorney-in-fact to make gifts. G.S. 32A-2(14) provides that an attorney-in-fact may make gifts to charities and to individuals other than the attorney-in-fact. This subsection specifically prohibits the attorney-in-fact from exercising this power in favor of himself or herself. However, G.S. 32A-2(15) specifically provides that an attorney-in-fact may make gifts to himself or herself. If both powers are included on the statutory short form by the principal, a conflict arises.

BILL ANALYSIS: Section 1 of House Bill 606 amends G.S. 32A-2(14) to clarify that, despite the prohibition contained in this subsection, the attorney-in-fact may make gifts in favor of himself or herself if specifically authorized by the power of attorney to do so pursuant to G.S. 32A-2(15).

Section 2 amends G.S. 32A-2(15) to clarify that gifts by the attorney-in-fact to the attorney-in-fact must be made in accordance with the principal's personal history of making or joining in the making of lifetime gifts. This language is consistent with the power of the attorney-in fact to make gifts to individuals and charities in G.S. 32A-2(14).

Section 1 of this act becomes effective July 1, 1999 and applies to all powers of attorneys executed on or after October 1, 1995. By making the language retroactive, this bill corrects any conflicts in existing short form powers of attorney. Section 2 becomes effective October 1, 1999 and applies to all powers of attorney executed on or after that date.

HOUSE BILL 885:
Self-Serve Storage/Late Payments

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representative Leubke
		Summary by:	Tim Hovis & Ed Rossi Committee Counsel
Date:	April 16, 1999		
Version:	H885-PCSSD-002.1		

SUMMARY: ***House Bill 885 creates a new Article 35 in Chapter 66 of the General Statutes that requires self serve storage rental contracts to provide in bold type and conspicuously placed the terms regarding the imposition of late fees. The bill limits late fees to $15.00 or 15% of the rental payment, whichever is less. If a self-storage business fails to comply with the bill's late fee provisions a consumer may avoid the imposition of late fees, attorney's fees, and court costs by mailing written notice to the business.***

BILL ANALYSIS: The proposed Senate committee substitute to House bill 885 adds a new Article 35 to Chapter 66 of the General Statutes governing Self-Service Storage Rental Agreements.

The Article would require a rental agreement for the storage of personal property in a self-service storage business to provide in bold type and conspicuously placed the terms regarding the imposition of late fees, the consequences of late payment, and the terms, if any, pertaining to the payment of court costs, attorneys fees, and any other costs.

The bill also prohibits late fees from exceeding $15.00 or 15% of the rental payment, whichever is less, and does not allow the imposition of such fees unless the rental payment is 5 days or more late. A late fee may only be imposed one time for each late payment and may not be deducted from subsequent rental payments causing the subsequent payment to be in default also.

If a self-storage business fails to comply with the bill's late fee provisions, a consumer may avoid late fees, attorney fees, and court costs by mailing written notice to the business. Any waiver of the proposed act's provisions would be void and unenforceable.

House Bill 885 becomes effective October 1, 1999, and applies to agreements entered into on or after that date.

HOUSE BILL 1074:
Election Law Changes-1.

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 24, 1999
Version: H1074-PCSRR-013

Introduced by: Representative Alexander
Summary by: William R. Gilkeson
Staff Attorney

SUMMARY: The Proposed Committee Substitute for House Bill 1074 would:

1. *Clarify that anyone who has accepted responsibility for someone else's signed voter registration form must turn it in to the board of elections within 5 days on pain of a Class 2 misdemeanor.* (p.2)
2. *Make it a misdemeanor to alter a voter registration record without written authorization from the voter.* (p.2)
3. *Allow county boards of elections to designate voting places outside a precinct.* (pp.2-3)
4. *Create a pilot program in up to 3 counties to allow those counties to temporarily use two voting places in the same precinct.* (pp. 3-4)
5. *Require county boards of elections to insist that public buildings chosen as voting places provide voters with adequate parking.* (pp.4-5)
6. *Abolish municipal boards of elections and provide that county boards conduct city elections in all municipalities.* (pp. 5-18)
7. *Increase the minimum compensation for county election directors from $8 per hour to $12 per hour.* (pp. 18-19)
8. *Lower the registered-voter threshold for a county to have a full-time board of election from 14,001 to 6,501.* (p. 19)
9. *Allow corporations and unions to make donations to a political party headquarters building fund.* (pp. 19-20)
10. *Change the existing statute concerning a candidate's signature on a campaign finance report to conform to what has been enforced: instead of signing every report, the candidate would sign only an organizational statement and the appointment of a treasurer.* (pp. 20-21)

CURRENT LAW and BILL ANALYSIS: The numbered paragraphs correspond to sections of the bill.

1. Misdemeanor: Failure to Deliver Registration Forms. Voter registration forms are self-executing. Unless the registration is conducted at a designated agency such as the DMV or ESC, the law places responsibility on the applicant to get the application to the county board of elections so the applicant can be registered for the next election. The law allows the applicant to delegate to another person the duty to get the application to the board, but it doesn't say what happens if the person to whom that duty is delegated doesn't follow through. There have been reports of people who have conducted voter registration drives discarding application rather than turning them in. There have also been reports of people offering to sell registration applications of a certain kind to candidates or political parties. ***The***

PCS states that if someone has accepted the job of delivering someone else's voter registration application form to the board of elections, that person has a legal duty to turn it in to the county board of elections within 5 calendar days. (That is the time an agency is given to deliver a form.) A violation of the duty would be a Class I felony. Effective October 1, 1999. *(p. 2)*

2. Misdemeanor: Altering Records Without Written Authorization. Changes in a voter's registration records, such as party affiliation, address, or name, must be made by the voter on a voter registration form. There have been reports of elections officials making changes based on such informal triggers as a phone conversation with the voter, a relayed request by a relative of the voter, etc. Although a Class I felony already exists for an election official knowingly to make a false or fraudulent entry on the registration books, and a Class 2 misdemeanor already exists for an election official to fail to perform any legal duty in the manner required by law, there is no specific crime for the offense of making a change to registration without written authorization. ***The PCS states specifically that it is a Class 2 misdemeanor for a member or employee of a board of elections to alter someone's voter registration records without written authorization from the voter or from the State Board of Elections. Effective October 1, 1999.*** *(p. 2)*

3. Out-of-Precinct Voting Place. A voting place is now required to be in a precinct or on a lot adjacent to a precinct. Some county election boards have said they cannot find a suitable building in some precincts and could serve the voters there well if they could designate a voting place outside the precinct. ***The PCS allows a county board of elections, by unanimous vote, to apply to the Executive Secretary-Director of the State Board of Elections to designate a voting place outside a precinct. Effective when the act becomes law, but sunset January 1, 2001.*** *(pp. 2-3)*

4. Pilot: Two Voting Places Per Precinct. The only provision for multiple voting places in the same precinct is a statute allowing a county to designate a satellite voting place only for elderly or disabled voters. ***The PCS would create a pilot program in up to three counties whereby the county board of elections could designate two voting places per precinct for up to three precincts in that county. The counties could apply to the State Election Director, who would report to the General Assembly by February 2001 on the program's results. Effective January 2, 2000, but sunset January 2, 2002.*** *(pp. 3-4)*

5. Parking at the Polls. The county board of elections has the authority to press into service any public, tax-supported building it needs as a precinct. Reports have surfaced of officials at schools or other public buildings, unhappy about being a voting place, stinting on the parking that voters and precinct officials could use. Current law says nothing about the provision of parking at a voting place. ***The PCS would direct the county board to require that adequate parking be provided around a tax-supported voting place. Effective January 1, 2000.*** *(pp. 4-5)*

6. Abolish Municipal Boards of Elections. In additional to the 100 county boards of elections, there are now 57 municipal boards of elections. They are appointed by the city council in the city they serve. Their function is to conduct the elections for city council. They generally exist in small towns. The State Board of Elections has for several years advocated their abolition, arguing that the State Board's duty to supervise the conduct of local elections is thwarted by the existence of so many different entities. ***The PCS would abolish municipal boards of elections, effective January 1, 2000. Elections in all city and special district elections would be conducted by the county board of elections.*** *(pp. 5-18)*

7. Increase Minimum Pay for County Directors. There are 16 part-time county boards of elections offices in small counties. The statutes require that the election directors in those offices be paid $8 an hour for regular time and $8 for overtime. Full-time directors must be paid a salary "commensurate

with the salary paid to directors in counties similarly situated and similar in population and number of registered voters." ***The bill would set $12 full-time and $12 overtime as the minimum hourly rate for all election directors. Effective July 1, 2000.*** *(pp. 18-19)*

8. More Full-Time County Elections Offices. Every county that has more than 14,000 registered voters must have a full-time elections office. Counties with fewer registered voters may operate a "modified full-time" (or part-time) office. The State Board of Elections has promulgated rules for the operation of the part-time offices. According to the rules, Plans A and B call for the office to be open 9-5 three days a week, and Plans C and D 9-1 three days a week. Only counties with 6,500 or fewer registered voters may use Plans C and D, the half-day plans. ***The PCS would lower the threshold for the requirement of a full-time board of elections from 14,001 to 6,501. Effective July 1, 2000. The effect appears to be that 12 offices that are now part-time would become full-time.*** *(p. 19)*

9. Gifts by Corporations, etc., to Party HQ Building Funds. Although the statutes prohibit contributions by business corporations to any candidate or political committee, including a political party, the State Board of Elections permits business entities to give to party headquarters building funds. Those funds must be separate segregated funds and may be used only for acquiring a headquarters building. The State Board decided it must allow those gifts contrary to State statute because of advisory opinions written by the Federal Elections Commission. Those opinions indicated that federal law allowing such gifts pre-empted State law. ***The PCS would allow corporations, other business entities, unions, and professional associations to donate to political party headquarters building funds. (Those givers are treated like corporations under current law in being prohibited to make political contributions.) The PCS would more or less codify the State Board's ruling on the matter. Parties would be strictly limited in how they could spend the money in the fund. They could use it only to purchase, construct, renovate, or pay a mortgage on a headquarters building. They could also use it to repay donor if the building were not purchased, etc. They could NOT use the money to pay building rent or utilities. Effective when the bill becomes law.*** *(pp. 19-20)*

10. Candidate's Signature on Campaign Reports. A statute, unchanged since 1974, says that every campaign finance report must be signed under oath by the treasurer of the campaign as being true and correct. If the treasurer was appointed by a candidate or by a candidate's principal campaign committee, the report must be "certified as true and correct to the best of his knowledge" by the candidate. Although that language seems to call for a candidate's signature, the practice of the State Board of Elections has been to provide for a candidate's signature only on the form for an organization statement and the appointment of treasurer. The State Board's basic quarterly reporting form for contributions and expenditures has not had a space a for candidate to sign. As the State Board was reviewing its forms recently in preparation for redesign, it determined that to comply with the law it must include a space for candidate to sign. The State Board staff was concerned that legislators should be made aware that enforcing the old law would result in this change in practice. They wanted legislators to have the opportunity to review the law and make the policy decision of whether the law should be changed or enforced. ***The PCS would change the statute to conform to traditional practice. It would require a candidate's signature only on the organization statement and the appointment of treasurer, not on every report. Effective when it becomes law.*** *(pp. 20-21)*

BACKGROUND Sections 1 through 3, minus some later refinements, were in the version of House Bill 1074 that passed the House before crossover. The rest of the PCS is new.

Wednesday, June 23, 1999

NORTH CAROLINA
NCCC
CONSUMERS COUNCIL

North Carolina Consumers Council, Inc.
Post Office Box 340
Chapel Hill NC 27515-3401

www.rtpnet.org/~nccc

New Address (May 1999):
P.O. Box 10214
RALEIGH NC 27605-0214

Senator Brad Miller
621 LOB
Raleigh NC

Dear Senator Miller:

House Bill 885: Self-Serve Storage/Late Payments.

We write this letter in support of the above bill, which is to be considered in a committee you chair.

North Carolina Consumers Council, Inc. believes that **consumers in a free market economy deserve full information about the business practices of firms with which they deal as regards the details and implications of contracts with such firms**. This clearly includes the nature and conditions of payments and fees or penalties associated with tardy payment of rents for self-serve storage units. While such terms may be standard and well known to each business person, they are not necessarily part of the "conventional wisdom" of consumers.

Thus, when specific legislation is needed for this purpose, as it apparently is in the case of HB 885, we endorse the passage of such legislation.

Sincerely yours,

Michael v. E. Rulison

Michael v.E. Rulison, Ph.D., President
dn4nccc@mindpring.com

Municipalities with Municipal Boards of Elections

County	City or Town
Alexander	Taylorsville
Allegheny	Sparta
Anson	Wadesboro Peachland Polkton Ansonville Lilesville Morven McFarlan
Bertie	Askewville
Burke	Morganton
Caldwell	Granite Falls
Caldwell/Burke	Rhodiss
Columbus	Cerro Gordo Brunswick
Craven	Cove City Vanceboro Dover
Cumberland	Falcon Stedman Godwin Wade
Haywood	Canton
Hertford	Winton Murfreesboro Harrellsville Como Cofield

Iredell	Love Valley Mooresville Harmony
Madison	Mars Hill Marshall Hot Springs
McDowell	Old Fort
Mitchell	Bakersville
Pamlico	Mesic Minnesott Beach Stonewall Vandemere Arapahoe
Pender	St. Helena Watha Atkinson
Polk	Columbus Saluda Tryon
Richmond	Norman Hoffman
Sampson	Garland
Swain	Bryson City
Warren	Warrenton Norlina Macon
Washington	Creswell Roper
Yancey	Burnsville

§ 32A-1. Statutory Short Form of General Power of Attorney.

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of . . . . . .

County of . . . . . .

I, ..., appoint . . . . . to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

(1) Real property transactions ....._____

(2) Personal property transactions ....._____

(3) Bond, share, stock, securities and commodity transactions ....._____

(4) Banking transactions ....._____

(5) Safe deposits..... ....._____

(6) Business operating transactions ....._____

(7) Insurance transactions..... ....._____

(8) Estate transactions ....._____

(9) Personal relationships and affairs..... ....._____

(10) Social security and unemployment ....._____

(11) Benefits from military service..... ....._____

(12) Tax matters..... ....._____

(13) Employment of agents ....._____

(14) Gifts to charities, and to individuals other than the attorney-in-fact... _____

(15) Gifts to the named attorney-in-fact ....._____

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates . . . . . ., ...')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated . . . . . ., ...

.....(Seal)

Signature

STATE OF . . . . . COUNTY OF . . . . . .

On this . . . . . day of . . . . . ., ..., personally appeared before me, the said named . . . . . to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires . . . . . .

.....

(Signature of Notary Public)
Notary Public (Official Seal)"

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE
Governmental Affairs

8000 Weston Parkway
Post Office Box 3688
Cary, North Carolina 27519-3688
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House Bill 604 - Clarify Atty-In-Fact Gifts

The North Carolina Bar Association Estate Planning and Fiduciary Law Section has studied the provisions in N.C.G.S. Chapter 32A and noted two problems which HB 604 would correct.

Conflict if two paragraphs selected on form:

N.C.G.S. Chapter 32A was amended in 1995 to specify when an attorney-in-fact could make gifts pursuant to a power of attorney. Two new powers (14. and 15.) were added to the Short Form Power of Attorney in G.S. 32A-1. Paragraph (14)b. of G.S. 32A-2 prohibits gifts in favor of the attorney-in-fact. Paragraph 15 specifically gives the attorney-in-fact the power to make gifts to himself. If both paragraphs 14 and 15 are checked, there is a conflict. Section §32A-14.1 dealing with the authority of an attorney-in-fact to make gifts was also added to Chapter 32A in 1995. This Article was intended to codify the existing North Carolina common law. Although §32A-14.1 includes the phrase "or unless gifts are expressly authorized by the power of attorney," this phrase was apparently left out of the Short Form Power of Attorney provisions. **Section 1** of this Act would add that phrase to G.S. 32A-2(14)b. to make it consistent with the common law and to avoid any conflict if both paragraphs 14 and 15 are selected.

Inconsistency as to power of attorney-in-fact to make gifts:

A second correction to the Short Form Power of Attorney provisions involves the power of the attorney-in-fact to make gifts to himself and to third parties. Under the current statute, an attorney-in-fact can make gifts to himself without limit, while gifts to third parties are subject to the principal's history of making gifts. **Section 2** of the Act adds language to paragraph 15 to clarify that gifts by the attorney-in-fact to the attorney-in-fact can only be made in accordance with the principal's history of making or joining in the making of gifts. This makes the language of paragraph 15 consistent with the language of paragraph 14.

Section 1 of the Act would apply to powers of attorney executed after October 1, 1995, which is the effective date of the prior amendments to the Section, while Section 2 would apply to powers of attorney executed on or after October 1, 1999.

The North Carolina Bar Association recommends the passage of HB 604.

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 extension 340

10 A.M. - 1/-00

VISITOR REGISTRATION SHEET

Jud. II — 7-6-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Roslyn Savitt	NC Child Care Coalition
Pamela Reed	AOC
Bill Scoggin	NC Bar Assoc.
Michael Rubin	NC Consumers Council, Inc
Michael Kidd	SSA
Kurt Regensburger	Security Self Storage Inc.
Peg Dorer	Conference of DAs
Ken Bore	" " "
Brenda Summers	NC Equity
Paula A. Wolf	Covenant w/NC's Children
Renee Johnson	NCCADV
Yvonne Southerland	State Bd of Elections
Johnnie McLean	" " "
Leslie Starsoneck	Domestic Violence Commission
Rob Wellborn	Intern

VISITOR REGISTRATION SHEET

Jud. H — Name of Committee

7/6/99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
MATT Allen	Democracy South, CHAPEL HILL
Peter Walz	NC Voters for Clean Elections, Chapel Hill
Jennifer Ingles	Democracy South, Chapel Hill
John Phelps	NCLM
ELLIS HANKINS	NCLM
Bryan Beatty	DOJ
Jim Blackburn	County Commissioner
Joe McClees	McClees Consulting
Henri McClees	" "
Zeb Alley	ZOA, DA
David Simms	"
WW Cherry	NCPC
Mike Mann	SSL
Les Robert	Core
Cam Civils	BPMH
by Avent James	d/b/a - did

SENATE JUDICIARY II COMMITTEE

JULY 7, 1999

ROOM 1124

HB 604	Clarify Atty-In-Fact Gifts	Representative Thomas
HB 885	Self-Serve Storage/Late Payments	Representative Leubke
HB 939	Raise Small Claims Amount	Representative Goodwin
HB 979	Modify Rights of Decedent's Spouse	Representative Baddour

Adjournment

SENATE JUDICIARY II COMMITTEE

JULY 7, 1999

MINUTES

The Senate Judiciary II Committee met on July 7, 1999 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller who presided.

Representative Goodwin was called on to explain HB 939, Raise Small Claims Amount. Senator Ballance moved to amend the bill (amendment copy attached). The motion carried unanimously. Speaking from the public in support of the bill were Anne Winner, Justice Center, and Andy Ellen, NC Retail Merchants Association. Senator Ballance moved to engross the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to committee substitute #1, but favorable as to Senate committee substitute.**

Senator Ballance was recognized to continue the discussion of HB 885, Self-Serve Storage/Late Payments and moved to amend the bill on page 2, line 3, by deleting the phrase "fifteen dollars ($15.00)." The motion carried. Senator Rucho moved a substitute amendment to remove the violation section altogether, and subsequently withdrew his motion.

Senator Odom moved to amend the bill on page 2, lines 13 through 20, by deleting those lines and substituting the following: "Late fees and attorney fees are not recoverable if a self serving storage business violates the provisions of G.S. 66-281." The motion carried unanimously.

Senator Dalton moved to consider his motion from the previous meeting to amend the bill on page 2, lines 21 through 23, by deleting lines 21 and 22 and renumbering the subsection beginning on line 23. The motion failed.

Senator Ballance moved to engross the amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried. **Unfavorable as to committee substitute #1, but favorable as to Senate committee substitute.**

HB 604, Clarify Atty-In-Fact Gifts, was explained by Representative Thomas. Senator Odom moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Thursday, July 08, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **604** Clarify Atty-In-Fact Gifts.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 604

Short Title: Clarify Atty-In-Fact Gifts. (Public)

Sponsors: Representative Thomas.

Referred to: Judiciary IV.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by

the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

Section 2. G.S. 32A-2(15) reads as rewritten:

"(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of lifetime gifts."

Section 3. Section 1 of this act becomes effective July 1, 1999, and applies to all powers of attorney executed on or after October 1, 1995. Section 2 of this act becomes effective October 1, 1999, and applies to all powers of attorney executed on or after that date. Section 3 of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 885
Committee Substitute Favorable 4/21/99

Short Title: Self-Serve Storage/Late Payments. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Self-Service Storage Rental Agreements.

"**§ 66-280. Definitions.**

The definitions set forth in Article 4 of Chapter 44A of the General Statutes apply to this Article.

"**§ 66-281. Contract requirements.**

The rental agreement for the storage of personal property in a self-service storage facility shall state, in bold type of a minimum size of 10 points and conspicuously placed, the terms regarding the imposition of late fees, the terms regarding any consequences of a late payment, and the terms, if any, that pertain to the payment of court costs, attorneys' fees, and any other costs associated with the payment of late fees or with judgment against the consumer for late rental payments or late fees.

"**§ 66-282. Late fees.**

(a) In all rental agreements in which a definite time for the payment of the rent is fixed, the late fee shall not exceed fifteen dollars ($15.00) or fifteen percent (15%) of

the rental payment, whichever is less, and shall not be imposed by the self-service storage business until the rental payment is five days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

"**§ 66-283. Violations.**

(a) If a self-service storage business fails to comply with the requirements of this Article or fails to comply with the terms of the contract or any obligation arising from this Article, then, upon written notice to the self-service storage business, the consumer may void the contract.

(b) Any waiver by a consumer of any of the provisions of this Article shall be deemed void and unenforceable by a self-service storage business.

(c) The remedies provided in this section are in addition to any other remedies provided for by law or in equity."

Section 2. This act becomes effective October 1, 1999, and applies to rental agreements for self-service storage entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 939
Committee Substitute Favorable 4/21/99

Short Title: Raise Small Claims Amount. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-210 reads as rewritten:

"**§ 7A-210. Small claim action defined.**

For purposes of this Article a small claim action is a civil action wherein:

(1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~three thousand dollars ($3,000);~~ five thousand dollars ($5,000); and

(2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and

(3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying."

Section 2. This act becomes effective October 1, 1999, and applies to claims filed for causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 979
Committee Substitute Favorable 4/20/99

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction.

"**§ 30-3.2. Definitions.**

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

(d) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code; and

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"§ 30-3.4. Procedure for determining the elective share.

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the surviving spouse, personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation

shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the

personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"§ 30-3.5. Recovery of assets by personal representative.

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any

Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds

that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated

and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall

promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

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

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"**§ 31C-3. Disposition of community property upon death.**

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an

elective share under Article 1A of Chapter 30 of the General Statutes.

e. Resolving questions of domicile and residence of a decedent.

f. Handling proceedings involving year's allowances of widows and children.

g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.

h. Drafting instruments releasing deeds of trust.

i. Drafting assignments of rent.

j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.

k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:

1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

3. Handling petitions to the tax court.

l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.

m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters or administration.

2. Abstracting or passing upon title to property.

3. Handling litigation relating to claims by or against the estate or trust.

4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act becomes effective October 1, 1999, and applies to estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H885-PCSSD-002.1
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL NO. 885
THIS IS A DRAFT 2-JUL-99 11:43:08
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Self-Serve Storage/Late Payments. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Self-Service Storage Rental Contracts.

"§ 66-280. Contract requirements.

A rental contract for the storage of personal property in a self-service storage business shall state, in bold type of a minimum size of 10 points and conspicuously placed, the terms regarding the imposition of late fees, the terms regarding any consequences of a late payment, and the terms, if any, that pertain to the payment of court costs, attorneys' fees, and any other costs associated with the payment of late fees or with judgment against the consumer for late rental payments or late fees.

"§ 66-281. Late fees.

(a) In all rental contracts in which a definite time for the payment of the rent is fixed, the late fee for each rental unit shall not exceed fifteen dollars ($15.00) or fifteen percent (15%) of the rental payment, whichever is less, and shall not be imposed by the self-service storage business until the rental payment for that rental unit is five days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

"§ 66-282. Violations.

(a) If a self-service storage business fails to comply with the requirements of G.S.66-281, a consumer who has entered into a rental contract with a self-service storage business may upon mailing written notice to the self-service storage business avoid the imposition of the following fees or charges:

(1) Late fees.

(2) Attorney's fees.

(3) Court costs.

(b) Any waiver of any of the provisions of this Article shall be deemed void and unenforceable.

(c) The remedies provided in this section are in addition to any other remedies provided for by law or in equity."

Section 2. This act becomes effective October 1, 1999, and applies to rental contracts for self-service storage entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 885 PCSSd-002.1 DATE _____

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

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 21-23

by deleting lines 21 and 22 and renumbering the subsection ~~on~~ beginning on line 23.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 885 DATE 7/7/99

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Oden

moves to amend the bill on page 2, line 13-20

( ) WHICH CHANGES THE TITLE

by deleting those lines and substituting the following:

"late fees and attorney fees are not recoverable if a self serving storage business violates the provisions of G.S. 66-281

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 885

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

H885-ASD-001 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []

moves to amend the bill on page 2, line 3, by deleting the phrase "fifteen dollars ($15.00)"; And

on page 2 line 15 by inserting the word "objection" after the word "upon"; And

on page 2 line 16 by deleting the phrase "mailing written notice to the self-service storage business".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

hrH=1>

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill NO. 939

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

H939-asd-001

<EH=1>

Date_____,1999

Comm. Sub. []
Amends Title [YES]
Second Edition

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

"AND GIVE MAGISTRATES WHO ARE ATTORNEYS THAT ARE LICENSED TO PRACTICE LAW IN NORTH CAROLINA ADDITIONAL AUTHORITY TO ACCEPT BINDING WAIVERS OF COUNSEL IN CRIMINAL CASES AND CIVIL CONTEMPT CASES" And;

on page 1 lines 9 and 10 by rewriting those lines to read:

"7A-243, does not exceed ~~three thousand dollars ($3,000);~~ four thousand dollars ($4,000); and"; And

on page 1 lines 19 and 20 by inserting the following between the lines and renumbering the remaining section:

"Section 2. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~ subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars

($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d), effective July 15, 1992.

(b) In criminal actions or infractions, a magistrate who is licensed to practice law in this State and has the additional authority,if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To accept binding waivers of cousnel in criminal cases.'"

"Section 3. G.S. 7A-292 reads as rewritten:

'**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;

(3) When authorized by the chief district judge, to take depositions and examinations before trial;

(4) To issue subpoenas and capiases valid throughout the county;

(5) To take affidavits for the verification of pleadings;

(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;
(8) To take acknowledgments of instruments, as provided in G.S. 47-1;
(9) To perform the marriage ceremony, as provided in G.S. 51-1;
(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
(11) Repealed by Session Laws 1973, c. 503, s. 9.
(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
(13) Repealed by Session Laws 1973, c. 503, s. 9.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To accept binding waivers of counsel in civil contempt cases.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 604:
Clarify Atty-In-Fact Gifts

BILL ANALYSIS

Committee:	House Judiciary IV Committee	**Introduced by:**	Representative Thomas
Date:	April 8, 1999	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 604 clarifies that the attorney-in-fact named in a short form power of attorney may make gifts in favor of himself or herself if such gifts are expressly authorized by the power of attorney. The bill also clarifies that gifts by the attorney-in-fact to the attorney-in-fact must be made in accordance with the principal's history of making or joining in the making of gifts.***

BACKGROUND: Article 1 of Chapter 32, *Statutory Short Form Power of Attorney*, provides a form to be used when creating a short form power of attorney and describes the various powers which may be conferred by the short form, including the power of the attorney-in-fact to make gifts. G.S. 32A-2(14) provides that an attorney-in-fact may make gifts to charities and to individuals other than the attorney-in-fact. This subsection specifically prohibits the attorney-in-fact from exercising this power in favor of himself or herself. However, G.S. 32A-2(15) specifically provides that an attorney-in-fact may make gifts to himself or herself. If both powers are included on the statutory short form by the principal, a conflict arises.

BILL ANALYSIS: Section 1 of House Bill 606 amends G.S. 32A-2(14) to clarify that, despite the prohibition contained in this subsection, the attorney-in-fact may make gifts in favor of himself or herself if specifically authorized by the power of attorney to do so pursuant to G.S. 32A-2(15).

Section 2 amends G.S. 32A-2(15) to clarify that gifts by the attorney-in-fact to the attorney-in-fact must be made in accordance with the principal's personal history of making or joining in the making of lifetime gifts. This language is consistent with the power of the attorney-in fact to make gifts to individuals and charities in G.S. 32A-2(14).

Section 1 of this act becomes effective July 1, 1999 and applies to all powers of attorneys executed on or after October 1, 1995. By making the language retroactive, this bill corrects any conflicts in existing short form powers of attorney. Section 2 becomes effective October 1, 1999 and applies to all powers of attorney executed on or after that date.

§ 32A-1. Statutory Short Form of General Power of Attorney.

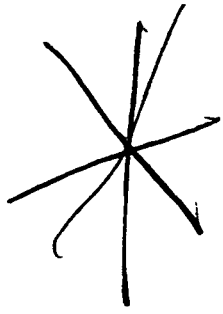
The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of . . . . . .

County of . . . . . .

I, ..., appoint . . . . . to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)



(1) Real property transactions ....._____

(2) Personal property transactions ....._____

(3) Bond, share, stock, securities and commodity transactions ....._____

(4) Banking transactions ....._____

(5) Safe deposits..... ....._____

(6) Business operating transactions ....._____

(7) Insurance transactions..... ....._____

(8) Estate transactions ....._____

(9) Personal relationships and affairs..... ....._____

(10) Social security and unemployment ....._____

(11) Benefits from military service..... ....._____

(12) Tax matters..... ....._____

(13) Employment of agents ....._____

(14) Gifts to charities, and to individuals other than the attorney-in-fact... _____

(15) Gifts to the named attorney-in-fact ....._____

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates . . . . . ., ...')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated . . . . . ., ...

.....(Seal)

Signature

STATE OF . . . . . COUNTY OF . . . . . .

On this . . . . . day of . . . . . ., ..., personally appeared before me, the said named . . . . . to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires . . . . . .

.....

(Signature of Notary Public)
Notary Public (Official Seal)"

HOUSE BILL 885:
Self-Serve Storage/Late Payments

BILL ANALYSIS

Committee:	House Ways and Means Committee	**Introduced by:**	Representative Leubke
		Summary by:	Tim Hovis & Ed Rossi
Date:	April 16, 1999		Committee Counsel
Version:	H885-PCSSD-002.1		

SUMMARY: ***House Bill 885 creates a new Article 35 in Chapter 66 of the General Statutes that requires self serve storage rental contracts to provide in bold type and conspicuously placed the terms regarding the imposition of late fees. The bill limits late fees to $15.00 or 15% of the rental payment, whichever is less. If a self-storage business fails to comply with the bill's late fee provisions a consumer may avoid the imposition of late fees, attorney's fees, and court costs by mailing written notice to the business.***

BILL ANALYSIS: The proposed Senate committee substitute to House bill 885 adds a new Article 35 to Chapter 66 of the General Statutes governing Self-Service Storage Rental Agreements.

The Article would require a rental agreement for the storage of personal property in a self-service storage business to provide in bold type and conspicuously placed the terms regarding the imposition of late fees, the consequences of late payment, and the terms, if any, pertaining to the payment of court costs, attorneys fees, and any other costs.

The bill also prohibits late fees from exceeding $15.00 or 15% of the rental payment, whichever is less, and does not allow the imposition of such fees unless the rental payment is 5 days or more late. A late fee may only be imposed one time for each late payment and may not be deducted from subsequent rental payments causing the subsequent payment to be in default also.

If a self-storage business fails to comply with the bill's late fee provisions, a consumer may avoid late fees, attorney fees, and court costs by mailing written notice to the business. Any waiver of the proposed act's provisions would be void and unenforceable.

House Bill 885 becomes effective October 1, 1999, and applies to agreements entered into on or after that date.

HOUSE BILL 939:
Raise Small Claims Amount.

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Goodwin
Date:	April 20, 1999	**Summary by:**	William R. Gilkeson & Ed Rossi Staff Counsel
Version:	Second Edition		

SUMMARY: ***House Bill 939 would raise from $3,000 to $5,000 the amount that may be tried in small claims court.***

CURRENT LAW: The law now says that a civil matter is a "small claim action" if:

1. The amount is controversy is $3,000 or less.
2. The relief sought is monetary, recovery of specific personal property, summary ejectment, or some combination of those things;and
3. The plaintiff has properly sought assignment of the case to a magistrate.

A small claims action is tried by a magistrate. Cases are assigned to magistrates by the chief district court judge. The losing party in a small claims action may appeal the magistrate's judgment to District Court.

BILL ANALYSIS: The bill would raise the small claims jurisdictional amount to $5,000. The bill would be effective October 1, 1999, and would apply to all claims filed for causes of action arising on or after that date.

BACKGROUND: The small claims amount was last raised in 1993. It went up from $2,000 to $3,000.

H939-SMRR-001

Wednesday, June 23, 1999

NORTH CAROLINA
NCCC
CONSUMERS COUNCIL

North Carolina Consumers Council, Inc.
Post Office Box 3401
Chapel Hill, NC 27515-3401

www.rtpnet.org/~nccc

New Address (May 1999):
P.O. Box 10214
RALEIGH NC 27605-0214

Senator Brad Miller
621 LOB
Raleigh NC

Dear Senator Miller:

House Bill 885: Self-Serve Storage/Late Payments.

We write this letter in support of the above bill, which is to be considered in a committee you chair.

North Carolina Consumers Council, Inc. believes that **consumers in a free market economy deserve full information about the business practices of firms with which they deal as regards the details and implications of contracts with such firms**. This clearly includes the nature and conditions of payments and fees or penalties associated with tardy payment of rents for self-serve storage units. While such terms may be standard and well known to each business person, they are not necessarily part of the "conventional wisdom" of consumers.

Thus, when specific legislation is needed for this purpose, as it apparently is in the case of HB 885, we endorse the passage of such legislation.

Sincerely yours,

Michael v. E. Rulison

Michael v.E. Rulison, Ph.D., President
dn4nccc@mindpring.com

We stand up for your consumer interests.

NORTH CAROLINA
1899 – 1999
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SEEKING LIBERTY & JUSTICE

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An Act to Modify the Rights of a Decedent's Spouse
Summary of House Bill [redacted]. 979

Section 1 of the Act governs a surviving spouse's right to an elective share of the decedent's property by repealing North Carolina's dissent statute (Article 1 of Chapter 30 of the General Statutes) and replaces it with an "elective share" statute.

The new statute solves two problems:

(1) the failure of the dissent statute and the Intestate Succession Act to provide a surviving spouse with rights in a decedent's non-probate property; and

(2) an anomaly in the dissent statute's determination of how much property the spouse may claim.

In addition, the elective share statute provides the procedure before the clerk of superior court for claiming and determining the elective share; apportions the liability for satisfaction of the elective share among the beneficiaries of the probate and non-probate assets; and provides a method for spouses to waive their elective share rights by agreement.

Sections 2 through 9 of the Act amend those statutes which refer to a surviving spouse's right to dissent or refer to sections within the dissent statute by removing all such references and substituting references to the surviving spouse's right to an elective share and to the elective share statute.

Section 10 of the Act corrects an problem with the Summary Administration procedure (N.C.G.S. §28A-28-1 et seq.) to allow for cutting off creditor's claims by using the "notice to creditors" provisions routinely employed in other estate administration procedures.

HB 908 passed the House and is currently in the Senate Judiciary Committee. The NCBA urges passage of this important legislation.

PO Box 3688 • CARY, NC 27519-3688
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ISSUES IN REAL PROPERTY



Chris Burti obtained his B.S. Degree in Management from East Carolina University in 1975. He then received his J.D. from the University of North Carolina School of Law. After practicing law for fifteen years, he accepted the position of Regional Vice President and Legal Counsel for Statewide Title in December, 1994. Mr. Burti is the co-author of Examining and Evaluating Title to Real Property in North Carolina.

Intestacy and Dissent Statutes up for Revision *Pending Legislation*

By Chris Burti

This session of the Legislature is considering a major rewrite of the intestacy and spousal dissent statutes and is contained in House Bill 979. The primary sponsors are Representatives Baddour and Russell. The bill, if passed, would repeal Article 1 of Chapter 30, replace it with Article 1A.

Instead of the present spousal right to dissent from a will the new act would provide a surviving spouse with a right to an elective share. This election would apply whether the decedent spouse died testate or intestate. Section 30-3.1 proposes that the "surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a)."

The elective share is set out differently than the existing dissent statute but generally would produce a similar result in the typical estate. One important difference is that, regardless of the results of computing the formulas under the proposed act, the spousal share of the assets of any estate in excess of $25000 will not be less than $25000. Another major difference is that the elective share statute is much more far-reaching and is well coordinated with the intestacy statute. The proposed legislation would, if passed, be a comprehensive overhaul of the present system. Much existing case law is incorporated into the act by adoption or, in some parts, correction of perceived inequities. One of controversial issues addressed by this bill is the disinheritance afforded by joint and survivor accounts. Funds in such accounts, where the surviving spouse is not a joint owner, would be included in their entirety in the Total Net Assets of the decedent. The legislation should also clarify other issues and unanswered questions surrounding the disposition of other assets of the decedent before and after death.

The definition section 30-3.2 would codify many issues previously dealt with only in appellate decisions and is set forth as follows:

§30-3.2. Definitions.

(a) 'Code' means the Internal Revenue Code in effect at

the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

(d) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death;

(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual Exclusion provisions of section 2503 of the Code; and

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."

Property passing to a surviving spouse is defined in section 30-3.3. This section also incorporates or modifies existing case law, is far more comprehensive than the existing statute and is set out below.

"(a) Property Passing to Surviving Spouse. For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. —The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. —In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

A claim for an elective share must be made within six months after the issuance of letters testamentary or of administration. The right must be exercised during the lifetime of the surviving spouse, by the surviving spouse, their agent under a power of attorney, or the guardian of their estate. The procedure is set out in section 30-3.4 and spells out detailed and extensive provisions for the following subsections: Time Limitations, Time for Hearing, Preparation of Tax Form, Valuation, Findings and Conclusions and Appeals.

The personal representative, under section 30-3.5, would be entitled to recover from all persons in possession of any of the decedent's assets sufficient property to enable the personal representative to pay the elective share. The only persons subject to contribution in order to make up the elective share will be the original recipients of the property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees A person receiving, or in possession of, any of the decedent's assets may pay their elective share liability, attributable to that property, by conveyance of the property, payment of the value of the liability in cash or, if agreed to by the surviving spouse, other property equal to the liability. If the personal representative cannot reasonably collect, from any person required to contribute, the amount of the elective share apportioned to that person, that amount shall be apportioned among the other persons who are also subject to apportionment with the clerk's approval.

Section 30-3.5 (b) makes provision for a standstill order. "After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk."

Of particular interest to real property practitioners is section 30-3.6, which has no direct counterpart in the current statute. Similar provisions are included by application when the G.S. 29-30 election of surviving spouse to take a life interest in lieu of the intestate share has been chosen. The pending act proposes a spousal waiver of rights in subsection (a). "The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse." Subsection (b) limits the benefit by making the waiver refutable. "A waiver is not enforceable if the surviving spouse proves that . . . The waiver was not executed voluntarily; or . . . The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure." If this bill passes the better practice will be for drafters of such agreements to include appropriate disclosure provisions in order to prevent avoidance of these waivers.

One major shortcoming of the bill is that it does not provide for existing waivers of the right to dissent to operate as waivers of the new election. A well-worded agreement will usually contain a comprehensive waiver that should be effective. However, many agreements are not well drafted and contain limited or highly specific waivers that, arguably, will not constitute a waiver of the new elective share. It should be also noted that a gift of real property, to some-

CONTINUED ON PAGE 7

RT PROGRAM

ROM PAGE 2

it in remission.

Managed care on the one hand, and the general pace of interaction in our culture even among people who would describe themselves as alternative healers such as nutritionists and acupuncturists, etc., on the other, have combined to make most medical treatment, whether it is mainstream or traditional, less relationship centered. In the face of this is the paradox of our human condition, that it is other people who drive us crazy and also our interconnection with other people that heals. I love some of the old family stories about home remedies that a grandmother would make up and give to the sick child. Often, I suppose there was something healthy in the remedy, but surely there was a lot of love that worked positively in the immune system of the child who received it. If you are worried about the need for an alternative to treat a chronic ailment it may be important to remember the relationships that go with the kind of treatment you choose.

People with active alcoholism find that their relation with alcohol has replaced their relationship with other people. Family members of alcoholics often find themselves getting just as sick as the alcoholic because relationships don't work.

If you know of someone who may have a problem with alcohol, there are more than a handful of lawyers who have wrestled with that same problem and are willing to take the time to form relationships that just might help. Call 1-800-720-PALS. All inquiries are confidential.

'UTER CORNER

ROM PAGE 3

merge or displace some of the point to point and frame relay services in the near future. A T1 line at 1.54 Mbps costs about $1600/mth or more. xDSL will be able to provide the same speeds for about 1/10 of that cost.

Where do I connect these technologies to my network?

At the server. If you have a peer to peer network then you may be able to utilize some of these technologies but not the more powerful ones. If you have a client server setup running Windows NT, Novell or Linux,

ISSUES IN REAL PROPERTY

CONTINUED FROM PAGE 4

one other than the spouse, within three years of death in excess of the annual exclusion could, in effect, be brought back into the estate if the surviving spouse does not join in the conveyance, (proposed 30-3.2(7) and 30-3.5(a)). If this interpretation proves correct this would constitute an entirely new right for spouses of intestates dying after the effective date of the act. The nearest comparable provisions arise under the elective life estate provisions of G.S. 29-30. It would appear that sales to bona fide purchasers for value would be exempt from the recapture provisions of the proposed act and therefor should not be of significant concern to title examiners.

The legislation if adopted would also make conforming changes to Section 4 of G.S.§ 30-15 governing when spouse entitled to allowance, § 31-5.3 providing that a will is not revoked by marriage, Section 6 of G.S. 31A-1(b) acts barring a spouse rights, Section 7 of G.S. 31C-3 regarding community property, Section 8 of G.S. 84-5(2) prohibiting corporations from practicing law and G.S. 29-30 election of surviving spouse to take life interest in lieu of intestate share. This bill would become effective October 1, 1999, and would apply to estates of decedents dying on or after that date.

If this legislation is passed it will obviously cure some of the major difficulties of the present scheme. However failure of a spouse to join in a conveyance may produce title defects far more likely to result in claims than before. Under the current statutory scheme failure to join would result in a claim in the relatively rare case of an elective life estate. Even then it would result in a loss of the present possessory interest not a total failure of title.

As of April 28, 1999 this bill has passed the House and is in the Senate Judiciary II Committee. The text of the bill is to lengthy for inclusion in this issue and may be found on the Internet at www.ncga.state.nc.us

Director of Admissions

The Norman Adrian Wiggins School of Law at Campbell University is seeking to fill the position of Director of Admissions.

Candidates for the position should have strong administrative and leadership abilities. A law degree is a plus.

The Director is responsible for coordinating all admissions activities for the School of Law. These responsibilities include, but are not limited to,

- recruiting potential applicants;
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- evaluating the qualifications of applicants;
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- coordinating applicant visits to campus and their required interviews with faculty;
- responding to inquiries regarding admissions; and
- assisting students with financial aid and housing matters.

An Act to Modify the Rights of a Decedent's Spouse: The Elective Share Statute

This bill repeals North Carolina's dissent statute (Article 1 of Chapter 30 of the General Statutes) and replaces it with an "elective share" statute. The elective share statute solves two problems: (1) the failure of the dissent statute and the Intestate Succession Act to provide a surviving spouse with rights in a decedent's non-probate property, and (2) an anomaly, explained below, in the dissent statute's determination of how much property the spouse may claim. The elective share statute: includes rules for determining the value of property; provides the procedure for claiming and determining the elective share; apportions the liability for satisfaction of the elective share among the beneficiaries of the probate and non-probate assets; and provides a method for spouses to waive their elective share rights by agreement.

The Treatment of Non-probate Property

North Carolina's current dissent statute and Intestate Succession Act (Chapter 29 of the General Statutes) provide a decedent's spouse with certain rights in the decedent's property. The dissent statute applies if the decedent dies with a will; the Intestate Succession Act applies if the decedent dies without a will. Both statutes appear to have been enacted to prevent the decedent from disinheriting his or her spouse and to protect the spouse against the loss of support upon the decedent's death.

Each statute, however, gives the spouse rights only to the decedent's probate property. Probate property is generally all property that the decedent owns other than non-probate property. Non-probate property includes life insurance, IRAs, employee retirement plan accounts, annuities, revocable or "living" trusts, irrevocable trusts, and property owned jointly with one or more other persons with right of survivorship.

Both statutes were enacted in 1959. Since then, the "non-probate revolution" has occurred. Federal tax and employee benefit law has encouraged huge investments of wealth in employee qualified retirement plan accounts, IRAs, tax-deferred annuities and life insurance, all of which are non-probate property. At the same time, an increased awareness of the costs, publicity and delay imposed by court jurisdiction over probate property has motivated many people to transfer large amounts of property into revocable or "living" trusts and joint with right of survivorship property.

Today, it is commonplace for a decedent to die owning a substantial amount of non-probate property, yet very little probate property. Neither the Intestate Succession Act nor the dissent statute, however, provides a decedent's spouse with any rights in the decedent's non-probate property. Accordingly, a decedent can bypass his or her spouse and leave all his or her property to someone else by placing all the property in non-probate form: either owning it jointly with the non-spousal beneficiaries with right of survivorship; or investing it in life

insurance, annuities, IRAs, employee benefit plan accounts, or irrevocable trusts that designate the non-spousal persons as beneficiaries.

The elective share statute restores to the surviving spouse the protection that the dissent statute and Intestate Succession Act originally intended to provide. The elective share statute gives the surviving spouse the right to an "elective share" of the decedent's "Total Net Assets", whether the decedent dies with or without a will.

How Much Property the Surviving Spouse May Claim

The current dissent statute determines a surviving spouse's rights in two steps. The statute first determines whether the spouse has the right to dissent at all (§ 30-1 of the dissent statute). If the spouse has the right to dissent, then the statute determines how much probate property the spouse may receive (§ 30-3 of the dissent statute). The two steps are inconsistent. The first step takes into account the non-probate property that the spouse receives. Generally, the spouse has a right to dissent if the amount of property, probate and non-probate, that the spouse is entitled to receive is less than a threshold amount. If the spouse passes this first step and thus has the right to dissent, the second step generally gives the spouse a share of the probate property equal to the step-one threshold amount without regard to how much non-probate property the spouse receives. Because the first step takes the spouse's share of non-probate property into account and the second step does not, an anomaly results:

> Example 1. Decedent dies survived by a spouse (sole marriage) and three children. Decedent owns $600,000 of probate property and $200,000 of non-probate property. Decedent's will leaves all the probate property to the children. All the non-probate property passes to the spouse.
>
> Example 2. The facts are the same as Example 1 except that Decedent's probate property is worth $600,001.

Assume that the step-one threshold amount and the step-two dissent share amount are both equal to one-third of the probate property. In Example 1, the step-one threshold is $200,000. Decedent's spouse may not dissent, as that share is not less than the threshold amount. The spouse receives $200,000 in non-probate property but receives none of the probate property.

In Example 2, the step-one threshold is $200,000.33. Accordingly, Decedent's spouse may dissent. The spouse then receives not only $200,000 in non-probate property, but also $200,000.33 worth of the probate property, for a total of $400,000.33.

The elective share statute avoids this unfairness by eliminating the dissent statute's first step, while maintaining a similar distribution under the second step. § 30-3.1 simply provides that a spouse always has the right to claim an elective share; and that the elective share amount is

equal to a defined share of the decedent's probate and non-probate property ("Total Net Assets") reduced by the amount of probate and non-probate property that the spouse is already entitled to receive ("Property Passing to Surviving Spouse").

Comparing the Shares Under the Dissent Statute and the Elective Share Statute

The elective share amount is:

1. If the decedent has no surviving descendants, one-half of Total Net Assets less Property Passing to Surviving Spouse.

2. If the decedent's only surviving descendants are either one child or the issue of one deceased child, one-half of Total Net Assets less Property Passing to Surviving Spouse.

3. Otherwise, one-third of Total Net Assets less Property Passing to Surviving Spouse.

Under the current dissent statute, if the surviving spouse has the right to dissent (passes the "step one" threshold described above) the dissent share equals:

A If the decedent has no surviving descendants or parents, approximately one-half of the decedent's net probate property.

B Otherwise, the spouse's share under the Intestate Succession Act if the decedent had died without a will. Under the Intestate Succession Act, the spouse's share equals:

i. If the decedent's only surviving descendants are either one child or the issue of one deceased child, approximately one-half of the decedent's net probate property.

ii. Otherwise, approximately one-third of the decedent's net probate property.

Thus, a similar distribution system is maintained. Like the current dissent statute, under the elective share statute, if the decedent has surviving descendants by a prior marriage and no descendants by the marriage to the surviving spouse, then the elective share amount is determined by reducing the prescribed share of Total Net Assets by one-half. (So, in #2 above, the elective share is one-fourth of Total Net Assets less Property Passing to Surviving Spouse, and in #3 one-sixth.)

NORTH CAROLINA
1899–1999
BAR ASSOCIATION
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House Bill 604 - Clarify Atty-In-Fact Gifts

The North Carolina Bar Association Estate Planning and Fiduciary Law Section has studied the provisions in N.C.G.S. Chapter 32A and noted two problems which HB 604 would correct.

Conflict if two paragraphs selected on form:

N.C.G.S. Chapter 32A was amended in 1995 to specify when an attorney-in-fact could make gifts pursuant to a power of attorney. Two new powers (14. and 15.) were added to the Short Form Power of Attorney in G.S. 32A-1. Paragraph (14)b. of G.S. 32A-2 prohibits gifts in favor of the attorney-in-fact. Paragraph 15 specifically gives the attorney-in-fact the power to make gifts to himself. If both paragraphs 14 and 15 are checked, there is a conflict. Section §32A-14.1 dealing with the authority of an attorney-in-fact to make gifts was also added to Chapter 32A in 1995. This Article was intended to codify the existing North Carolina common law. Although §32A-14.1 includes the phrase "or unless gifts are expressly authorized by the power of attorney," this phrase was apparently left out of the Short Form Power of Attorney provisions. **Section 1** of this Act would add that phrase to G.S. 32A-2(14)b. to make it consistent with the common law and to avoid any conflict if both paragraphs 14 and 15 are selected.

Inconsistency as to power of attorney-in-fact to make gifts:

A second correction to the Short Form Power of Attorney provisions involves the power of the attorney-in-fact to make gifts to himself and to third parties. Under the current statute, an attorney-in-fact can make gifts to himself without limit, while gifts to third parties are subject to the principal's history of making gifts. **Section 2** of the Act adds language to paragraph 15 to clarify that gifts by the attorney-in-fact to the attorney-in-fact can only be made in accordance with the principal's history of making or joining in the making of gifts. This makes the language of paragraph 15 consistent with the language of paragraph 14.

Section 1 of the Act would apply to powers of attorney executed after October 1, 1995, which is the effective date of the prior amendments to the Section, while Section 2 would apply to powers of attorney executed on or after October 1, 1999.

The North Carolina Bar Association recommends the passage of HB 604.

William G. Scoggin, Director of Governmental Affairs
bscoggin@mail.barlinc.org • 919.677.0561 • extension 340

25982

VISITOR REGISTRATION SHEET

Jud. II — 7/6/99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Brenda Summers	NC Equity
Anne Dixon	NCJCDC
Andy Ellen	NCRMA
PERRI MORGAN	NFIB
BILL SCOGGIN	NC BAR ASSOC.
David Ferrell	HPCCCTC, PA
Eddie Caldwell	"
FRAN PRESTON	NCRMS
Rob Holliday	Intern
Alan Miles	Bailey & Dixon

SENATE JUDICIARY II COMMITTEE

JULY 8, 1999

ROOM 1124

HB 660	Collection Agency Definition	Representative Nesbitt
HB 661	Juvenile Community Service	Representative Nesbitt
HB 973	Marriage License Change	Representative Hill

Adjournment

SENATE JUDICIARY II COMMITTEE

JULY 8, 1999

MINUTES

The Senate Judiciary II Committee met on July 8, 1999 at 9:00 a.m. in room 1124 of the Legislative Building. Nine members were present, including Senator Brad Miller, who presided.

HB 660, Collection Agency Definition, was explained by Ed Rossi, legal counsel to the Senate Judiciary II Committee, and Senator Miller. Speaking to the bill from the public was Mike Adams, with the Child Support Enforcement Agency. Senator Horton moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Brenda Carter, legal counsel to the Senate Judiciary II Committee, was called on to explain HB 661, Juvenile Community Service. Senator Kinnaird moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Dalton moved to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to Senate Committee Substitute.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Monday, July 12, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **660** Collection Agency Definition.
Sequential Referral: None
Recommended Referral: None

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

H.B. **661** Juvenile Community Service.
Draft Number: PCSA166
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**160** Increase Child Abuse Penalty.
Draft Number: PCS1318
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

H.B.(CS #1)**885** Self-Serve Storage/Late Payments.
Draft Number: PCSA167
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

H.B.(CS #1)**939** Raise Small Claims Amount.
Draft Number: PCS4280
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 660

Short Title: Collection Agency Definition. (Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF COLLECTION AGENCY SO THAT THE IV-D CHILD ENFORCEMENT PROGRAM IS REGULATED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-70-15 reads as rewritten:

"**§ 58-70-15. Definition of collection agency and collection agency business.**

"Collection agency" means and includes all persons, firms, corporations, and associations directly or indirectly engaged in soliciting, from more than one person, firm, corporation or association, delinquent claims of any kind owed or due or asserted to be owed or due the solicited person, firm, corporation or association, and all persons, firms, corporations and associations directly or indirectly engaged in the asserting, enforcing or prosecuting of those claims.

"Collection agency" shall include:

(1) Any person, firm, corporation or association who shall procure a listing of delinquent debtors from any creditor and who shall sell such listing or otherwise receive any fee or benefit from collections made on such listing; and

(2) Any person, firm, corporation or association which attempts to or does transfer or sell to any person, firm, corporation or association not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by

any person, firm, corporation, or association other than the creditor or owner of the claim or demand; and

(3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business.

"Collection agency" does not mean or include:

(1) Regular employees of a single creditor;

(2) Banks, trust companies, or bank-owned, controlled or related firms, corporations or associations engaged in accounting, bookkeeping or data processing services where a primary component of such services is the rendering of statements of accounts and bookkeeping services for creditors;

(3) Mortgage banking companies;

(4) Savings and loan associations;

(5) Building and loan associations;

(6) Duly licensed real estate brokers and agents when the claims or accounts being handled by the broker or agent are related to or are in connection with the broker's or agent's regular real estate business;

(7) Express, telephone and telegraph companies subject to public regulation and supervision;

(8) Attorneys-at-law handling claims and collections in their own name and not operating a collection agency under the management of a layman;

(9) Any person, firm, corporation or association handling claims, accounts or collections under an order or orders of any court;

(10) A person, firm, corporation or association which, for valuable consideration purchases accounts, claims, or demands of another, which such accounts, claims, or demands of another are not delinquent at the time of such purchase, and then, in its own name, proceeds to assert or collect the accounts, claims or demands;

(11) "Collection agency" shall not include any person, firm, corporation or association attempting to collect or collecting claims, in his or its own name, of a business or businesses owned wholly or substantially by the same person, firm, corporation, or association;

(12) Any nonprofit tax exempt corporation organized for the purpose of providing mediation or other dispute resolution ~~services.~~ services; and

(13) The designated representatives of programs as defined by G.S. 110-129(5)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 661

Short Title: Juvenile Community Service. (Public)

Sponsors: Representative Nesbitt.

Referred to: Judiciary I.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE JUVENILE CODE TO REVISE THE COMMUNITY SERVICE DISPOSITIONAL ALTERNATIVE FOR JUVENILE OFFENDERS WHO HAVE BEEN ADJUDICATED DELINQUENT FOR LEVEL 2 OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-2506(23), as enacted by S.L. 1998-202 and effective July 1, 1999, reads as rewritten:

"(23) Order the juvenile to perform up to 200 hours supervised community service ~~of not less than 100 hours and not more than 200 hours,~~ consistent with the juvenile's age, skill, and ability, specifying the nature of work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 973
Committee Substitute Favorable 4/21/99

Short Title: Marriage License Change/Study. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES CONCERNING THE ISSUANCE OF A MARRIAGE LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons if it appears that ~~such~~ these persons ~~are authorized to~~ may be married in accordance with the laws of this State. In making a determination as to whether or not the parties ~~are authorized to~~ may be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates ~~or birth registration cards provided for in G.S. 130-73,~~ or ~~such~~ any other evidence ~~as~~ the register of deeds deems necessary to ~~such~~ this determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. If the applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of such a statement, the register of deeds shall issue the license, provided all other requirements are met, and shall retain the statement with the register's copy of the license. The

register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 438

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

H438-ALM-1 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
Second Edition

Senator _____

moves to amend the bill on page 2, lines 16 through 17, by rewriting those lines to read:

"(8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried employees of the housing authority when performing acts authorized in this Chapter as to any property owned or leased by the housing authority. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority.'"

and further on page 2, lines 21 through 22, by rewriting those lines to read:

"The authority and the regular salaried employees of the authority shall be exempt from the requirements of Chapter 93A of the General Statutes as provided in G.S. 93A-2(c)(8).'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H478-CSRV-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 478
Committee Substitute Favorable 4/7/99
Third Edition Engrossed 4/20/99
THIS IS A DRAFT 8-JUL-99 11:16:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Threaten Court Officers. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 5A.

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

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

(a) Any person who assaults any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~officer named in G.S. 147-3(c),~~ officer, or court officer, or any person who makes a violent attack upon the residence, office, temporary

accommodation or means of transport of any ~~legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c)~~ one of those officers in a manner likely to endanger ~~such legislative officer or executive~~ the officer, shall be guilty of a felony and shall be punished as a Class I felon.

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

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

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

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

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

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

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

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

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

"§ 14-16.10. Definitions.

The following definitions apply in this Article:

(1) Court officer. -- Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court counselor as defined in G.S. 7B-1501(5). Court officer also means any court reporter or any attorney licensed to practice in the General Court of Justice, when in a building where judicial functions are exercised or while in the exercise of that person's judicial duties with regard to court proceedings.

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H661-CSRV-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 661
THIS IS A DRAFT 7-JUL-99 20:33:20
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Juvenile Community Service. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE JUVENILE CODE TO REVISE THE COMMUNITY SERVICE DISPOSITIONAL ALTERNATIVE FOR JUVENILE OFFENDERS WHO HAVE BEEN ADJUDICATED DELINQUENT FOR LEVEL 2 OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-2506(23) reads as rewritten:

"(23) Order the juvenile to perform up to 200 hours supervised community service ~~of not less than 100 hours and not more than 200 hours,~~ consistent with the juvenile's age, skill, and ability, specifying the nature of work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 160
Committee Substitute Favorable 3/15/99
Third Edition Engrossed 3/22/99
Proposed Senate Committee Substitute H160-PCS1318-RV

Short Title: Increase Child Abuse Penalty. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CHILD ABUSE THAT RESULTS IN SERIOUS BODILY INJURY OR PERMANENT LOSS OR IMPAIRMENT OF ANY MENTAL OR EMOTIONAL FUNCTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E ~~felony.~~ felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or

who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class C felony. 'Serious bodily injury' is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 661
Proposed Senate Committee Substitute H661-PCSA166-RV

Short Title: Juvenile Community Service. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE JUVENILE CODE TO REVISE THE COMMUNITY SERVICE DISPOSITIONAL ALTERNATIVE FOR JUVENILE OFFENDERS WHO HAVE BEEN ADJUDICATED DELINQUENT FOR LEVEL 2 OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-2506(23) reads as rewritten:

"(23) Order the juvenile to perform up to 200 hours supervised community service ~~of not less than 100 hours and not more than 200 hours,~~ consistent with the juvenile's age, skill, and ability, specifying the nature of work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 885
Committee Substitute Favorable 4/21/99
Proposed Senate Committee Substitute H885-PCSA167-SD

Short Title: Self-Serve Storage/Late Payments. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Self-Service Storage Rental Contracts.

"**§ 66-280. Contract requirements.**

A rental contract for the storage of personal property in a self-service storage business shall state, in bold type of a minimum size of 14 points and conspicuously placed, the terms regarding the imposition of late fees, the terms regarding any consequences of a late payment, and the terms, if any, that pertain to the payment of court costs, attorneys' fees, and any other costs associated with the payment of late fees or with judgment against the consumer for late rental payments or late fees.

"**§ 66-281. Late fees.**

(a) In all rental contracts in which a definite time for the payment of the rent is fixed, the late fee for each rental unit shall not exceed fifteen percent (15%) of the rental payment and shall not be imposed by the self-service storage business until the rental payment for that rental unit is five days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

"**§ 66-282. Violations.**

(a) Late fees and attorney fees are not recoverable if a self-service storage business violates the provisions of G.S. 66-281.

(b) Any waiver of any of the provisions of this Article shall be deemed void and unenforceable.

(c) The remedies provided in this section are in addition to any other remedies provided for by law or in equity."

Section 2. This act becomes effective October 1, 1999, and applies to rental contracts for self-service storage entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 939
Committee Substitute Favorable 4/21/99
Proposed Senate Committee Substitute H939-PCS4280-SD

Short Title: Raise Small Claims Amount. (Public)

Sponsors:

Referred to:

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT AND GIVE MAGISTRATES WHO ARE ATTORNEYS THAT ARE LICENSED TO PRACTICE LAW IN NORTH CAROLINA ADDITIONAL AUTHORITY TO ACCEPT BINDING WAIVERS OF COUNSEL IN CRIMINAL CASES AND CIVIL CONTEMPT CASES .

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-210 reads as rewritten:

"**§ 7A-210. Small claim action defined.**

For purposes of this Article a small claim action is a civil action wherein:

(1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~three thousand dollars ($3,000);~~ four thousand dollars ($4,000); and

(2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and

(3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying."

Section 2. G.S. 7A-273 reads as rewritten:

"**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

(a) In criminal actions or infractions, any magistrate has power:

(1) In infraction cases in which the maximum penalty that can be imposed is not more than fifty dollars ($50.00), exclusive of costs, or in Class 3 misdemeanors, other than the types of infractions and misdemeanors specified in subdivision (2) of this ~~section,~~ subsection, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter 18B of the General Statutes, traffic offenses, hunting, fishing, State park and recreation area rule offenses under Chapter 113 of the General Statutes, boating offenses under Chapter 75A of the General Statutes, and littering offenses under G.S. 14-399(c), to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county;

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511; and

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is two thousand dollars ($2,000) or less, restitution, including service charges and processing fees allowed by G.S. 14-107, is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(d).

(b) In criminal actions or infractions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To accept binding waivers of counsel in criminal cases."

Section 3. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

(a) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;

(3) When authorized by the chief district judge, to take depositions and examinations before trial;

(4) To issue subpoenas and capiases valid throughout the county;

(5) To take affidavits for the verification of pleadings;

(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;

(8) To take acknowledgments of instruments, as provided in G.S. 47-1;

(9) To perform the marriage ceremony, as provided in G.S. 51-1;

(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and

(11) Repealed by Session Laws 1973, c. 503, s. 9.

(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.

(13) Repealed by Session Laws 1973, c. 503, s. 9.

(b) In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, a magistrate who is licensed to practice law in this State has the additional authority, if so assigned by the chief district court judge and subject to any limitations imposed by the chief district court judge:

(1) To accept binding waivers of counsel in civil contempt cases."

Section 4. This act becomes effective October 1, 1999, and applies to claims filed for causes of action arising on or after that date.

HOUSE BILL 660:
Collection Agency Definition

BILL ANALYSIS

Committee: Senate Judiciary II
Date: July 7, 1999
Version: First Edition

Introduced by: Representative Nesbitt
Summary by: Ed Rossi & Susan L. Hayes
Staff Counsel

SUMMARY: ***House Bill 660 changes the definition of the phrase "collection agency" in Chapter 58 so that the debt collection practices of persons or agencies designated by county commissioners or DHHS to collect child support are not subject to regulation by Insurance Department.***

CURRENT LAW: Chapter 110 of the General Statutes gives counties the authority to institute civil or criminal proceedings to collect child support or establish paternity.[1] Such actions are instituted by the "designated representative" of the county.[2]

Article 70 of Chapter 58 gives the Department of Insurance the authority to regulate collection agencies. A collection agency is defined in the Article, as any person or association that directly or indirectly solicits delinquent claims of any kind and directly or indirectly engages in asserting, enforcing or prosecuting those claims.[3]

A person that undertakes to operate a collection agency must be licensed by the Commissioner[4] and post a bond.[5] In addition, they cannot collect nor attempt to collect a debt by means of threats of coercion,[6] harassment,[7] unreasonable publication,[8] or deceptive representation.[9]

Article 2 of Chapter 75 also governs debt collection practices. However, based on the definition of consumer[10] that is found in the Article it most likely does not apply to collections pursuant to Chapter 110.

BACKGROUND: The Department of Insurance's Legal Counsel recently issued an opinion that found that "designated representatives" as defined in G.S. § 110-129(5) must be licensed by the Department of Insurance.

BILL ANALYSIS: House Bill 660 amends G.S. 58-70-15 to provide that the term "collection agency" does not include "designated representatives" as defined by G.S. 110-129(5). This has the effect of ensuring that child enforcement programs are exempt from the debt collection restrictions imposed by Chapter 58 of the General Statutes.

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[1] G.S. § 110-130

[2] "Designated representative" means any person or agency designated by a board of county commissioners or the Department of Health and Human Services to administer a program of child support enforcement for a county or region of the State. G.S. § 110-129(5).

[3] G.S. § 58-70-15

[4] G.S § 58-70-1

[5] G.S. § 58-70-20

[6] G.S. § 58-70-95

[7] G.S. § 58-70-100

[8] G.S. § 58-70-105

[9] G.S. § 58-70-110

[10] "'Consumer' means any natural person who has incurred a debt or alleged debt for personal, family, household or agricultural purposes. G.S. § 75-50

HOUSE BILL 661:
Juvenile Community Service

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Nesbitt
Date:	July 8, 1999	**Summary by:**	Brenda J. Carter
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***House Bill 661 amends G.S. 7B-2506(23) to clarify a judge's authority to order up to 200 hours of community service for Level 2 juvenile offenders.***

CURRENT LAW: The Juvenile Code as rewritten in the last legislative session became effective July 1, 1999. It provides a structured sentencing type grid for delinquent juveniles, and three punishment levels are prescribed depending upon the nature of the offense committed and the juvenile's delinquency history. The 3 levels of disposition are as follows: Level 1 – Community Disposition; Level 2 – Intermediate Disposition; Level 3 – Commitment. The community service option is one of several dispositional alternatives a judge may utilize for Level 2 offenders, and both G.S. 7B-2506(6) & (23) are among the options available. Currently G.S. 7B-2506(6) allows a judge to order up to 100 hours of community service for a Level 1 juvenile offender; G.S. 7B-2506(23) requires a minimum of 100 hours for a Level 2 juvenile offender, but allows a judge to order up to 200 hours.

BILL ANALYSIS: The bill is in the nature of a technical change, as it clarifies the choice between two community service options within the range of dispositional alternatives available to a judge in the case of a Level 2 offender. This bill would change the community service hours for Level 2 to "up to 200 hours", thus eliminating the requirement that a Level 2 offender do a minimum of 100 hours community service.

The bill becomes effective July 1, 1999, and applies to offenses committed on or after that date. (Since the bill removes the mandatory minimum, retroactivity is not detrimental to the offender.)

H661-SMRV-002

HOUSE BILL 973:
Marriage License Change/Study.

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Rep. Hill
Date:	July 7, 1999	**Summary by:**	Ed Rossi & Karen Cochrane Brown
Version:	2nd Edition		

SUMMARY:

House Bill 973 amends the law relating to the issuance of marriage licenses to authorize the register of deeds to issue a marriage license to an applicant who does not have a social security number if the applicant presents a sworn statement that the applicant is ineligible to obtain a social security number, provided all other requirements are met.

CURRENT LAW:

Marriage license requirements -- Under current law, if two persons file a "proper application" and appear to be authorized to be married in accordance with the State's laws, a register of deeds is required to issue a marriage license. In general, all unmarried persons, not of the same gender and 18 years of age or older, may marry. Persons between the ages of 16 and 18 may marry with the written consent of a legal guardian. The register of deeds may require the applicants to provide certified copies of birth certificates or any other evidence of capacity to marry which the register deems necessary. The law also requires the applicants to provide his and her social security numbers on the application. The register of deeds may not issue a license unless all of the requirements are met. Thus, if an applicant does not have a social security number and is ineligible to obtain one, the applicant may not be issued a marriage license.

Social Security Number Requirements -- Prior to 1997, there was no requirement that applicants include their social security numbers on marriage license applications. However, due to changes mandated by federal welfare reform[1], on August 28, 1997, legislation was enacted requiring the use of social security numbers on marriage license applications.[2]

Constitutional Right to Marry – The right to marry is a fundamental right that is protected by the Fourteenth Amendment.[3] Thus, any regulation that interferes directly and substantially with this right will be subject to a strict scrutiny analysis -- requiring a state to show a compelling government interest in the regulation and further requiring the state to show that the regulation is narrowly tailored to further that interest.

BILL ANALYSIS:

This bill would authorize the register of deeds to issue a marriage license to an otherwise eligible applicant who does not have a social security number and is ineligible to obtain one, if the person presents a sworn statement to that effect.

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[1] 42 U.S.C. § 666(a) provides in pertinent part: "In order to satisfy...this title, each state must have in effect laws requiring the use of the use of....[p]rocedures requiring that the social security number of any applicant for a...marriage license be recorded on the application."

[2] House bill 301 was signed into law on 8/28/97 as CH. SL 97-0433.

[3] Zablocki v. Redhail, 434 U.S. 374 (1978)

VISITOR REGISTRATION SHEET

Jud. II — Name of Committee

7-8-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mike Adams	Corrections
[illegible]	DHHS-DSS-Child Support Enforcement
[illegible]	SOS
[illegible]	DOC

SENATE JUDICIARY II COMMITTEE

JULY 13, 1999

ROOM 1124

HB 438	Housing Authority Exemption	Representative Edwards
HB 478	Threaten Court Officers	Representative Jarrell
HB 1135	1999 Governor's DWI Amendments	Representative Hackney

Adjournment

SENATE JUDICIARY II COMMITTEE

JULY 13, 1999

MINUTES

The Senate Judiciary II Committee met on July 13, 1999 at 9:00 a.m. in room 1124 of the Legislative Building. Ten members were present, including Senator Brad Miller, who presided.

Representative Edwards was recognized to explain HB 438, Housing Authority Exemption. Senator Odom moved to amend the bill on page 2, lines 16 and 17, and further on page 2, lines 21 through 22 (amendment attached). The motion carried unanimously. Senator Odom moved to engross the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to committee substitute #1, but favorable as to Senate committee substitute.**

HB 478, Threaten Court Officers, was explained by Representative Jarrell. Senator Hagan moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Odom moved to amend the bill on page 3, lines 11 through 16, by deleting the sentence that begins on line 11. The motion carried unanimously. Senator Hagan moved to engross the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried. **Unfavorable as to committee substitute #1, but favorable as to Senate committee substitute.**

Representative Hackney was recognized to explain HB 1135, 1999 Governor's DWI Amendments. Senator Miller displaced the bill until the next meeting.

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Wednesday, July 14, 1999

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**438** Housing Authority Exemption.

Draft Number:	PCS8155
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1)**685** Arrest Warrants/Copies.

Draft Number:	PCS7252
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Wednesday, July 14, 1999

SENATOR BRAD MILLER,
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

H.B.(SCS #1)**1209** Personal Watercraft Safety.

Draft Number:	PCS1289
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 438
Committee Substitute Reported Without Prejudice 4/20/99

Short Title: Housing Authority Exemption. (Public)

Sponsors:

Referred to:

March 15, 1999

A BILL TO BE ENTITLED

AN ACT EXEMPTING HOUSING AUTHORITIES FROM REAL ESTATE LICENSURE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-2(c) reads as rewritten:

"(c) The provisions of this Chapter shall not apply to and shall not include:

(1) Any person, partnership, corporation, limited liability company, association, or other business entity who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment ~~therein;~~ therein.

(2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real ~~estate;~~ estate.

(3) The acts or services of an ~~attorney-at-law;~~ attorney-at-law.

(4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any ~~court;~~ court.

(5) Any person, while acting as a trustee under a trust agreement, deed of trust or will, or his regular salaried ~~employees;~~ employees.

(6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his employment to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or ~~broker; or~~ broker.

(7) Any owner who personally leases or sells his own property.

(8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes."

Section 2. Article 1 of Chapter 157 of the General Statutes is amended to add a new section to read:

"**§ 157-26.1. Exemption from real estate licensure requirements.**

The authority shall be exempt from the requirements of Chapter 93A of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 478
Committee Substitute Favorable 4/7/99
Third Edition Engrossed 4/20/99

Short Title: Threaten Court Officers. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 5A.

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

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

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

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

(c) Any person who commits an offense under subsection (a) and inflicts serious bodily injury to any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~

officer, executive ~~officer as named in G.S. 147-3(c)~~ officer, or court officer, shall be punished as a Class F felon.

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

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

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

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

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

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

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

"**§ 14-16.10. Definitions.**

The following definitions apply in this Article:

(1) Court officer. -- Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court counselor as defined in G.S. 7B-1501(5); or any attorney licensed to practice in the General Court of Justice when in a building where judicial functions are exercised or while in the exercise of that attorney's judicial duties.

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

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

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

"(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 6

HOUSE BILL 1135
Committee Substitute Favorable 4/22/99
Third Edition Engrossed 4/26/99
Corrected Copy 4/30/99
Committee Substitute #2 Favorable 6/21/99
Sixth Edition Engrossed 6/28/99

Short Title: 1999 Governor's DWI Amendments. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more;

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. -- Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical ~~Analysis; Procedure upon Refusal.~~ Analysis. -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions

of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed affidavit required by subsection ~~(e),~~ (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the

person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent ~~offense;~~ offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent ~~offense;~~ offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of ~~his or her~~ the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court

judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 2. G.S. 20-19 reads as rewritten:

"**§ 20-19. Period of suspension or ~~revocation.~~ revocation; conditions of restoration.**

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's

license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. -- When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing Before Division; Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly

requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a);

(3) The drivers license of the person had an alcohol concentration restriction; and

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. -- There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the superior court of the county in which the hearing took place for discretionary review on the record of the revocation. The superior court may stay the imposition of the revocation only if the court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division

may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been

revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing

proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

Section 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.16 or more; or

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.01 or greater.

(c) Length of Requirement. -- The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(d) Effect of Limited Driving Privileges. -- If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection (c).

(e) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, but may be used in an administrative revocation proceeding as provided in subsection (g) of this section.

(g) Effect of Violation of Restriction When Driving While License Revoked not Charged. -- A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year. An alcohol concentration report from the ignition interlock system indicating an alcohol concentration of 0.01 or greater is sufficient evidence for revocation under this subsection.

(h) Beginning of Revocation Period. -- If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. -- If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to

the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and

(2) The person:

a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or

b. Did not personally activate the ignition interlock system before driving the vehicle; or

c. Drove the vehicle with an alcohol concentration of 0.01 or greater.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. -- When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation occurred prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully complied with subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section."

Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 5. G.S. 20-179.3(g4) reads as rewritten:

"(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART III. OPEN CONTAINER

Section 6. G.S. 18B-401 reads as rewritten:

"**§ 18B-401. Manner of transportation.**

(a) Opened Containers. -- It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. ~~It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine.~~ Violation of this subsection shall constitute a Class 3 misdemeanor.

(a1) Transportation of an open container of malt beverage or unfortified wine shall be governed by G.S. 20-138.7.

(b) Taxis. -- It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than eight liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. -- The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle,

the area behind the last upright back seat shall not be considered part of the passenger area."

Section 7. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- If the driver is not consuming alcohol and has no alcohol remaining in the driver's body, it shall not be a violation of subsection (a1) for the driver to drive the motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

(2) In the living quarters of a house trailer, motor home, or house car.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) is not a lesser

included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) is a lesser included offense of subsection (a). A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 8. G.S. 20-17(a)(12) reads as rewritten:

"(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under ~~G.S. 20-138.7.~~ G.S. 20-138.7(a)."

PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 10. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. -- A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is

revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

PART VI. INCREASE PUNISHMENT FOR 19- OR 20-YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 11. G.S. 18B-302(i) reads as rewritten:

"(i) Purchase or Possession by 19 or 20-Year Old. -- A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is ~~an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.~~ a Class 3 misdemeanor."

Section 12. G.S. 15A-145 reads as rewritten:

"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of ~~misdemeanor.~~ misdemeanor; expunction of certain other misdemeanors.

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from

his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and (i) petitioner was not 18 years old at the time of the conviction in question, or (ii) petitioner was not 21 years old at the time of the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge."

Section 13. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~ was charged with an infraction under ~~G.S. 18B-302(i),~~ G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

PART VII. OTHER DWI CHANGES

Section 14. G.S. 20-16.2(i) reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S.

20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 15. G.S. 20-28.2(a) reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of "Impaired Driving License Revocation". -- The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired ~~driving.~~ driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2)."

Section 16. G.S. 20-28.2(e) reads as rewritten:

"(e) Release of Vehicle to Innocent Motor Vehicle Owner. -- At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner,

conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this ~~Chapter;~~ Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2.

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals."

Section 17. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license ~~has been revoked~~ has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the

person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 18. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 19. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially ~~equivalent to~~ similar conduct prohibited by the offenses in ~~subparagraphs a through c.~~ this subsection.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 20. G.S. 20-138.2A reads as rewritten:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an

administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

Section 21. G.S. 20-138.2B reads as rewritten:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

Section 22. G.S. 20-28.2(a1)(2) reads as rewritten:

"(2) Innocent Owner. -- A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied ~~permission;~~ permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

c. Whose vehicle was reported stolen;

~~d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;~~

e. Who is in the business of renting vehicles, ~~the driver~~ and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VIII. EFFECTIVE DATE

Section 23. This act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts. This act does not obligate the General Assembly to appropriate additional funds.

Section 24. Parts I and II of this act become effective July 1, 2000, and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 478:
Threaten Court Officers

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Jarrell
Date:	July 13, 1999	**Summary by:**	Brenda Carter & Robin Johnson Staff Counsel
Version:	Proposed Senate Committee Substitute		

SUMMARY: ***The proposed Senate Committee Substitute for House Bill 478 would amend Article 5A of Chapter 14 of the General Statutes by adding enumerated court officers, to create the criminal offenses of endangering or threatening judges, district attorneys, and other court officers in the same manner as they apply to legislative and executive officers.***

CURRENT LAW: Generally, the following law applies:

- Simple assault on an officer or employee of the State or any local government, when the officer or employee is discharging or attempting to discharge his or her official duties is a *Class A1 misdemeanor*, punishable with community, intermediate, or active punishment from 1-60 days for a person with no prior convictions, and fines in the discretion of the court. Simple assaults on legislative or executive officers are *Class I felonies*, punishable with 3-8 months of community punishment to 6-12 months of active incarceration. This offense includes violent attacks upon an officer's residence, office, temporary accommodation, or means of transport.
- Assaults with a firearm or other deadly weapon upon governmental officers or employees, or assault inflicting serious bodily injury are Class F felonies. These assaults on legislative or executive officers are also Class F felonies, punishable with 10-20 months of intermediate punishment to 23-49 months of active incarceration.
- Threats to kill or inflict serious bodily injury are *Class 1 misdemeanors*, punishable with 1-60 days of community punishment up to 150 days of active punishment, and fines within the discretion of the court. These threats, when made against legislative or executive officers, are *Class I felonies*, punishable with 3-8 months of community punishment to 6-12 months of active incarceration. The officer is not required to have actually received the threat.

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

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

BILL ANALYSIS: The bill makes assault upon a court officer a Class I felony, assault upon a court officer with a deadly weapon or with serious bodily injury a Class F felony, and threatening to kill or inflict serious bodily injury upon any court officer a Class I felony. The bill would amend Article 5A of Chapter 14 of the General Statutes, which currently creates the offenses as they apply to legislative and executive officers. This Article also applies to offenses upon those named persons who have been elected, but who have not yet taken the oath of office. The bill would also amend G.S. 114-15(a) to authorize the SBI to investigate any assault or threat against a court officer.

Court officers as defined in the proposed committee substitute would include:

- ***Magistrates, clerks of superior court, acting clerks, assistant or deputy clerk, judges, or justices of the General Court of Justice.***
- ***District attorneys, assistant district attorneys, or other attorneys designated by the district attorney to act on behalf of the district attorney or to act for the State.***
- ***Public defenders or assistant public defenders.***
- ***Court Reporters and Attorneys licensed to practice in the General Court of Justice, when the court reporter or attorney is in a building where judicial functions are exercised or while the court report or attorney is exercising his or her judicial duties with regard to court proceedings.***

The bill would become effective December 1, 1999, and would apply to offenses committed on or after that date.

H478-SMRV-004

HOUSE BILL 1135:
1999 Governor's DWI Amendments

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Rep. Hackney, Bowie & Wainwright
Date:	July 12, 1999	**Summary by:**	Brenda Carter & Susan L. Hayes *
Version:	6th Edition		Staff Counsel

SUMMARY: ***House Bill 1135 enacts the recommendations of the Governor's DWI Task Force.***

BILL ANALYSIS:

Part I. Lower Tolerance for Repeat Offenders

An administrative graduated alcohol concentration scale is created for DWI offenders. When a person convicted of DWI has their license restored DMV must place a restriction that they not operate a motor vehicle with an alcohol concentration of :

0.04 or more if -- It is the first restoration of a license after conviction of a DWI

greater than 0.00 if - 1) It is the second or subsequent restoration of a license after conviction of a DWI, or

2) It is the restoration of a license for a person convicted of DWI in a commercial vehicle, driving while less than 21 after consuming alcohol or drugs, or felony death by vehicle, manslaughter, or negligent homicide when the offense involved impaired driving, or a revocation based on a restriction under this section

The restriction is to remain on the person's license for the following period of time:

-- 7 years if the revocation was a permanent revocation
-- until the person's 21st birthday if the revocation was for driving while less than 21 after consuming alcohol or drugs
--3 years, in all other cases

In order to have their license restored, the person must consent to this restriction, and also must consent to submit to a chemical analysis at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction.

Violation of the restriction results in a one year administration revocation of the drivers license by DMV.

Part II. Ignition Interlock

An ignition interlock requirement is created for DWI offenders who have an alcohol concentration of 0.16 or more, or who have been convicted of another DWI within 7 years of the current offense.

When DMV restores the license of those persons, they must restrict the person to driving only a vehicle equipped with ignition interlock.

The requirement is in effect for:

-- 1 year if the revocation was for 1 year
-- 3 years if the revocation was for 4 years
-- 7 years if the revocation was permanent.

Violation may occur as the result of driving a vehicle without ignition interlock, not personally activating the ignition interlock, or driving a motor vehicle with an alcohol concentration of 0.01 or greater. A person violating these provisions may be charged with Driving While License Revoked by a law enforcement officer, or may have their license administratively revoked by DMV based on an alcohol concentration reading of the ignition interlock.

Part III. Open Container

The open container law is amended to comply with federal mandate, by making it an infraction to have an open container of beer or unfortified wine in a vehicle if the driver has NOT been drinking. Current law makes it a Class 3 misdemeanor if the driver HAS been drinking, but no offense if the driver has not been drinking. There is an exception to the infraction if the driver has not been drinking and the vehicle is designed, maintained, or used primarily for the transportation of persons for compensation, or if the open container is in the living quarters of a house trailer, motor home, or house car.

Part V. Limited Driving Privilege Alcosensor Admissibility

Allows the results of an Alco-Sensor (the roadside test) to be admissible in cases dealing with the violation of a limited driving privilege as proof of the presence of alcohol.

Part VI. Increase Punishment for 19 or 20 Year Old Purchase or Possession of Alcoholic Beverages

Repeals the portion of the statute that makes possession of beer or unfortified wine by a 19 or 20 year old an infraction so that possession by any person under 21 will be a Class 3 misdemeanor.

Part VII. Other DWI Changes

Section 14 changes the pre-arrest test rights to conform with the changes made to pre-trial revocation in the 1998 session.

Sections 15 and 16 amend the DWI forfeiture provisions to make them apply to persons who have an out of state DWI conviction.

Section 17 is a technical conforming change.

Section 18 amends the language regarding sequential breath tests to remove the requirement that refusal of the second test be "willful".

Section 19 amends the language in the definitions section of Chapter 20 regarding out of state convictions to make the language consistent with other parts of the statute, and to add habitual driving and DWI in a commercial vehicle to the offenses included in out of state offenses.

Sections 20 and 21 amend the Operating a commercial vehicle after consuming alcohol, and the Operating a school bus, school activity bus, or child care vehicle after consuming alcohol statutes to provide that if

the driver refuses to submit to an Intoxilyzer test, an alcohol screening test can be admitted to prove the presence of alcohol.

Section 22 makes a technical grammatical correction to a section of the DWI forfeiture statutes.

Part VIII. Effective Date

Section 23 states that this act will implemented with funds available to the Department of Transportation and the Administrative Office of the Courts and does not obligate the General Assembly to appropriate additional funds.

Section 24 makes Parts I and II of this act effective July 1, 2000, applying only to offenses committed on or after that date. All other sections are effective December 1, 1999 and apply to offenses committed on or after that date.

*** Summary of revisions subsequent to First Edition provided by G. Wesley Parker, Director, Governor's Task Force on Driving While Impaired**

H1135-SMRV-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H478-CSRV-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 478
Committee Substitute Favorable 4/7/99
Third Edition Engrossed 4/20/99
THIS IS A DRAFT 8-JUL-99 11:16:25
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Threaten Court Officers. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 5A.

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

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

(a) Any person who assaults any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~ officer, executive ~~officer named in G.S. 147-3(c),~~ officer, or court officer, or any person who makes a violent attack upon the residence, office, temporary

accommodation or means of transport of any ~~legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c)~~ one of those officers in a manner likely to endanger ~~such legislative officer or executive~~ the officer, shall be guilty of a felony and shall be punished as a Class I felon.

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

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

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

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

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

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

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

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

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

"§ 14-16.10. Definitions.

The following definitions apply in this Article:

(1) Court officer. -- Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court counselor as defined in G.S. 7B-1501(5). Court officer also means any court reporter or any attorney licensed to practice in the General Court of Justice, when in a building where judicial functions are exercised or while in the exercise of that person's judicial duties with regard to court proceedings.

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

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

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

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 438

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

H438-ALM-1 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
Second Edition

Senator _____

moves to amend the bill on page 2, lines 16 through 17, by rewriting those lines to read:

"(8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried employees of the housing authority when performing acts authorized in this Chapter as to any property owned or leased by the housing authority. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority.'"

and further on page 2, lines 21 through 22, by rewriting those lines to read:

"The authority and the regular salaried employees of the authority shall be exempt from the requirements of Chapter 93A of the General Statutes as provided in G.S. 93A-2(c)(8).'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 478-CSRV-001 DATE 7-13-99

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

COMMITTEE SUBSTITUTE _____

Rep.) Odom
)
Sen.)

moves to amend the bill on page 3, line 11-16

( ) WHICH CHANGES THE TITLE

by deleting the sentence that begins on line 11

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 438
Committee Substitute Reported Without Prejudice 4/20/99
Proposed Senate Committee Substitute H438-PCS8155-SD

Short Title: Housing Authority Exemption. (Public)

Sponsors:

Referred to:

March 15, 1999

A BILL TO BE ENTITLED

AN ACT EXEMPTING HOUSING AUTHORITIES FROM REAL ESTATE LICENSURE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-2(c) reads as rewritten:

"(c) The provisions of this Chapter shall not apply to and shall not include:

(1) Any person, partnership, corporation, limited liability company, association, or other business entity who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment ~~therein;~~ therein.

(2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real ~~estate;~~ estate.

(3) The acts or services of an ~~attorney-at-law;~~ attorney-at-law.

(4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any ~~court;~~ court.

(5) Any person, while acting as a trustee under a trust agreement, deed of trust or will, or his regular salaried ~~employees;~~ employees.

(6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his employment to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or ~~broker; or~~ broker.

(7) Any owner who personally leases or sells his own property.

(8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried employees of the housing authority when performing acts authorized in this Chapter as to any property owned or leased by the housing authority. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority."

Section 2. Article 1 of Chapter 157 of the General Statutes is amended to add a new section to read:

"**§ 157-26.1. Exemption from real estate licensure requirements.**

The authority and the regular salaried employees of the authority shall be exempt from the requirements of Chapter 93A of the General Statutes as provided in G.S. 93A-2(c)(8)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 685*
Committee Substitute Favorable 4/12/99
Proposed Committee Substitute H685-PCS7252-SD

Short Title: Arrest Warrants/Copies. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A LAW ENFORCEMENT OFFICER MAY ARREST A PERSON ON PRIVATE PREMISES OR IN A VEHICLE IN ACCORDANCE WITH STATE LAW WITH A COPY OF THE ORIGINAL ARREST WARRANT OR ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-401(e) reads as rewritten:

"(e) Entry on Private Premises or Vehicle; Use of Force. --

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a ~~person~~ person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of the officer's employing law enforcement agency and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued,

b. The officer has reasonable cause to believe the person to be arrested is present, and

c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

(2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1209
Committee Substitute Favorable 4/27/99
Third Edition Engrossed 4/29/99
Senate Judiciary II Committee Substitute Adopted 6/10/99
Proposed Senate Committee Substitute H1209-PCS1289-SD

Short Title: Personal Watercraft Safety. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 reads as rewritten:

"**§ 75A-13.3. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the ~~vehicle.~~ vessel.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, ~~nor shall~~ and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow ~~a person under the age of 16~~ that person to operate a personal watercraft. A person of

at least ~~13~~ 12 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least ~~16~~ 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses ~~a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary.~~ on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) It shall be unlawful for any person, firm, or corporation to engage in the business of renting personal watercraft to the public for operation by the rentee unless such person, firm, or corporation has secured insurance for his own liability and that of his rentee, in such an amount as is hereinafter provided, from an insurance company duly authorized to sell liability insurance in this State. Each such personal watercraft rented must be covered by a policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars ($300,000) per occurrence.

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast ~~Guard;~~ Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water skis or other devices unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or ~~property, including:~~ property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and include:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel ~~unreasonably or unnecessarily close of~~ within 100 feet of such other vessel or when visibility around such other vessel is obstructed; ~~and~~

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision~~ collision;

(4) Operating at greater than no-wake speed within 100 feet of an anchored or moored vessel, the shoreline, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel; and

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

~~shall constitute reckless operation of a vessel as provided in G.S. 75A-10.~~

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

~~(g) This section applies only to that portion of the waters of the upper Catawba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section.~~

(h) Nothing in this section prohibits units of local government, marine commissions, or local wake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section. Whenever a unit of local government, marine commission, or local wake authority regulates personal watercraft pursuant to this subsection, it shall conspicuously post signs that are reasonably calculated to provide notice to personal watercraft users of the stricter regulations."

Section 2. G.S. 75A-18 is amended by adding a new subsection to read:

"(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000)."

Section 3. G.S. 75A-13.2 is repealed.

Section 4. This act becomes effective December 1, 1999, and applies to acts committed on or after that date.

VISITOR REGISTRATION SHEET

Jud. II — 7-13-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Larry Dix	OJJ
Bill Soggin	NC Bar Assoc
Fran Preston	NCRMA
Myth Osborne	AOC
Rex Bore	Conference of DAs
Jay Rouse	NC Bar & Wm
Matt Ezell	GTASA
C Massengill	DMV
Debbie Strickland	DMV
Michael E Bryant	DMV
Wes Parker	Lt. Gov. office / GHSP
Bryan Beatty	DOS
Andy Ellen	NC RMA
Kim Gibbons	NCLM
Stacy Flannery	NCHCPA

VISITOR REGISTRATION SHEET

SENATE J-11 — Name of Committee

7-13-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER, POE, ADAMS & BERNSTEIN
Richard Rogers	DENR
Ashleigh E. Cloud	Mun. Int. Liability on Cabarrus
Mary Ann Talley	Atty.
David Ferrell	HPMCC&C, P.A.
Jon Williams	CCPS
Pamela Wright	AOC

SENATE JUDICIARY II COMMITTEE

JULY 15, 1999

ROOM 1124

HB 162	1999 Technical Corrections	Representative Culpepper
HB 328	Sent. Commn/Crim Law Changes/AB	Representative Braswell
HB 1135	1999 Governor's DWI Amendments	Representative Hackney

Adjournment

SENATE JUDICIARY II COMMITTEE

JULY 15, 1999

MINUTES

The Senate Judiciary Committee met on July 15, 1999 at 9:00 a.m. in room 1124 of the Legislative Building. Ten members were present, including Senator Brad Miller, who presided.

Senator Odom was recognized to continue the discussion of HB 1135, 1999 Governor's DWI Amendments. Senator Ballance moved to amend the bill on page 12, line 30, by changing "0.01" to 0.04." The motion carried.

Senator Ballance moved to amend the bill on page 12, line 11, by changing "0.16" to "0.18." The motion failed.

Senator Horton moved to amend the bill on page 15, line 36, by deleting the sentence "not more than eight liters of fortified wine or spiritous liquor or combination of the two, may be transported by each passenger," and then withdrew the motion. Senator Horton made another motion to amend the bill on page 15, by deleting the word "passenger" and substituting "passenger, without a purchase-transportation permit under G.S. 18B-403." The motion carried unanimously.

Senator Horton moved to further amend the bill on page 23, lines 15 through 40, by deleting those lines in their entirety, and by renumbering the remaining sections of the bill. The motion carried unanimously.

Senator Horton moved to amend the bill by entirely eliminating Part 111, dealing with open containers. The motion failed.

Senator Horton moved to amend the bill on page 12, line 3, by rewriting that line to read: "Section 2.1 G.S. 20-138.5 (d) reads as rewritten: Section 2.2 G.S. 20-17 (a) (2) is amended by adding a new subdivision to read: c. Habitual impaired driving under G.S. 20-138.5." Senator Odom spoke in opposition to the amendment and requested that Senator Horton withdraw it. Senator Horton complied.

Senator Horton again moved to amend the bill by changing the permanent revocation provision to providing the return of driving privileges after 7 years, with a clean driving record. The motion failed.

Senator Ballance moved to amend the bill on page 26, line 40, by rewriting that line to read: "Parts 1, 11, and 111 of this act become effective..." The motion carried.

Senator Odom moved to engross the amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to committee substitute #2, but favorable as to Senate committee substitute.**

Senator Brad Miller, Chairman

Cornelia McMillan, Legislative Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 162
Committee Substitute Favorable 4/23/99

Short Title: 1999 Technical Corrections. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-56 reads as rewritten:

"**§ 143-56. Certain purchases excepted from provisions of Article.**

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals through a competitive bidding purchasing program, as defined in ~~G.S. 143-29,~~ G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at

Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

Section 2. G.S. 32A-14.1 reads as rewritten:

"**§ 32A-14.1. Gifts under power of attorney.** .

(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and ~~2422(a)~~ 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

(b) Except as provided in subsection (c) of this section, or unless gifts are expressly authorized by the power of attorney, a power described in subsection (a) of this section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact.

(c) If the power of attorney described in subsection (a) of this section is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by subsection (b) of this section from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact. If the power of attorney described in subsection (a) of this section is conferred upon one attorney-in-fact, the power of attorney may be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact pursuant to an order issued by the clerk in accordance with the procedures and provisions of Article 2B of this Chapter.

(d) Subsection (a) of this section shall not in any way impair the right, power, or ability of any principal, by express terms in the power of attorney, to authorize or limit the authority of any attorney-in-fact to make gifts of the principal's property.

(e) An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request that the clerk of the superior court issue an order approving a gift or gifts of the property of the principal.

(f) This section shall apply to all powers of attorney executed prior to, on, or after ~~the effective date of this section.~~ October 1, 1995."

Section 3. G.S. 122C-57(d) through (f) read as rewritten:

"(d) Each voluntarily admitted client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of ~~attorney,~~ attorney has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid ~~advanced~~ advance instruction for mental health treatment ~~or an attorney-in-fact named pursuant to a valid instruction for mental health treatment~~ in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm self or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's consent expressed in a valid ~~advanced~~ advance instruction ~~or~~ for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client, the client's legally responsible person, or a health care agent named

pursuant to a valid health care power of ~~attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation.~~ attorney."

Section 4. G.S. 122C-211(f1) reads as rewritten:

"(f1) An individual in need of treatment for mental illness may be admitted to a facility pursuant to an advance instruction for mental health treatment or pursuant to the authority of a health care agent named in a valid health care power of attorney, provided that the individual is incapable, as defined in ~~G.S. 122C-72(c)~~ G.S. 122C-72(4) at the time of the need for admission. An individual admitted to a facility pursuant to an advance instruction for mental health treatment may not be retained for more than 10 days, except as provided for in subsection (b) of this section. When a health care power of attorney authorizes a health care agent to seek the admission of an incapable individual, the health care agent shall act for the individual in applying for admission to a facility and in consenting to medical treatment at the facility when consent is required, provided that the individual is incapable."

Section 5. G.S. 74C-5 reads as rewritten:

"**§ 74C-5. Powers of the Board.**

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Approve individual applicants to be licensed or registered according to this Chapter;

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment

pursuant to G.S. [Chapter] 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court; ~~and~~

(8) Repealed by Session Laws 1989, c. 759, s. 5.

(9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such ~~schools.~~ schools; and

(10) Contract for services as necessary to carry out the functions of the Board."

Section 6. G.S. 74D-5(a) reads as rewritten:

"(a) In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and make evaluations as may be necessary to determine if licensees and registrants under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Investigate and approve individual applicants to be licensed or registered according this Chapter;

(6) Deny, suspend, or revoke any license issued or to be issued under this Chapter to any applicant or licensee who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation of such license shall be in accordance with Chapter 150B of this General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. 5A-21 et seq. for acts occurring in matters pending before the Board which would constitute civil contempt if the acts occurred in an action pending in ~~court.~~ court; and

(8) Contract for services as necessary to carry out the functions of the Board."

Section 7. G.S. 74C-6 reads as rewritten:

"**§ 74C-6. Position of Administrator created.**

The position of Administrator of the Private Protective Services Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the private protective services industry to ensure compliance with the law in all aspects."

Section 8. G.S. 74D-5.1 reads as rewritten:

"**§ 74D-5.1. Position of Administrator created.**

The position of Administrator of the Alarm Systems Licensing Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the alarm systems industry to insure compliance with the law in all aspects. The Administrator may issue a temporary grant or denial of a request for registration subject to final action by the Board at its next regularly scheduled meeting."

Section 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 328
Committee Substitute Favorable 3/31/99

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

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 14-107. Worthless checks.**

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. -- Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior ~~Class A1 or Class 1~~ misdemeanor ~~conviction or prior impaired driving conviction under G.S. 20-138.1,~~ conviction as defined in this subsection, 1 ~~point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)) and conviction for impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.~~ point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

Section 4. G.S. 19A-35 reads as rewritten:

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

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

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

"**§ 106-418.14. Penalties.**

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

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

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

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

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

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

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding,

or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture and Consumer Services the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

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

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

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

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

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

"**§ 106-549.88. Penalties.**

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 6

HOUSE BILL 1135
Committee Substitute Favorable 4/22/99
Third Edition Engrossed 4/26/99
Corrected Copy 4/30/99
Committee Substitute #2 Favorable 6/21/99
Sixth Edition Engrossed 6/28/99

Short Title: 1999 Governor's DWI Amendments. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more;

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. -- Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical ~~Analysis; Procedure upon Refusal.~~ Analysis. -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions

of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed affidavit required by subsection ~~(c),~~ (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the

person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent ~~offense;~~ offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent ~~offense;~~ offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of ~~his or her~~ the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court

judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 2. G.S. 20-19 reads as rewritten:

"**§ 20-19. Period of suspension or ~~revocation.~~ revocation; conditions of restoration.**

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's

license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. -- When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing Before Division; Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly

requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a);

(3) The drivers license of the person had an alcohol concentration restriction; and

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. -- There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the superior court of the county in which the hearing took place for discretionary review on the record of the revocation. The superior court may stay the imposition of the revocation only if the court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division

may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been

revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing

proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

Section 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.16 or more; or

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.01 or greater.

(c) Length of Requirement. -- The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(d) Effect of Limited Driving Privileges. -- If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection (c).

(e) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, but may be used in an administrative revocation proceeding as provided in subsection (g) of this section.

(g) Effect of Violation of Restriction When Driving While License Revoked not Charged. -- A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year. An alcohol concentration report from the ignition interlock system indicating an alcohol concentration of 0.01 or greater is sufficient evidence for revocation under this subsection.

(h) Beginning of Revocation Period. -- If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. -- If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to

the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and

(2) The person:

a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or

b. Did not personally activate the ignition interlock system before driving the vehicle; or

c. Drove the vehicle with an alcohol concentration of 0.01 or greater.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. -- When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation occurred prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully complied with subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section."

Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 5. G.S. 20-179.3(g4) reads as rewritten:

"(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART III. OPEN CONTAINER

Section 6. G.S. 18B-401 reads as rewritten:

"**§ 18B-401. Manner of transportation.**

(a) Opened Containers. -- It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. ~~It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine.~~ Violation of this subsection shall constitute a Class 3 misdemeanor.

(a1) Transportation of an open container of malt beverage or unfortified wine shall be governed by G.S. 20-138.7.

(b) Taxis. -- It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than eight liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. -- The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle,

the area behind the last upright back seat shall not be considered part of the passenger area."

Section 7. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- If the driver is not consuming alcohol and has no alcohol remaining in the driver's body, it shall not be a violation of subsection (a1) for the driver to drive the motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

(2) In the living quarters of a house trailer, motor home, or house car.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) is not a lesser

included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) is a lesser included offense of subsection (a). A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 8. G.S. 20-17(a)(12) reads as rewritten:

"(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under ~~G.S. 20-138.7.~~ G.S. 20-138.7(a)."

PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 10. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. -- A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is

revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

PART VI. INCREASE PUNISHMENT FOR 19- OR 20-YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 11. G.S. 18B-302(i) reads as rewritten:

"(i) Purchase or Possession by 19 or 20-Year Old. -- A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is ~~an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.~~ a Class 3 misdemeanor."

Section 12. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of ~~misdemeanor:~~ misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from

his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and (i) petitioner was not 18 years old at the time of the conviction in question, or (ii) petitioner was not 21 years old at the time of the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge."

Section 13. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~ was charged with an infraction under ~~G.S. 18B-302(i),~~ G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

PART VII. OTHER DWI CHANGES

Section 14. G.S. 20-16.2(i) reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S.

20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 15. G.S. 20-28.2(a) reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of "Impaired Driving License Revocation". -- The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired ~~driving.~~ driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2)."

Section 16. G.S. 20-28.2(e) reads as rewritten:

"(e) Release of Vehicle to Innocent Motor Vehicle Owner. -- At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner,

conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this ~~Chapter;~~ Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2.

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals."

Section 17. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license ~~has been revoked~~ has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the

person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 18. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 19. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially ~~equivalent to~~ similar conduct prohibited by the offenses in ~~subparagraphs a through c.~~ this subsection.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 20. G.S. 20-138.2A reads as rewritten:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an

administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

Section 21. G.S. 20-138.2B reads as rewritten:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

Section 22. G.S. 20-28.2(a1)(2) reads as rewritten:

"(2) Innocent Owner. -- A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied ~~permission;~~ permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

c. Whose vehicle was reported stolen;

~~d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;~~

e. Who is in the business of renting vehicles, ~~the driver~~ and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VIII. EFFECTIVE DATE

Section 23. This act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts. This act does not obligate the General Assembly to appropriate additional funds.

Section 24. Parts I and II of this act become effective July 1, 2000, and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 6th

H. B. No. 1135 DATE 7-15-99

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

COMMITTEE SUBSTITUTE

Rep.)
) Ballance
Sen.)

moves to amend the bill on page 26, line 40

( ) WHICH CHANGES THE TITLE

by The drafting that line to read Parts I, II and III of this act become effective July 1, 2000, and

SIGNED

ADOPTED ✓ FAILED TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1135 DATE July 15 99

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 12, line 3

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"Sect. 2.1 G.S. 20-138.5 (d) reads as rewritten:

~~"(d) A person convicted under this section shall have his license permanently revoked."~~"

Section 2.2. G.S. 20-17(a)(2) is amended by adding a new subdivision to read:

"c. Habitual impaired driving under G.S. 20-138.5."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 6

H. B. No. 1135 DATE 7-15-99

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Horton
Sen.)

moves to amend the bill on page 23, line 15-40

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety, and by renumbering the remaining sections of the bill

SIGNED Horton

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1135 DATE 7-15-99

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

COMMITTEE SUBSTITUTE _____

~~Rep.~~)
) Horton
Sen.)

moves to amend the bill on page 15, line ~~35~~ 36

( ) WHICH CHANGES THE TITLE

by deleting the sentence "not more than eight liters of fortified wine or spirituous liquor or combination of the two, may be transported by each passenger."

By deleting the word "passenger" and substituting "~~passenger.~~ passenger, without a purchase-transportation permit under G.S. 18B-403."

SIGNED Horton

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 6th Ed.

H. B. No. 1135 6th Ed. DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Ballance
Sen.)

1 moves to amend the bill on page 12, line 11
2 ( ) WHICH CHANGES THE TITLE
3 by changing "0.16" to "0.18"
4
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14
15
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17
18
19

SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 4th Ed

H. B. No. 1135 DATE 7-15

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Ballmer

1 moves to amend the bill on page 12, line 30

2 ( ) WHICH CHANGES THE TITLE

3 by changing "0.01" TO "0.04"

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13

14

15

16

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SIGNED JWBallm

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 328:
Sentencing Commission/Criminal Law Changes

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Rep. Braswell
Date:	May 13, 1999	**Summary by:**	Brenda J. Carter
Version:	2nd Edition		Committee Co-Counsel

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

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

Section 2 amends the penalty portion of G.S. 14-229, which presently makes it an unspecified misdemeanor for an officer to enter on the duties of his office before executing and delivering the necessary bonds and taking the necessary oath. The amendment specifies that a violation is a Class 1 misdemeanor. (The bill does not increase the penalty, since under G.S. 14-3, a person convicted of a misdemeanor for which no specific classification and no specific punishment is prescribed by statute is punished as a Class 1 misdemeanor).

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

Section 4 amends G.S. 19A-35, which provides the penalty for failure to adequately care for animals in animal shelters, pet shops, boarding kennels, and other animal dealers. The present penalty for failure to properly house, feed, and water animals is an unspecified misdemeanor with a fine of not less than $5 and not more than $1,000. The amendment changes this to a Class 3 misdemeanor, with the fine remaining as is. Counsel to the House Judiciary II

Committee pointed out that as presently written the statute authorizes the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture to sell or euthenize animals seized because of a violation of the Animal Welfare Act once there is a conviction of a person under the Article. The act authorizes the Director to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of the animals, and further provides that fines levied because of violation of the act shall be applied toward reimbursement of funds the Director has expended in providing for the welfare of the animals. It was the opinion of Committee Counsel for House Judiciary II that these last two provisions appear to be in violation of the Executive Budget Act and the Constitution of North Carolina. The provision authorizing the Director "to disburse State funds in such amount as in his discretion is necessary" would allow the Director to expend funds from the General Fund without a specific appropriation, thus violating the Executive Budget Act and Article V, Section 7 of the State Constitution, and the provision allowing fines levied to be applied toward reimbursement of these funds would appear to violate Article IX, Section 7 of the constitution which provides that the clear proceeds of fines collected from breach of State penal laws shall belong to the counties to be used exclusively for maintaining free public schools. The House Judiciary II Committee voted to amend the bill to eliminate the last sentence of G.S. 19A-35. **An amendment is now necessary to replace the deleted language and strike through it in accordance with coded bill drafting requirements.**

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

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

Section 7 amends G.S.106-549.59, dealing with the punishment for violations of the Poultry Products Inspections Act. The penalties were never reclassified under Structured Sentencing or the Fair Sentencing Act. The amendments would make violations a Class 1 misdemeanor (instead of a fine of not more than $1,000 and/or imprisonment of not more than one year), and where the violation involves intent to defraud or distribution of adulterated items, the offense is a Class H felony, which may include a maximum $10,000 fine (presently it is imprisonment for not more than three years and/or the fine). This section also amends subsection (c) of G.S. 106-549.59 which provides the penalty for a person who forcibly assaults, resists, or otherwise interferes with a person performing official duties under the Poultry Products Inspections Act. Present penalty provides for a fine of not more than $5,000 or imprisonment for not more than three years, or both. This violation becomes a Class 2 misdemeanor and may include a maximum $5,000 fine. If deadly or dangerous weapons are involved, a violation is a Class A1

misdemeanor and may include a maximum $10,000 fine, in lieu of the present penalty of imprisonment of not more than 10 years and/or the $10,000 fine.

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

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

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

The bill becomes effective December 1, 1999, and applies to acts committed on or after that date.

H328-SMRV-002

HOUSE BILL 1135:
1999 Governor's DWI Amendments

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Rep. Hackney, Bowie & Wainwright
Date:	July 12, 1999	**Summary by:**	Brenda Carter & Susan L. Hayes *
Version:	6th Edition		Staff Counsel

SUMMARY: ***House Bill 1135 enacts the recommendations of the Governor's DWI Task Force.***

BILL ANALYSIS:

Part I. Lower Tolerance for Repeat Offenders

An administrative graduated alcohol concentration scale is created for DWI offenders. When a person convicted of DWI has their license restored DMV must place a restriction that they not operate a motor vehicle with an alcohol concentration of :

0.04 or more if -- It is the first restoration of a license after conviction of a DWI

greater than 0.00 if - 1) It is the second or subsequent restoration of a license after conviction of a DWI, or

2) It is the restoration of a license for a person convicted of DWI in a commercial vehicle, driving while less than 21 after consuming alcohol or drugs, or felony death by vehicle, manslaughter, or negligent homicide when the offense involved impaired driving, or a revocation based on a restriction under this section

The restriction is to remain on the person's license for the following period of time:

-- 7 years if the revocation was a permanent revocation
-- until the person's 21st birthday if the revocation was for driving while less than 21 after consuming alcohol or drugs
--3 years, in all other cases

In order to have their license restored, the person must consent to this restriction, and also must consent to submit to a chemical analysis at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction.

Violation of the restriction results in a one year administration revocation of the drivers license by DMV.

Part II. Ignition Interlock

An ignition interlock requirement is created for DWI offenders who have an alcohol concentration of 0.16 or more, or who have been convicted of another DWI within 7 years of the current offense.

When DMV restores the license of those persons, they must restrict the person to driving only a vehicle equipped with ignition interlock.

The requirement is in effect for:

-- 1 year if the revocation was for 1 year
-- 3 years if the revocation was for 4 years
-- 7 years if the revocation was permanent.

Violation may occur as the result of driving a vehicle without ignition interlock, not personally activating the ignition interlock, or driving a motor vehicle with an alcohol concentration of 0.01 or greater. A person violating these provisions may be charged with Driving While License Revoked by a law enforcement officer, or may have their license administratively revoked by DMV based on an alcohol concentration reading of the ignition interlock.

Part III. Open Container

The open container law is amended to comply with federal mandate, by making it an infraction to have an open container of beer or unfortified wine in a vehicle if the driver has NOT been drinking. Current law makes it a Class 3 misdemeanor if the driver HAS been drinking, but no offense if the driver has not been drinking. There is an exception to the infraction if the driver has not been drinking and the vehicle is designed, maintained, or used primarily for the transportation of persons for compensation, or if the open container is in the living quarters of a house trailer, motor home, or house car.

Part V. Limited Driving Privilege Alcosensor Admissibility

Allows the results of an Alco-Sensor (the roadside test) to be admissible in cases dealing with the violation of a limited driving privilege as proof of the presence of alcohol.

Part VI. Increase Punishment for 19 or 20 Year Old Purchase or Possession of Alcoholic Beverages

Repeals the portion of the statute that makes possession of beer or unfortified wine by a 19 or 20 year old an infraction so that possession by any person under 21 will be a Class 3 misdemeanor.

Part VII. Other DWI Changes

Section 14 changes the pre-arrest test rights to conform with the changes made to pre-trial revocation in the 1998 session.

Sections 15 and 16 amend the DWI forfeiture provisions to make them apply to persons who have an out of state DWI conviction.

Section 17 is a technical conforming change.

Section 18 amends the language regarding sequential breath tests to remove the requirement that refusal of the second test be "willful".

Section 19 amends the language in the definitions section of Chapter 20 regarding out of state convictions to make the language consistent with other parts of the statute, and to add habitual driving and DWI in a commercial vehicle to the offenses included in out of state offenses.

Sections 20 and 21 amend the Operating a commercial vehicle after consuming alcohol, and the Operating a school bus, school activity bus, or child care vehicle after consuming alcohol statutes to provide that if

the driver refuses to submit to an Intoxilyzer test, an alcohol screening test can be admitted to prove the presence of alcohol.

Section 22 makes a technical grammatical correction to a section of the DWI forfeiture statutes.

Part VIII. Effective Date

Section 23 states that this act will implemented with funds available to the Department of Transportation and the Administrative Office of the Courts and does not obligate the General Assembly to appropriate additional funds.

Section 24 makes Parts I and II of this act effective July 1, 2000, applying only to offenses committed on or after that date. All other sections are effective December 1, 1999 and apply to offenses committed on or after that date.

*** Summary of revisions subsequent to First Edition provided by G. Wesley Parker, Director, Governor's Task Force on Driving While Impaired**

H1135-SMRV-002

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bryan Beatty	DOJ
Melissa Lovell	DOJ
Rudolph E. Ellis	Mo. Dept. on alcohol
BRUCE THOMPSON	PARKER, POE, ADAMS & BERNSTEIN
Anne Wilmer	NCAOCR
Shena Rapter	Intern
John M May	NC CWA Council
Ann Dees	NC CWA Council
J Ramquist	NCHNA
Dave Horne	Smith Anderson
L Wilder + Crew	UNC-TV
George Reed	Christian Life Council (BSC)
Deborah Bryan	ALA of NC
Lisa Holmes	DENR

VISITOR REGISTRATION SHEET

J # 11
Name of Committee

Dec 15. 99
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Wes Parker	Lt. Gov. / GHSP
John Madler	Sentencing Commission
John McMillan	MFS
Bill Scogin	NC BAR ASSOC
Roz Sawyer	NCCCC
Matt Osborne	AOC
Fran Preston	NCRMA
Andy Allen	NCRMA
Cathy Matthews	DMV
Michael E. Bryant	DMV
David Ferrell	HMCCC&C, PA
Pete Martin	DMHDDSAS
Bob Hall	GIASA
Alan Mebane	Bailey & Dixon LLP
Chris Coy	ACLU

SENATE JUDICIARY II COMMITTEE

JULY 19, 1999

ROOM 1124

HB 162	**1999 Technical Corrections**	**Representative Culpepper**
HB 328	**Sent. Comm/Crim. Law Changes**	**Representative Braswell**

Adjournment

SENATE JUDICIARY II COMMITTEE

JULY 19, 1999

MINUTES

The Senate Judiciary II Committee met at 5:00 p.m. on Monday, July 19, 1999, in Room 1124 of the Legislative Building. Twelve members of the committee attended. Senator Miller presided.

Representative Braswell was recognized to explain HB 328, Sent. Commn/Crim Law Changes/AB, which makes various technical corrections to criminal laws and criminal penalties as recommended by the North Carolina Sentencing and Policy Advisory Commission. After Mr. Braswell's explanation, Senator Odom moved adoption of a technical amendment. The motion carried unanimously. Senator Odom moved a favorable report of the committee substitute as amended and that it be engrossed into a Senate committee substitute. The motion carried unanimously.

Senator Miller asked Ms. Brenda Carter, Counsel to the committee, to explain HB 162, 1999 Technical Amendments. Senator Odom moved adoption of a committee substitute. The motion carried unanimously. Mr. Dashiell Propes, Department of Insurance, answered a question concerning "non-business occupancy building" built prior to 1953 (Section 40). He said some examples would include institutions and apartment buildings. Ms. Bly Hall, Department of Justice, assured committee members that mental health is subsumed under health care powers of attorney (Section 4). Mr. Bryan Beatty, Department of Justice, explained that detection of deception schools referred to schools teaching how to use polygraph tests (Section 19).

Senator Odom sent forth an amendment to clarify an inconsistency in the budget bill and moved adoption of the amendment. The motion carried unanimously. Senator Lee moved adoption of an amendment to add two additional sections, one to repeal G.S. 58-79-30 and the other regarding structured settlement payment rights to amend G.S. 1-543.12 if Senate Bill 746 becomes law. Senator Odom moved a favorable report of the committee substitute as amended and engrossed into a Senate committee substitute. The motion carried unanimously.

Senator Miller adjourned the meeting at 6:30 p.m.

Brad Miller

Senator Brad Miller, Chair

Dot Waugaman

Dot Waugaman, Acting Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Monday, July 19, 1999

SENATOR MILLER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**478** Threaten Court Officers.

Draft Number:	PCS3469
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1)**644** "Quick Take" Notice of Appeal.

Draft Number:	PCS1266
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1135** 1999 Governor's DWI Amendments.

Draft Number:	PCS7277
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

REVISED REPORT

Monday, July 19, 1999

SENATOR MILLER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**162** 1999 Technical Corrections.

Draft Number:	PCS1277
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B.(CS #1)**328** Sent. Commn/Crim Law Changes/AB.

Draft Number:	PCS1321
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 162
Committee Substitute Favorable 4/23/99

Short Title: 1999 Technical Corrections. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-56 reads as rewritten:

"**§ 143-56. Certain purchases excepted from provisions of Article.**

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals through a competitive bidding purchasing program, as defined in ~~G.S. 143-29,~~ G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at

Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

Section 2. G.S. 32A-14.1 reads as rewritten:

"**§ 32A-14.1. Gifts under power of attorney.**

(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and ~~2422(a)~~ 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

(b) Except as provided in subsection (c) of this section, or unless gifts are expressly authorized by the power of attorney, a power described in subsection (a) of this section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact.

(c) If the power of attorney described in subsection (a) of this section is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by subsection (b) of this section from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact. If the power of attorney described in subsection (a) of this section is conferred upon one attorney-in-fact, the power of attorney may be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact pursuant to an order issued by the clerk in accordance with the procedures and provisions of Article 2B of this Chapter.

(d) Subsection (a) of this section shall not in any way impair the right, power, or ability of any principal, by express terms in the power of attorney, to authorize or limit the authority of any attorney-in-fact to make gifts of the principal's property.

(e) An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request that the clerk of the superior court issue an order approving a gift or gifts of the property of the principal.

(f) This section shall apply to all powers of attorney executed prior to, on, or after ~~the effective date of this section.~~ October 1, 1995."

Section 3. G.S. 122C-57(d) through (f) read as rewritten:

"(d) Each voluntarily admitted client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of ~~attorney,~~ attorney has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid ~~advanced~~ advance instruction for mental health treatment ~~or an attorney-in-fact named pursuant to a valid instruction for mental health treatment~~ in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm self or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's consent expressed in a valid ~~advanced~~ advance instruction ~~or~~ for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client, the client's legally responsible person, or a health care agent named

pursuant to a valid health care power of ~~attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation.~~ attorney."

Section 4. G.S. 122C-211(f1) reads as rewritten:

"(f1) An individual in need of treatment for mental illness may be admitted to a facility pursuant to an advance instruction for mental health treatment or pursuant to the authority of a health care agent named in a valid health care power of attorney, provided that the individual is incapable, as defined in ~~G.S. 122C-72(c)~~ G.S. 122C-72(4) at the time of the need for admission. An individual admitted to a facility pursuant to an advance instruction for mental health treatment may not be retained for more than 10 days, except as provided for in subsection (b) of this section. When a health care power of attorney authorizes a health care agent to seek the admission of an incapable individual, the health care agent shall act for the individual in applying for admission to a facility and in consenting to medical treatment at the facility when consent is required, provided that the individual is incapable."

Section 5. G.S. 74C-5 reads as rewritten:

"**§ 74C-5. Powers of the Board.**

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Approve individual applicants to be licensed or registered according to this Chapter;

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment

pursuant to G.S. [Chapter] 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court; ~~and~~

(8) Repealed by Session Laws 1989, c. 759, s. 5.

(9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such ~~schools.~~ schools; and

(10) Contract for services as necessary to carry out the functions of the Board."

Section 6. G.S. 74D-5(a) reads as rewritten:

"(a) In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and make evaluations as may be necessary to determine if licensees and registrants under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Investigate and approve individual applicants to be licensed or registered according this Chapter;

(6) Deny, suspend, or revoke any license issued or to be issued under this Chapter to any applicant or licensee who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation of such license shall be in accordance with Chapter 150B of this General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. 5A-21 et seq. for acts occurring in matters pending before the Board which would constitute civil contempt if the acts occurred in an action pending in ~~court.~~ court; and

(8) Contract for services as necessary to carry out the functions of the Board."

Section 7. G.S. 74C-6 reads as rewritten:

"§ 74C-6. Position of Administrator created.

The position of Administrator of the Private Protective Services Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the private protective services industry to ensure compliance with the law in all aspects."

Section 8. G.S. 74D-5.1 reads as rewritten:

"**§ 74D-5.1. Position of Administrator created.**

The position of Administrator of the Alarm Systems Licensing Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the alarm systems industry to insure compliance with the law in all aspects. The Administrator may issue a temporary grant or denial of a request for registration subject to final action by the Board at its next regularly scheduled meeting."

Section 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 328
Committee Substitute Favorable 3/31/99

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

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 14-107. Worthless checks.**

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. -- Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior ~~Class A1 or Class 1~~ misdemeanor ~~conviction or prior impaired driving conviction under G.S. 20-138.1,~~ conviction as defined in this subsection, 1 ~~point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)) and conviction for impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.~~ point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

Section 4. G.S. 19A-35 reads as rewritten:

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

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

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

"**§ 106-418.14. Penalties.**

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

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

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

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

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

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

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding,

or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture and Consumer Services the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

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

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

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

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

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

"**§ 106-549.88. Penalties.**

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

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

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

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

adopted by cttee then amended

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 162
Committee Substitute Favorable 4/23/99
Proposed Senate Committee Substitute H162-PCS3462-RV

Short Title: 1999 Technical Corrections. (Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO MAKE VARIOUS OTHER CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 29-12 reads as rewritten:

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2.~~ G.S. 116B-2."

Section 2. G.S. 32A-14.1 reads as rewritten:

"**§ 32A-14.1. Gifts under power of attorney.**

(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and ~~2422(a)~~ 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's

personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

(b) Except as provided in subsection (c) of this section, or unless gifts are expressly authorized by the power of attorney, a power described in subsection (a) of this section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact.

(c) If the power of attorney described in subsection (a) of this section is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by subsection (b) of this section from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact. If the power of attorney described in subsection (a) of this section is conferred upon one attorney-in-fact, the power of attorney may be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact pursuant to an order issued by the clerk in accordance with the procedures and provisions of Article 2B of this Chapter.

(d) Subsection (a) of this section shall not in any way impair the right, power, or ability of any principal, by express terms in the power of attorney, to authorize or limit the authority of any attorney-in-fact to make gifts of the principal's property.

(e) An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request that the clerk of the superior court issue an order approving a gift or gifts of the property of the principal.

(f) This section shall apply to all powers of attorney executed prior to, on, or after ~~the effective date of this section.~~ October 1, 1995."

Section 3. G.S. 55-1-40(9) reads as rewritten:

"(9) 'Entity' includes (without limiting the meaning of such term in Article 9) corporation and foreign corporation; nonprofit corporation; professional corporation; limited liability company; profit and nonprofit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government."

Section 4. G.S. 122C-57(d) through (f) read as rewritten:

"(d) Each voluntarily admitted client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of ~~attorney;~~ attorney has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid advance instruction for

mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid ~~advanced~~ advance instruction for mental health treatment ~~or an attorney-in-fact named pursuant to a valid instruction for mental health treatment~~ in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm self or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's consent expressed in a valid ~~advanced~~ advance instruction ~~or~~ for mental health treatment. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of ~~attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation.~~ attorney."

Section 5. G.S. 122C-211(f1) reads as rewritten:

"(f1) An individual in need of treatment for mental illness may be admitted to a facility pursuant to an advance instruction for mental health treatment or pursuant to the authority of a health care agent named in a valid health care power of attorney, provided that the individual is incapable, as defined in ~~G.S. 122C-72(c)~~ G.S. 122C-72(4) at the time of the need for admission. An individual admitted to a facility pursuant to an advance instruction for mental health treatment may not be retained for more than 10 days, except as provided for in subsection (b) of this section. When

a health care power of attorney authorizes a health care agent to seek the admission of an incapable individual, the health care agent shall act for the individual in applying for admission to a facility and in consenting to medical treatment at the facility when consent is required, provided that the individual is incapable."

Section 6. G.S. 131E-23(a)(20) reads as rewritten:

"(20) ~~Subject to subsection (c), to~~ To lease any hospital facilities to or from any municipality, other public agency of this or any other state or of the United States, or to any individual, corporation, or association upon any terms and subject to any conditions as may carry out the purposes of this Part. ~~Subject to subsection (c), the~~ The authority may provide for the lessee to use, operate, manage and control the hospital facilities, and to exercise designated powers, in the same manner as the authority itself might do;".

Section 7. G.S. 143-56 reads as rewritten:

"**§ 143-56. Certain purchases excepted from provisions of Article.**

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals through a competitive bidding purchasing program, as defined in ~~G.S. 143-29,~~ G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

Section 8. Effective December 1, 1999, G.S. 1-539.2A(b), as enacted by Section 4 of S.L. 1999-212, reads as rewritten:

"(b) A civil action under this section shall be commenced before expiration of the time period prescribed in G.S. 1-54. In actions alleging injury arising from the

transmission of unsolicited bulk commercial electronic mail, personal jurisdiction may be exercised pursuant to G.S. ~~1-75.4(13).~~ 1-75.4."

Section 9.(a) The prefatory language of Section 4 of Senate Bill 974, 1999 Regular Session, reads as rewritten:

"Section 4. G.S. 7A-292 reads as rewritten:"

Section 9.(b) If Senate Bill 974, 1999 Regular Session, becomes law, then effective January 1, 2000, G.S. 7A-292, as rewritten by Section 4 of Senate Bill 974, 1999 Regular Session, reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;

(3) When authorized by the chief district judge, to take depositions and examinations before trial;

(4) To issue subpoenas and capiases valid throughout the county;

(5) To take affidavits for the verification of pleadings;

(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;

(8) To take acknowledgments of instruments, as provided in G.S. 47-1;

(9) To perform the marriage ceremony, as provided in G.S. 51-1;

(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and

(11) Repealed by Session Laws 1973, c. 503, s. 9.

(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.

(13) Repealed by Session Laws 1973, c. 503, s. 9.

(14) ~~If the office the clerk of superior court is closed, to accept the filing of a complaint and to issue a summons in cases for expedited eviction proceedings under Article 4 of Chapter 42A of the General Statutes.~~ To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed."

Section 10. G.S. 18B-603(d) reads as rewritten:

"(d) Mixed Beverage Elections. -- If a mixed beverage election is held under G.S. 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue

permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) The Commission may issue mixed beverage permits.

(2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establishments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.

(3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages.

(4) The Commission may issue brown-bagging permits for private clubs and congressionally chartered veterans organizations but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.

(5) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

In any county in which the sale of mixed beverages has been approved in elections in at least three cities that, combined, contain more than two-thirds the total county population as of the most recent federal census, the county board of commissioners may by resolution approve the sale of mixed beverages throughout the county, and the Commission may issue permits as if mixed beverages had been approved in a county election.

If a county or city holds a mixed beverage election and an ABC store election at the same time and the voters do not approve the establishment of an ABC store, the Commission may ~~not~~ issue mixed beverages permits in that county or city. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county."

Section 11. G.S. 20-28.5(a) reads as rewritten:

"(a) Sale. -- A motor vehicle ordered forfeited and sold or a seized motor vehicle authorized to be sold pursuant to G.S. 20-28.3(i), shall be sold at a public sale conducted in accordance with the provisions of Article 12 of Chapter 160A of the General Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted

by the county board of education or a person acting on its behalf. Notice of sale, including the date, time, location, and manner of sale, shall be given by first-class mail to all motor vehicle owners of the vehicle to be sold at the address shown by the records of the Division. ~~Division and at any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered.~~ Written notice of sale shall also be given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least 10 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf."

Section 12. G.S. 47-108.11 reads as rewritten:

"**§ 47-108.11. Validation of recorded instruments where seals have been omitted.**

In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or required to be registered in the office of the register of deeds of any county in this State where it appears of record or it appears that from said instrument, as recorded in the office of the register of deeds of any county in the State, there has been omitted from said recorded or registered instrument the word "seal," "notarial seal" and that any of said recorded or registered instruments shows or recites that the grantor or grantors "have hereunto fixed or set their hands and seals" and the signature of the grantor or grantors appears without a seal thereafter or on the recorded or registered instrument or in all cases where it appears there is an attesting clause which recites "signed, sealed and delivered in the presence of," and the signature of the grantor or grantors appears on the recorded or registered instrument without any seal appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration of same in the office of the register of deeds, are hereby declared to be in all respects valid and binding and are hereby made in all respects valid and binding to the same extent as if the word "seal" or "notarial seal" had not been omitted, and the registration and recording of such instruments in the office of the register of deeds in any county in this State are hereby declared to be valid, proper, legal and binding registrations.

This section shall not apply in any respect to any instrument recorded or registered subsequent to ~~January 1, 1995~~ January 1, 1999, or to pending litigation or to any such instruments now directly or indirectly involved in pending litigation."

Section 13. G.S. 50-13.4(f)(7) reads as rewritten:

"(7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article ~~3~~ 3A of Chapter 39 of the General Statutes pertaining to fraudulent conveyances."

Section 14. G.S. 50-16.7(h) reads as rewritten:

"(h) A dependent spouse for whose benefit an order for the payment of alimony or postseparation support has been entered shall be a creditor within the meaning of Article ~~3~~ 3A of Chapter 39 of the General Statutes pertaining to fraudulent conveyances."

Section 15.(a) The catchline of G.S. 58-3-176, as enacted by S.L. 1999-231, reads as rewritten:

"**~~§ 58-3-176.~~ § 58-3-178. Coverage for prescription contraceptive drugs or devices and for outpatient contraceptive services; exemption for religious employers.**"

Section 15.(b) Section 2 of S.L. 1999-231 is repealed.

Section 15.(c) The prefatory language of Section 2.1 of S.L. 1999-231 reads as rewritten:

"Section 2.1. ~~If House Bill 314, 1999 Regular Session, becomes law, then Section 2 of this act is repealed and effective~~ Effective January 1, 2000, G.S. 58-50-155(a) as rewritten by Section 2 of ~~House Bill 314, 1999 Regular Session~~ S.L. 1999-197 is amended by adding a new subdivision to read:".

Section 15.(d) G.S. 58-50-155(a)(5), as enacted by Section 2.1 of S.L. 1999-231, reads as rewritten:

"(5) Prescribed contraceptive drugs or devices that prevent pregnancy and that are approved by the United States Food and Drug Administration for use as contraceptives, or outpatient contraceptive services at least equal to the coverage required by G.S. ~~58-3-174,~~ 58-3-178, if the plan covers prescription drugs or devices, or outpatient services, as applicable. The same exceptions and exclusions as are provided under G.S. ~~58-3-174~~ 58-3-178 apply to standard plans developed and approved under G.S. 58-50-125."

Section 16. If ratified Senate Bill 594 becomes law, then G.S. 58-3-167(b), as enacted by Section 5 of that act, reads as rewritten:

"(b) Whenever a law is enacted by the General Assembly on or after the effective date of this section that applies to a health benefit plan, the term 'health benefit plan' shall be defined for purposes of that law as provided in subsection (a) of this section unless that law provides a different definition or otherwise expressly provides that the definition in this section is not applicable."

Section 17. G.S. 62-159(a) reads as rewritten:

"(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation bonds as provided in this section to either (i) an existing natural gas local distribution ~~company or (ii) a person or a gas district awarded a new franchise~~ company; (ii) a person awarded a new franchise; or (iii) a gas district for the construction of natural gas facilities that it otherwise would not be economically feasible for the company, person, or gas district to construct."

Section 18. G.S. 62A-25(d) reads as rewritten:

"(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of

the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at ~~the rate set out in G.S. 24-1~~ a rate equal to the rate earned by the Wireless Fund until all of the approved payments are made."

Section 19. G.S. 74C-5 reads as rewritten:

"**§ 74C-5. Powers of the Board.**

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Approve individual applicants to be licensed or registered according to this Chapter;

(6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. ~~[Chapter]~~ Chapter 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court; ~~and~~

(8) Repealed by Session Laws 1989, c. 759, s. 5.

(9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such ~~schools.~~ schools; and

(10) Contract for services as necessary to carry out the functions of the Board."

Section 20. G.S. 74C-6 reads as rewritten:

"**§ 74C-6. Position of Administrator created.**

The position of Administrator of the Private Protective Services Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the private protective services industry to ensure compliance with the law in all aspects."

Section 21. G.S. 74D-5(a) reads as rewritten:

"(a) In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

(1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;

(2) Determine minimum qualifications and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;

(3) Conduct investigations regarding alleged violations and make evaluations as may be necessary to determine if licensees and registrants under this Chapter are complying with the provisions of this Chapter;

(4) Adopt and amend bylaws, consistent with law, for its internal management and control;

(5) Investigate and approve individual applicants to be licensed or registered according this Chapter;

(6) Deny, suspend, or revoke any license issued or to be issued under this Chapter to any applicant or licensee who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation of such license shall be in accordance with Chapter 150B of this General Statutes of North Carolina;

(7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. 5A-21 et seq. for acts occurring in matters

pending before the Board which would constitute civil contempt if the acts occurred in an action pending in ~~court.~~ court; and

(8) Contract for services as necessary to carry out the functions of the Board."

Section 22. G.S. 74D-5.1 reads as rewritten:

"**§ 74D-5.1. Position of Administrator created.**

The position of Administrator of the Alarm Systems Licensing Board is hereby created within the ~~State Bureau of Investigation.~~ Department of Justice. The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the alarm systems industry to insure compliance with the law in all aspects. The Administrator may issue a temporary grant or denial of a request for registration subject to final action by the Board at its next regularly scheduled meeting."

Section 23. Effective October 1, 1999, G.S. 85B-3.1(a), as enacted by Section 2 of S.L. 1999-142, reads as rewritten:

"(a) The Commission shall have the following powers and duties:

(1) To receive and act upon applications for licenses.

(2) To issue licenses.

(3) To deny, suspend, and revoke licenses pursuant to G.S. 85B-8.

~~(3) To adopt rules for auctioneers and auctions that are consistent with the provisions of this Chapter and the General Statutes.~~

(4) To issue declaratory rulings.

(5) To adopt rules for auctioneers and auctions that are consistent with the provisions of this Chapter and the General Statutes."

Section 24. G.S. 90-113.31, as rewritten by Section 1 of S.L. 1999-164, reads as rewritten:

"**§ 90-113.31. Definitions.**

The following definitions shall apply in this Article:

(1) Board. -- The North Carolina Substance Abuse Professional Certification Board.

(1a) Certified clinical addictions specialist. -- A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(1b) Certified clinical supervisor. -- A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(1c) Certified residential facility director. -- A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.

(2) Certified substance abuse counselor. -- A person certified by the Board to practice as a substance abuse counselor in accordance with the provisions of this Article.

(3) Repealed by S.L. 1997-492, s. 2.

~~(4)~~ (3a) Certified substance abuse prevention consultant. -- A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(4) Clinical supervisor intern. -- A person designated by the Board to practice as a clinical supervisor intern for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.

(4a) Credentialing body. -- A board that licenses, certifies, or regulates a profession or practice.

(4b) Deemed status. -- Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.

(4c) Human services field. -- An area of study that focuses on the biological, psychological, and social aspects of human beings.

(5) Prevention. -- The reduction, delay, or avoidance of alcohol and of other drug use behavior. "Prevention" includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.

(6) Professional discipline. -- A field of study characterized by the technical, educational, and ethical standards of a profession.

(7) Substance abuse counseling. -- The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.

(7a) Substance abuse counselor intern. -- A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.

(8) Substance abuse professional. -- A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director."

Section 25. Effective July 1, 2000, Article 9G of Chapter 90 of the General Statutes, as enacted by S.L. 1999-245, is amended by adding a new section to read:

"**§ 90-171.94. Applicability of compact.**

This Article is applicable only to nurses whose home states are determined by the North Carolina Board of Nursing to have licensure requirements that are substantially equivalent or more stringent than those of North Carolina."

Section 26. If Senate Bill 55, 1999 Regular Session, becomes law, then the catchline of G.S. 105-37.1, as amended by Senate Bill 55, reads as rewritten:

"**§ 105-37.1. ~~(Effective July 1, 1999)~~ Dances, athletic events, shows, exhibitions, and other entertainments.**"

Section 27. G.S. 113-270.1A(d) reads as rewritten:

"(d) Nothing in this section shall be construed to prohibit the sale of lifetime licenses as provided in ~~G.S. 113-270.2(c)(1a).~~ G.S. 113-270.1D(b) or G.S. 113-270.2(c)(2). Pending satisfactory completion of the hunter safety course, persons who possess such licenses may exercise the privileges thereof when accompanied by an adult at least 21 years of age who is licensed to hunt in this State. For the purpose of this section, "accompanied" is defined as being able to take immediate control of the hunting device."

Section 28. G.S. 113-271(a) reads as rewritten:

"(a) All the hook-and-line fishing licenses set forth in ~~subsection (b) of this section entitle the holder to fish with hook and line in the inland and joint waters of the State, but not in public mountain trout waters. The licenses set forth in~~ subdivisions (1), (3), (7), and (9) of subsection (d) of this section ~~further~~ entitle the holder to fish with hook and line in public mountain trout waters."

Section 29. G.S. 113-276(e) reads as rewritten:

"(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing-license requirements of ~~G.S. 113-271.~~ G.S. 113-270.1B(a). "Natural bait" is bait which may be beneficially digested by fish. Where a municipality is bounded by a boundary river or stream, residents of the county in which the municipality is located may fish in the boundary river or stream from those banks of such river or stream in any adjoining county lying directly opposite to the banks of the municipality in question and be deemed fishing within their county for the purposes of the exemption contained in this subsection. The same is deemed true of fishing from the banks of any island in the boundary river or stream within the area opposite the banks of the municipality or municipalities. For the purposes of this section, a boundary river or stream is such portion of a river or stream which either forms a county boundary line or follows the course of such a line. Such line may follow the middle, thread, some former channel, the edge, or some other course in, along, under, or touching the waters of such river or stream so long as the course of the river or stream substantially represents or follows the course of such boundary line."

Section 30. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes of:

(1) Purchasing and using the resident fishing licenses provided by ~~G.S. 113-271(d)(2a), (3), and (4);~~ G.S. 113-271(d)(2), (4), and (6)a.; and

(2) Utilizing the natural-bait exemption in subsection (e) above."

Section 31. G.S. 113-276.2(a) reads as rewritten:

"(a) This section applies to the administrative control of:

(1) Persons, other than individual hunters and fishermen taking wildlife as sportsmen, holding permits under this Article;

(2) Individuals holding special device licenses under ~~G.S. 113-272.2(c)(1) and (2);~~ G.S. 113-272.2(c)(1), (1a), (2), and (2a);

(3) Individuals holding collection licenses under G.S. 113-272.4;

(4) Individuals holding captivity licenses under G.S. 113-272.5; and

(5) Persons holding dealer licenses under G.S. 113-273."

Section 32. G.S. 113-291.4A(a) reads as rewritten:

"(a) There is an open season for the taking of foxes with firearms in all areas of the State east of Interstate Highway 77 and in Mitchell and Caldwell Counties from the beginning of the season established by the Wildlife Resources Commission for the taking of rabbits and quail through January 1 of each year. The selling, buying, or possessing for sale of any fox or fox part taken pursuant to this subsection is prohibited, and is punishable as provided by ~~G.S. 113-294(a) or (k).~~ G.S. 113-294(a) or (j)."

Section 33.(a) G.S. 14-34.3(b)(1) reads as rewritten:

. . .

"(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms or weapons, civil officers of the United States while in the discharge of their official duties, officers and soldiers of the militia ~~and the State guard~~ when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;".

Section 33.(b) G.S. 14-409(b) reads as rewritten:

"(b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons as defined by subsection (a) of this section: Provided, however, that this subsection shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the sheriff of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States Army, when in discharge of their official duties, officers and soldiers of the militia ~~and the State guard~~ when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or

possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is located. Provided, further, that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the sheriff of the county in which said person lives."

Section 33.(c) G.S. 97-2(2), as rewritten by Section 1 of Senate Bill 877, 1999 Regular Session, reads as rewritten:

. . .

"(2) Employee. -- The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national guard while on State active duty under orders of the Governor and members of the North Carolina State ~~guard~~ Defense Militia while on State active duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee as herein defined of a municipality, county, or of the

State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term employee shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such

business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article."

Section 33.(d) G.S. 97-29 reads as rewritten:

"**§ 97-29. Compensation rates for total incapacity.**

Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars ($30.00) per week.

In cases of total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

The weekly compensation payment for members of the North Carolina national guard and the North Carolina State Defense Militia ~~guard~~ shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars ($30.00) a week as fixed herein.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars ($2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as herein provided."

Section 33.(e) G.S. 115C-254 reads as rewritten:

"**§ 115C-254. Use of school buses by State ~~guard~~ militia or national guard.**

When requested to do so by the Governor, the board of education of any local school administrative unit is authorized and directed to furnish a sufficient number of school buses to the North Carolina State ~~guard~~ Defense Militia or the national guard

for the purpose of transporting members of the State ~~guard~~ militia ~~or~~ members of the national guard to and from authorized places of encampment, or to and from places to which members of the State ~~guard~~ militia or members of the national guard are ordered to proceed for the purpose of suppressing riots or insurrections, repelling invasions or dealing with any other emergency. Public school buses so furnished by any local school administrative unit to the North Carolina State ~~guard~~ Defense Militia or the national guard shall be operated by members or employees of the State militia or national guard, and all expense of such operation, including any repair or replacement of any bus occasioned by such operation, shall be paid by the State from the appropriations available for the use of the State ~~guard~~ militia or the national guard."

Section 33.(f) G.S. 147-33.2(8)d. reads as rewritten:

. . .

"d. Whenever it should be certified by the Adjutant General of the State that emergency conditions require such procedure, the Governor, with the approval of the Council of State, shall have the power to call up and mobilize State ~~militia in addition to the existing units of the State guard;~~ militia; to provide transportation and facilities for mobilization and full utilization of the State ~~guard, or other units of~~ militia, in such emergency; and to allocate from the Contingency and Emergency Fund such amounts as may be necessary for such purposes during the period of such emergency;".

Section 34. G.S. 115C-325(c) is amended by adding a new subdivision to read:

. . .

"(5) Consecutive Years of Service. -- If a probationary teacher in a full-time permanent position does not work for at least 120 workdays in a school year because the teacher is on sick leave, disability leave, or both, that school year shall not be deemed to constitute (i) a consecutive year of service for the teacher or (ii) a break in the continuity in consecutive years of service for the teacher."

Section 35. Effective July 1, 2000, G.S. 115C-47(32a), as rewritten by S.L. 1999-237, reads as rewritten:

"**§ 115C-47. Powers and duties generally.**

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

. . .

(32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. -- Each local board of education shall establish at least one alternative learning ~~programs~~ program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs

and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long-term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's policies and guidelines developed under G.S. 115C-12(24). Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard."

Section 36. G.S. 122C-251(h), as rewritten by S.L. 1999-201, reads as rewritten:

"(h) The cost and expenses of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. The State (when providing transportation under G.S. 122C-408(b)), a city, or a county is entitled to recover the reasonable cost of transportation from the county of residence of the respondent. The county of residence of the respondent shall reimburse the State, another county, or a city the reasonable transportation costs incurred as authorized by this subsection. The county of residence of the respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a city, or a county. Provided that the county of residence provides the respondent or other individual liable for the respondent's support ~~is provided~~ a reasonable notice and opportunity to object to the ~~reimbursement. The~~ reimbursement, the county of residence of the respondent may recover that cost from:

(1) The respondent, if the respondent is not indigent;

(2) Any person or entity that is legally liable for the resident's support and maintenance provided there is sufficient property to pay the cost;

(3) Any person or entity that is contractually responsible for the cost; or

(4) Any person or entity that otherwise is liable under federal, State, or local law for the cost."

Section 37. G.S. 128-21(11), as rewritten by Section 2 of S.L. 1999-167, reads as rewritten:

"(11) "Employer" shall mean any county, incorporated city or town, the board of alcoholic control of any county or incorporated city or town, the North Carolina League of Municipalities, and the State Association of County Commissioners. "Employer" shall also mean any separate, juristic political subdivision of the State as may be

approved by the Board of Trustees upon the advice of the Attorney General. "Employer" also means any fire department that serves a city or county or any part of a city or county and that is supported in whole or in part by municipal or county funds."

Section 38. G.S. 146-32, as amended by S.L. 1999-252, reads as rewritten:

"**§ 146-32. Exemptions as to leases, etc.**

The Governor, acting with the approval of the Council of State, may adopt rules and ~~regulations.~~ regulations:

(1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and

(2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this Chapter.

(3) No rule or regulation adopted under this section may exempt from the provisions of G.S. 146-25.1 any class of lease or rental which has a duration of more than 21 days, unless the class of lease or rental:

a. Is a lease or rental necessitated by a fire, flood, or other disaster that forces the agency seeking the new lease or rental to cease use of real property;

b. Is a lease or rental necessitated because an agency had intended to move to new or renovated real property that was not completed when planned, but a lease or rental exempted under this subparagraph may not be for a period of more than six months; or

c. Is a lease or rental which requires a unique location or a location that adjoins or is in close proximity to an existing rental location."

Section 39. G.S. 143-135.9(a) reads as rewritten:

"(a) For purposes of this section:

(1) 'Best Value' procurement means the selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.

(2) 'Government-Vendor Partnership' means a mutually beneficial contractual relationship between State government and a contractor, wherein the two share risk and reward, and value is added to the procurement of complex technology.

(3) 'Information technology' includes electronic data processing and telecommunications goods and services, microelectronics, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design and/or redesign of business processes.

(4) 'Solution-Based Solicitation' means a solicitation in which the requirements are stated in terms of how the product or service being purchased should accomplish the business objectives, rather than in terms of the technical design of the product or service.

(5) 'State government', 'agency', 'procuring agency', and 'State of North Carolina' include the governing board of any county, city, town, or other subdivision of the State."

Section 40. G.S. 143-138 is amended by adding a new subsection to read:

"(j1) A nonbusiness occupancy building built prior to the adoption of the 1953 Building Code that is not in compliance with Section 402.1.3.5 of Volume IX of the Building Code or Section 3407.2.2 of Volume I of the Building Code must comply with the applicable sections by December 31, 2006."

Section 41. If Senate Bill 1149, 1999 Regular Session, becomes law, then Section 6 of Senate Bill 1149 is repealed.

Section 42. G.S. 143B-426.24(j) reads as rewritten:

"(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. ~~Any assets of such investment vehicles or trusts shall remain solely the property and rights of the State subject only to the claims of the State's general creditors.~~ All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries."

Section 43. G.S. 162A-5(a) reads as rewritten:

"(a) Each authority organized under this Article shall consist of the number of members as may be agreed upon by the participating political ~~subdivision,~~ subdivisions, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring one year, two years and three years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of three years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any

member may be reappointed; provided, however, that a political subdivision subsequently joining an authority created under G.S. 162A-3.1 shall not have the right to appoint any members to such authority. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member. This subsection does not apply in the case of an authority that a city joins under G.S. 162A-5.1."

Section 44. G.S. 168A-3(10)a.6., as rewritten by S.L. 1999-160, reads as rewritten:

"6. Make physical changes to accommodate a person with a disability where:

I. For a new employee the cost of such changes would exceed five percent (5%) of the annual salary or annualized hourly wage for the job in question; or

II. For an existing employee the cost of the changes would bring the total cost of physical changes made to accommodate the employee's ~~handicapping~~ disabling conditions since the beginning of the employee's employment with the employer to greater than five percent (5%) of the employee's current salary or current annualized hourly wage; or"

Section 45. Section 2 of S.L. 1999-55 is amended by deleting "94.6" and substituting "Sec. 94.6".

Section 46. Section 1 of S.L. 1999-99 reads as rewritten:

"Section 1. Section 7.109 of the Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, as added by Chapter 55 of the 1981 Session Laws and as amended by Chapter 346 of the 1985 Session Laws, reads as rewritten:

'Sec. 7.109. ~~Uptown~~ Public-private development projects.

(a) Definition. In this Article, '~~uptown~~ public-private development projects' means a capital project located: (i) in the city's central business district, as defined by the city ~~council;~~ council; (ii) in or along a major transportation corridor; or (iii) in a development zone designated pursuant to G.S. 105-129.3A; comprising one or more buildings or other improvements and including both public and private facilities. By way of illustration but not limitation, such a project might include a single building comprising a publicly owned parking structure and publicly owned convention center and a privately owned hotel or office building.

(b) Authorization. If the city council finds that it is likely to ~~have a significant effect on the revitalization of the central business district,~~ be of significant economic benefit to the area of the city in which the project is located, the city may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of ~~an uptown~~ a public-private development project or of specific

facilities within such a project. The city may enter into binding contracts with one or more private developers with respect to acquiring, constructing, owning, or operating such a project. Such a contract shall among other provisions, specify the following:

(1) The property interest of both the city and the developer or developers in the project.

(2) The responsibilities of the city and the developer or developers for construction of the project.

(3) The responsibilities of the city and the developer or developers with respect to financing the project.

(4) The responsibilities of the city and the developer or developers with respect to the operation of the project.

Such a contract may be entered into before the acquisition of any real property necessary to the project.

(c) Property acquisition. ~~An uptown~~ A public-private development project may be constructed on property acquired by the developer or developers or on property directly acquired by the city by any means.

(d) Property disposition. In connection with ~~an uptown~~ a public-private development project, the city may lease or convey interests in property owned by it, including air rights over public facilities, by private negotiation or sale, and Article 12 of Chapter 160A of the General Statutes does not apply to such dispositions.

(e) Construction of the project. The contract between the city and the developer or developers may provide that the developer or developers shall be responsible for construction of the entire ~~uptown~~ public-private development project. If so, the contract shall include such provisions as the city council deems sufficient to assure that the public facility or facilities included in the project meet the needs of the city and are constructed at a reasonable price. A project constructed pursuant to this paragraph is not subject to Article 8 of Chapter 143 of the General ~~Statutes.~~ Statutes as long as city funds constitute not more than fifty percent (50%) of the total costs of the project.

(f) Operation. The city may contract for the operation of any public facility or facilities included in ~~an uptown~~ a public-private development project by a person, partnership, firm, or corporation, public or private. Such a contract shall include provisions sufficient to assure that any such facility or facilities are operated for the benefit of the citizens of the city.

(g) Grant funds. To assist in the financing of its share of ~~an uptown~~ a public-private development project, the city may apply for, accept and expend grant funds from the federal or State governments.'"

Section 47.(a) Effective December 1, 1999, G.S. 8-45.1(b), as enacted by S.L. 1999-131, reads as rewritten:

"(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. ~~The provisions shall not apply to magnetic tape, CD-R, or CD-RW.~~ Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the

decisions to be made by the organizers at such meetings shall require the approval, consent, agreement, or ratification of a majority of the organizers. Unless otherwise provided in the articles of organization, the organizers may, in lieu of a meeting, take action as described in this subsection by written consent signed by all of the organizers. The written consent may be incorporated in, or otherwise made part of, the initial written operating agreement of the limited liability company."

Section 51. G.S. 57C-3-03 reads as rewritten:

"**§ 57C-3-03. Voting of members.**

Except as provided in the articles of organization or a written operating agreement, the affirmative vote, approval, agreement, or consent of all members shall be required to:

(1) Adopt or amend an operating agreement;

(2) Admit any person as a member;

(3) Sell, transfer, or otherwise dispose of all or substantially all of the assets of the limited liability company prior to the dissolution of the limited liability ~~company;~~ company.

~~(4) Merge the limited liability company into or with another limited liability company.~~"

Section 52.(a) If Senate Bill 835, 1999 Regular Session, becomes law, then G.S. 57C-1-03(3a), as enacted by Senate Bill 835, reads as rewritten:

. . .

"(3a) Business entity. -- A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this ~~State.~~ State)."

Section 52.(b) If Senate Bill 835, 1999 Regular Session, becomes law, then G.S. 57C-9A-08(a)(1), as enacted by Senate Bill 835, reads as rewritten:

. . .

"(1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business ~~entity;~~ entity except the surviving business entity ceases;".

Section 53. S.L. 1999-237 is amended by rewriting the two lines above the heading to Section 11.58 to read:

"Requested by: Representatives Earle, Nye, Easterling, Hardaway, Redwine, Boyd-McIntyre, Senators Martin of Guilford, Foxx, Plyler, Perdue, Odom".

Section 54. Section 15.15 of S.L. 1999-237 is amended by designating the existing language as (a) and adding a new subsection to read:

"Section 15.15.(b) If the Director of the Office of State Budget determines that sufficient State funds are available from any source to match federal funds for the detoxification of the Warren County polychlorinated biphenyl (PCB) landfill, consistent with the provisions of Section 29.9 of S.L. 1998-212, the Director may transfer funds not to exceed seven million dollars ($7,000,000) to the Department of Environment and Natural Resources to be placed in the nonreverting reserve established under Section 29.9(a) of S.L. 1998-212."

Section 55. Section 16.7(c)(10) of S.L. 1999-237 reads as rewritten:

"(10) One representative from the American Lung Association of North Carolina who is a resident of this State, appointed by the President Pro Tempore of the Senate."

Section 56. Section 18.13 of S.L. 1999-237 reads as rewritten:

"Section 18.13. The Department of Correction may use funds available to the Department during the 1999-2001 biennium for payment to claimants as part of the settlement of the Title VII lawsuit over the recruitment, hiring, and promotion of females in the Department. ~~Prior to final settlement of the lawsuit, the~~ The Department shall report ~~on the proposed settlement~~ to the Joint Legislative Commission on Governmental ~~Operations,~~ Operations on the details of the settlement of the lawsuit within 60 days of the court's entry of the final order. The Department shall also report to the Joint Legislative Corrections and Crime Control Oversight Committee, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety."

Section 57. Notwithstanding the provisions of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated June 29, 1999, which was distributed in the House of Representatives and the Senate and used to explain S.L. 1999-237, funds in the amount of two hundred forty thousand dollars ($240,000) that were appropriated to the State Board of Education for the 1999-2000 fiscal year in S.L. 1999-237 for the school leadership pilot project shall be used by four local school administrative units to participate in the nationwide program of the Center for Leadership in School Reform.

Section 58.(a) For the 1999-2001 biennium, the Department of Health and Human Services shall continue to provide the current office space for the four regional offices of the Governor's Advocacy Council for Persons with Disabilities or office space that is comparable to that now used by the Council.

Section 58.(b) For the 1999-2001 biennium, the Secretary of Administration may use funds from parking revenues that are in excess of parking system expense requirements to fund the fifteen dollar ($15.00) per month subsidies for vanpools and transit passes.

Section 59. Whenever any law, public or local, provides a form requiring the user of the form to fill in the last two digits of the year and the number "19" appears as the first two digits of the year, then effective January 1, 2000, those first two digits are deleted from the law.

Section 60. Articles 1 through 11 of Subchapter I of Chapter 7B of the General Statutes, as enacted by Section 6 of S.L. 1998-202, and as amended by

Sections 18 through 28 of S.L. 1998-229, become effective July 1, 1999, and apply to abuse, neglect, and dependency reports received, petitions filed, and reviews commenced on and after that date.

Section 61.(a) If Senate Bill 10, 1999 General Assembly, is enacted, then G.S. 131D-4.5(6), as enacted by Senate Bill 10, reads as rewritten:

"(6) Establishing procedures for determining the compliance history of adult care homes' principals and affiliates. The rules shall include criteria for refusing to ~~license~~ renew the license of facilities which have a history of, or have principals or affiliates with a history of, noncompliance with State law, or disregard for the health, safety, and welfare of residents."

Section 61.(b) If Senate Bill 10, 1999 General Assembly, is enacted, then G.S. 131D-2(b)(6), as enacted by Senate Bill 10, reads as rewritten:

"(6) Prior to ~~issuing a new license or~~ renewing an existing license, the Department shall conduct a compliance history review of the facility and its principals and affiliates. The Department may refuse to ~~license~~ renew the license of a facility when the compliance history review shows a pattern of noncompliance with State law by the facility or its principals or affiliates, or otherwise demonstrates disregard for the health, safety, and welfare of residents in current or past facilities. The Department shall require compliance history information and make its determination according to rules adopted by the Medical Care Commission."

Section 61.(c) If Senate Bill 10, 1999 General Assembly, is enacted, then G.S. 131D-7, as enacted by that act, is recodified as "G.S. 131D-8", and all references in Senate Bill 10, as enacted, to "G.S. 131D-7" are rewritten to read "G.S. 131D-8".

Section 61.(d) If Senate Bill 10, 1999 Regular Session, becomes law, then G.S. 14-32.2(e1), as enacted by Section 3.15 of that act, is amended by deleting "health, welfare, or comfort" and substituting "health or welfare".

Section 62. The prefatory language of Section 3 of Ratified House Bill 253, 1999 Regular Session, reads as rewritten:

"Section 3. G.S. 143B-472.41(a)(8) reads as rewritten:".

Section 63. If both House Bill 1072 and Senate Bill 881 of the 1999 Regular Session become law, then G.S. 163-278.23, as amended by Section 5(b) of Senate Bill 881, is amended by deleting the word "opinions" the second time that word appears.

Section 64. If Senate Bill 1115, 1999 Regular Session, becomes law, then G.S. 105-129.3(e)(1), as enacted by that act, is amended by deleting "has is designated", and substituting "is designated".

Section 65. Except as otherwise provided herein, this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 162

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

H162-ALH-01 Page 1 of __

Date 7-19-, 1999

Comm. Sub. [YES]
Amends Title []
PCS H162-PCS3462-RV

Senator _____

moves to amend the bill on page 28, lines 41-42 ~~Effective~~ July 1, 1999,
by adding between those lines the following:

"Section 64.1. Section 16.35(a) of S.L. 1999-237 reads as rewritten:

"Section 16.35.(a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of ~~one million four hundred seventy thousand dollars ($1,470,000)~~ one million four hundred fifty-seven thousand three hundred thirty-eight dollars ($1,457,338) for the 1999-2000 fiscal year and the sum of ~~one million four hundred seventy thousand dollars ($1,470,000)~~ one million four hundred fifty-seven thousand three hundred thirty-eight dollars ($1,457,338) for the 2000-2001 fiscal year shall be allocated as follows:

	1999-2000 FY		2000-2001 FY	
Research and Demonstration Grants	$475,864		$475,864	
Technical Assistance and Center Administration of Research and Demonstration Grants	444,136		444,136	
Center Administration, Oversight, and Other Programs	~~350,000~~	337,338	~~350,000~~	337,338

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 162

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

H162-ALH-01 Page 2 of __

Administration of Clean Water/		
Natural Gas Critical Needs		
Bond Act of 1998	200,000	200,000.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 162

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

H162-ARV-001

Date _____,1999

Comm. Sub. [YES]
Amends Title []
PCS

Senator _____

moves to amend the bill on page _____, line _____, by adding two new sections to read:

" Section @. G.S. 58-79-30 is repealed.

Section @. If Senate Bill 746, 1999 Regular Session becomes law, then it becomes effective October 1, 1999. G.S. 1-543.12 as enacted by that act reads as rewritten:

'**§ 1-543.12. Structured settlement payment rights.**

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 162

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

H162-ARV-001 Page 2 of __

d. The gross amount payable to the payee in exchange for such payments;
e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;
f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;
g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments;
h. The discount rate used by the transferee to determine the net amount payable to the payee for the structured settlement payments to be transferred; and
i. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transfer is in the best interest of the payee;
(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;
(5) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority;
(6) The discount rate used in determining the net amount payable to the payee, as provided in subdivision (2) of this section, does not exceed an annual percentage rate of prime plus five percentage points calculated as if the net amount payable to the payee, as provided

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 162

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

H162-ARV-001 Page 3 of __

in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan. For purposes of this subdivision, the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the month in which the transfer agreement is signed by both the payee and the transferee, except when the transfer agreement is signed prior to the first Monday of that month then the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the preceding month;

(7) Any brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee do not exceed two percent (2%) of the net amount payable to the payee;

(8) The transfer of structured settlement payment rights is fair and reasonable; and

(9) Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a transfer of periodic payment rights provided that the court finds that the provisions of this Article are satisfied.

If the court or responsible administrative authority authorizes the transfer pursuant to this section, the court or responsible administrative authority shall order the structured settlement obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the amount of the structured settlement payment rights to be ~~transferred.~~ provided, however, structured settlement payment rights arising from a claim pursuant to Chapter 97 shall not be authorized.'"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 162

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

H162-ARV-001

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 3, line 44

( ) WHICH CHANGES THE TITLE

by adding the following language & after the period:

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

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 328
Committee Substitute Favorable 3/31/99
Proposed Committee Substitute H328-PCS1321-RV

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

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"**§ 14-107. Worthless checks.**

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

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

deposit in, or credit with, ~~such~~ the bank or depository with which to pay the ~~same~~ check or draft upon presentation.

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

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

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

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

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

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

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

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

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

If any officer shall enter on the duties of his office before he executes and delivers to the authority entitled to receive the same the bonds required by law, and qualifies

by taking and subscribing and filing in the proper office the oath of office prescribed, he shall be guilty of a Class 1 misdemeanor and shall be ejected from his office."

Section 3. G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. -- Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior ~~Class A1 or Class 1~~ misdemeanor ~~conviction or prior impaired driving conviction under G.S. 20-138.1,~~ conviction as defined in this subsection, 1 ~~point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)) and conviction for impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.~~ point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

Section 4. G.S. 19A-35 reads as rewritten:

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

Failure of any person licensed or registered under this Article to adequately house, feed, and water animals in his possession or custody shall constitute a Class 3 misdemeanor, and such person shall be subject to a fine of not less than five dollars ($5.00) per animal or more than a total of one thousand dollars ($1,000). Such

animals shall be subject to seizure and impoundment and upon conviction may be sold or euthanized at the discretion of the Director and such failure shall also constitute grounds for revocation of license after public hearing. ~~The Director is hereby authorized to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of animals until either sold or euthanized and any fine levied in connection with this section shall be applied toward reimbursement of such State funds as the Director shall have expended.~~"

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

"**§ 106-418.14. Penalties.**

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

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

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

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

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

(a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 ~~shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both;~~ is guilty of a Class 1 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person ~~shall be fined~~ is guilty of a Class H felony which may include a fine of not more than ten thousand dollars ~~($10,000) or imprisoned not more than three years or both.~~ ($10,000). When construing or enforcing the

provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

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

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

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

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

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

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

"**§ 106-549.88. Penalties.**

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

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

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

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

SENATE
GENERAL ASSEMBLY OF NORTH CAROLINA COMMITTEE SUBSTITUTE

SESSION 1999

JUL 19 1999

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ADOPTED

HOUSE BILL 478
Committee Substitute Favorable 4/7/99
Third Edition Engrossed 4/20/99
Proposed Senate Committee Substitute H478-PCS3469-RV

Short Title: Threaten Court Officers. (Public)

Sponsors:

Referred to:

March 17, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 5A.

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

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

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

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

(c) Any person who commits an offense under subsection (a) and inflicts serious bodily injury to any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any~~

officer, executive ~~officer as named in G.S. 147-3(c)~~ officer, or court officer, shall be punished as a Class F felon.

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

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

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

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

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

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

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

"**§ 14-16.10. Definitions.**

The following definitions apply in this Article:

(1) Court officer. -- Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court counselor as defined in G.S. 7B-1501(5).

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

SENATE COMMITTEE SUBSTITUTE

JUL 19 1999

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ADOPTED

HOUSE BILL 644*
Committee Substitute Favorable 4/23/99
Proposed Senate Committee Substitute H644-PCS1266-RV

Short Title: "Quick Take" Notice of Appeal. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF OWNER'S RIGHTS IN THE NOTICE OF ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-40 reads as rewritten:

"**§ 40A-40. Notice of action.**

(a) Not less than 30 days prior to the filing of a complaint under the provisions of G.S. 40A-41, a public condemnor listed in G.S. 40A-3(b) or (c) shall provide notice to each owner (whose name and address can be ascertained by reasonable diligence) of its intent to institute an action to condemn property. (The notice shall be sent to each owner by certified mail, return receipt requested. The providing of notice shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Notice by publication is not required. Notice to an owner whose name and/or address cannot be ascertained by reasonable diligence is not required in any manner.)

The notice shall contain a general description of the property to be taken and of the amount estimated by the condemnor to be just compensation for the property to be condemned. The notice shall also state the purpose for which the property is being condemned and the date condemnor intends to file the complaint.

(b) In the case of a condemnation action to be commenced pursuant to G.S. 40A-42(a), the notice required by subsection (a) of this section shall be printed in at least 12 point bold type, and shall contain conspicuously, the words 'NOTICE OF CONDEMNATION' or similar wording. In addition to the information required by subsection (a) of this section, the notice shall include a summary of the owner's rights including the right to commence an action for injunctive relief and the right to answer the complaint. The notice shall conclude with a statement as follows: 'YOU ARE ENCOURAGED TO CONSULT WITH AN ATTORNEY REGARDING YOUR RIGHTS IN THIS MATTER.'"

Section 2. This act becomes effective October 1, 1999, and applies to notices of action sent on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

SENATE
COMMITTEE SUBSTITUTE
D

JUL 19 1999

ADOPTED

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HOUSE BILL 1135
Committee Substitute Favorable 4/22/99
Third Edition Engrossed 4/26/99
Corrected Copy 4/30/99
Committee Substitute #2 Favorable 6/21/99
Sixth Edition Engrossed 6/28/99
Proposed Senate Committee Substitute H1135-PCS7277-RV

Short Title: 1999 Governor's DWI Amendments. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.
(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.
(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.
(4) The person's driving privilege will be revoked immediately for at least 30 days if:
a. The test reveals an alcohol concentration of 0.08 or more;
b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or
c. The person is under 21 years of age and the test reveals any alcohol concentration.
(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. -- Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical ~~Analysis; Procedure upon Refusal.~~ Analysis. -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully

refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed affidavit required by subsection ~~(e),~~ (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the

court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent ~~offense;~~ offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent ~~offense;~~ offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of ~~his or her~~ the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that

revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the

superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 2. G.S. 20-19 reads as rewritten:

"**§ 20-19. Period of suspension or ~~revocation.~~ revocation; conditions of restoration.**

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a

vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. -- When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing Before Division; Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5,

if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a);

(3) The drivers license of the person had an alcohol concentration restriction; and

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. -- There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the superior court of the county in which the hearing took place for discretionary review on the record of the revocation. The superior court may stay the imposition of the revocation only if the court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

Section 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.16 or more; or

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater.

(c) Length of Requirement. -- The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(d) Effect of Limited Driving Privileges. -- If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection (c).

(e) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, but may be used in an administrative revocation proceeding as provided in subsection (g) of this section.

(g) Effect of Violation of Restriction When Driving While License Revoked not Charged. -- A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year. An alcohol concentration report from the ignition interlock system indicating an alcohol concentration of 0.01 or greater is sufficient evidence for revocation under this subsection.

(h) Beginning of Revocation Period. -- If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. -- If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the

person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and

(2) The person:

a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or

b. Did not personally activate the ignition interlock system before driving the vehicle; or

c. Drove the vehicle with an alcohol concentration of 0.01 or greater.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. -- When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation occurred prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully

complied with subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section."

Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 5. G.S. 20-179.3(g4) reads as rewritten:

"(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART III. OPEN CONTAINER

Section 6. G.S. 18B-401 reads as rewritten:

"**§ 18B-401. Manner of transportation.**

(a) Opened Containers. -- It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. ~~It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine.~~ Violation of this subsection shall constitute a Class 3 misdemeanor.

(a1) Transportation of an open container of malt beverage or unfortified wine shall be governed by G.S. 20-138.7.

(b) Taxis. -- It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than eight liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each ~~passenger.~~ passenger, without a purchase-transportation permit under G.S. 18B-403. A violation of this subsection

shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. -- The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area."

Section 7. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- If the driver is not consuming alcohol and has no alcohol remaining in the driver's body, it shall not be a violation of subsection (a1) for the driver to drive the motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

(2) In the living quarters of a house trailer, motor home, or house car.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one

approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) is a lesser included offense of subsection (a). A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 8. G.S. 20-17(a)(12) reads as rewritten:

"(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under ~~G.S. 20-138.7.~~ G.S. 20-138.7(a)."

PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 10. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. -- A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

PART VI. INCREASE PUNISHMENT FOR 19- OR 20-YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 11. G.S. 18B-302(i) reads as rewritten:

"(i) Purchase or Possession by 19 or 20-Year Old. -- A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is ~~an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.~~ a Class 3 misdemeanor."

Section 12. G.S. 15A-145 reads as rewritten:

"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of ~~misdemeanor.~~ misdemeanor; expunction of certain other misdemeanors.

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and (i) petitioner was not 18 years old at the time of the conviction in

question, or (ii) petitioner was not 21 years old at the time of the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge."

Section 13. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~ was charged with an infraction under ~~G.S. 18B-302(i),~~ G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

PART VII. OTHER DWI CHANGES

Section 14. G.S. 20-16.2(i) reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 15. G.S. 20-28.2(a) reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of "Impaired Driving License Revocation". -- The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired ~~driving.~~ driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2)."

Section 16. G.S. 20-28.2(e) reads as rewritten:

"(e) Release of Vehicle to Innocent Motor Vehicle Owner. -- At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this ~~Chapter;~~ Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2.

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals."

Section 17. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person

a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license ~~has been revoked~~ has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 18. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially ~~equivalent to~~ similar conduct prohibited by the offenses in ~~subparagraphs a through c.~~ this subsection.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an

offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 19. G.S. 20-138.2A reads as rewritten:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

Section 20. G.S. 20-138.2B reads as rewritten:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

Section 21. G.S. 20-28.2(a1)(2) reads as rewritten:

"(2) Innocent Owner. -- A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied ~~permission;~~ permission, and the owner

files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

c. Whose vehicle was reported stolen;

~~d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;~~

e. Who is in the business of renting vehicles, ~~the driver~~ and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VIII. EFFECTIVE DATE

Section 22. This act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts. This act does not obligate the General Assembly to appropriate additional funds.

Section 23. Parts I, II, and III of this act become effective July 1, 2000, and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 162:
1999 Technical Corrections

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Culpepper
Date:	July 19, 1999	**Summary by:**	Brenda J. Carter
Version:	Proposed Senate Committee Substitute		Committee Co-Counsel

SUMMARY: ***House Bill 162 makes technical corrections and conforming changes to the General Statutes as recommended by the General Statutes Commission; makes additional technical corrections and other changes to the General Statutes and to the Session Laws.***

SECTION-BY-SECTION ANALYSIS:

Sections 1-7 are recommendations of the General Statutes Commission, and are summarized in a separate document.

Section 8 – Corrects a citation in the recently enacted "Anti-Spam" legislation. In Section 4 of the bill, a new G.S. 1-539.2A was enacted. In the new G.S. 1-539.2A(b) there is a reference to G.S. 1-75.4(13). This was a new subdivision that was proposed by EARLIER versions of the bill. In the final version as enacted, Section 1 merely added some material to the existing G.S. 1-75.4.

Sections 9(a) & 9(b) - make technical, grammatical and typographical corrections to Section 4 of Senate Bill 974 (Vacation Rental Act). The effective date for SB 974 is January 1, 2000.

Section 10 – Amends the law regarding mixed beverage elections to allow businesses in a town that has approved the sale of mixed beverages to obtain a purchase-transportation permit to purchase alcoholic beverages from an ABC store located elsewhere in the county. Under current law, if a city holds a mixed beverage election and an ABC store election at the same time and the voters do not approve the establishment of an ABC store, the Commission may not issue mixed beverage permits in that city even though issuance of those permits has been approved by the voters.

Section 11 – Amends G.S. 20-28.5 regarding DWI-related forfeiture of a vehicle to require that notice of sale be given by first-class mail to the owner at the address shown on DMV records. This eliminates the option of sending such notice to "any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered."

Section 12 – G.S. 47-108.11 validates recorded instruments where seals have been omitted – for example, where a deed fails to contain the word "(SEAL)" next to the signature line as required under the recordation statutes. The statute was last amended in 1995 as part of the technical corrections bill. That amendment extended the coverage of the curative statute through January 1, 1995. This amendment will extend the statute to validate such instruments through January 1, 1999.

Sections 13 & 14 – Corrects citations to the law regarding fraudulent conveyances as they appear in the child support and alimony statutes.

Sections 15 (a) – 15 (d) - This section corrects several erroneous citations in S.L. 1999-231 (Senate Bill 90). Senate Bill 90 had also provided that one of its sections (Section 2) would be repealed and replaced by Section 2.1 if House Bill 314 became law. House Bill 314 has since been signed by the Governor, and its session law number (S.L. 1999-197) is reflected in this provision.

Section 16 - This section makes clear that a definition of "health benefit plan" enacted as part of SB 594 applies only prospectively.

Section 17 – This section makes a technical correction to G.S. 62-159, which was part of the 1998 Clean Water and Natural Gas Critical Needs Bond Act of 1998. The current statute erroneously implies that gas districts have natural gas franchises, which they do not. The amendment clarifies that only persons are awarded natural gas franchises.

Section 18 – A bill enacted in 1998 created a new board in the Department of Commerce to collect and disburse funds for enhanced 911 Wireless services. G.S. 62A-25(d) requires that the State pay interest "at the rate set out in G.S. 24-1 until all of the approved payments are made." The rate specified in G.S. 24-1 is 8% -- however, none of the accounts that the Treasurer's office establishes are paying 8%, so there would not be money to pay that level of interest. The amendment clarifies that interest is to be paid at a rate equal to the rate earned by the Wireless Fund. This amendment has the support of the wireless providers as well as the Department.

Section 19 - 22 – Make clarifying changes regarding the Private Protective Services Board and the Alarm Systems Licensing Board. The Boards are specifically authorized to contract for services as necessary to carry out its functions, and the positions of Administrator of each Board are placed within the Department of Justice rather than the SBI.

Section 23 - Eliminates duplicate numbering which occurred in G.S. 85B-3.1(a) as enacted in House Bill 301 (Auctioneer Amendments). The statute deals with the authority of the N. C. Auctioneers Commission.

Section 24 - makes a technical correction in G.S. 90-113.31 as amended by S.L. 1999-164. That bill changed a subdivision (4) to (3a), then added a new (4), but it did not strike out the old (4), which did not appear in the bill at all.

Section 25 – Amends Article 9G of Chapter 90 of the General Statutes to add language that was passed in both houses in Senate Bill 194 (Nurse Compact), but which due to inadvertent error was not included in the ratified bill that went to the Governor, and is therefore not in the law. It appears that the first edition rather than the second edition of the bill may have been ratified, as G.S. 90-171.94 appeared in the 2nd edition but not the first, and was not in the ratified bill.

Section 26 – Deletes the words (Effective July 1, 1999) from the catchline of G.S. 105-37.1, as amended by SB 55. After July 1, the bill was amended to provide that this section would become effective upon

ratification. To prevent any confusion on the section's effective date, this part of the catchline is being deleted.

Sections 27-32 are technical corrections requested by the North Carolina Wildlife Resources Commission because of numerous references to statutes that have either been repealed, replaced or recodified.

Sections 33(a) – 33(f) amend various statutes to delete references to the no longer existent North Carolina State Guard and, where appropriate, to replace those references to refer to the State militia. The "North Carolian State Guard" was replaced by the "North Carolina Defense Militia" as set out in Chapter 127A-80 of the General Statutes. The Governor has the statutory and constitutional authority to organize and maintain State Defense Militia, and the militia is subject to the call of the Governor.

Section 34 – Under current law, a probationary teacher must be employed for four consecutive years in order to be eligible to obtain career status (tenure). G.S. 115C-325(a)(8) defines a year as not less than 120 workdays. If at some point during the four-year probationary period a teacher does not fulfill the 120 workday requirement, the teacher must start all over again in terms of accumulating consecutive years towards career status. The proposed amendment to 115C-325 provides that if a probationary teacher did not have at least 120 workdays in a school year because the teacher was on sick leave, disability leave, or both, then the school year would not constitute a break in consecutive years of service. The teacher could not count that year towards obtaining career status, but the teacher would not have to start over in terms of accumulating the four consecutive years of service.

Section 35 – Corrects an omission to clarify a statute regarding the power & duties of local boards of education to establish alternative learning programs, so that the sentence makes grammatical sense.

Section 36 – This section amends the statute regarding transportation in the case of involuntary commitment when transportation is provided to or from a 24-hour facility. The cost and expense of transporting the patient is the responsibility of the patient's county of residence. The amendment clarifies the fact that it is the county of residence of the person transported that has the obligation to make contact with the patient or other responsible person prior to seeking reimbursement for the transportation.

Section 37 - Senate bill 638 (Local Gov't Retirement Definition) was ratified on May 31, 1999. Apparently, some words were redlined that should not have been. The bill removed the following language from G S 128-21(11) which defines an "Employer" in the Local Governmental Employee's Retirement System,**"Employer" shall also mean any separate, juristic political subdivision of the State as may be approved by the Board of Trustees upon the advice of the Attorney General.** This amendment restores the sentence to read as it was before the bill passed so that local units of government can join the system -- such as ABC boards, libraries, etc.

Section 38 – Corrects a printing error in a statute dealing with State Land Transactions, wherein a period appears at the end of a lead-in, where there should be a colon.

Section 39 – Clarifies that, for purposes of the law regarding "best-value" information technology procurements, the law applies to the governing board of any county, city, town, or other subdivision of the State in the same manner in which it applies to State government agencies.

Section 40 - The provision gives owners of non-business occupancy buildings built prior to the 1953 Building Code until December 31, 2006, to come into compliance with the multiple exit requirements of the Building Code. Coming into compliance means either putting in an additional exit or taking alternative steps such as sprinklering the building. The legislature and the Building Code Council have already given owners of business occupancy buildings built prior to the 1953 Building Code until December 31, 2006, to come into compliance. This was done a few years ago. The Code requirements have actually been in place for some time, but many owners of older buildings (primarily in urban downtown areas) were apparently unaware that their buildings did not comply until fire code enforcement picked up in the early to middle part of the 1990s. As a result, the Building Code Council adopted a rule in 1995 giving owners until January 1, 1999, to come into compliance. The legislature and Building Code Council then extended this deadline to December 31, 2006, for business-occupancy buildings built prior to the 1953 Code. This provision will give owners of non-business occupancy buildings built prior to the 1953 Code the same December 31, 2006 deadline to come into compliance.

Section 41 – Repeals the section of the ratified predatory lending bill that authorized the Department of Justice to use $100,000 of its 1999-2000 funds to develop and implement a program of consumer counseling or awareness to inform the public about predatory lending practices.

Section 42 – Amends G.S. 143B-426.24(j) regarding assets of the North Carolina Public Employee Deferred Compensation Plan. Under current law, the plan's Board of Trustees is authorized to acquire investment vehicles from companies duly authorized to conduct such business in this State or to establish or modify a trust for the purpose of administering and investing assets acquired by the investment of deferred funds. The statute currently provides that assets of those investment vehicles remain solely the property and rights of the State, subject only to the claims of the State's general creditors. The amendment was requested by the Director of Fiscal Management of the Department of Administration/Executive Secretary to the Deferred Compensation Board, and is intended to comply with Section 457 of the Internal Revenue Code, which provides rules for nonqualified deferred compensation plans established by state and local governments or tax-exempt organizations. Section 457(g) of the Internal Revenue Code requires that all assets and income of a Section 457(b) plan maintained by a state or local government employer be held in trust, or in certain custodial accounts or annuity contracts for the exclusive benefit of participants and beneficiaries.

Section 43 – Makes a technical amendment to a statute dealing with the organization of water and sewer authorities created by an agreement of several political subdivisions by changing the word "subdivision" from singular to plural.

Section 44 - House Bill 1071, enacted as S.L. 1999-160, amended a number of statutes to change "handicapped" to "disabling." One amendment made by the bill to G.S. 168A-3(10) 6.II was in the bill as passed both houses, but was not in the bill presented to the Governor, and thus is not in the law. The proposed change would enact the same provision that passed both houses but was not included in the ratified bill.

Section 45 – Makes a technical correction to correct the number of a section of S.L. 1999-55.

Section 46 - SB 573, Session Law 1999-99, amended the Charlotte City Charter in several respects. However, the version of the city's charter used as a baseline for drafting did not reflect a 1985 amendment which had been made to the same section of the Charter being amended by the bill. To correct this,

Section 1 of Session Law 1999-99, which amends Section 7.109 of the City Charter, is rewritten to accurately show the last words in subsection (c) of 7.109 as "by any means." rather than "by purchase."

Sections 47 (a) through 47 (e) - SB 1021 was enacted in Session Law 1999-131. Each section of the bill amends a different part of the General Statutes relating to the preservation of records. The sentences to be deleted all read "The provisions shall not apply to magnetic tape, CD-R, or CD-RW." This change is apparently needed because the preparation of permanent CD-ROM and other forms of permanent computer storage sometimes involves the use of CD-R as the transfer medium. The present language creates a potential for confusion, since it validates the permanent medium, such as CD-ROM, but appears to invalidate the interim medium needed and used, such as CD-R, to create the permanent medium. Deletion of the sentence does not change the substance of the bill in any way but merely removes surplusage which may create confusion. The sentence being added has been requested by the Department of Archives and Cultural History and is intended to clarify the relationship between SB 1021 and the use of computer-readable records storage media for archival purposes under GS 132-8.2 and 121-5. The Department is concerned that for some purposes computer-readable records storage may not be suitable for archival purposes.

Sections 48 (a) – 48 (d) – House Bill 426 (Local Red Light Cameras) and House Bill 514 (Huntersville Photo Enforcement) both enacted a proposed G.S. 160A-300.1(b1) and amended G.S. 160A-300.1(c)(2). Both also contained a section that would amend S.L. 1997-216 to add different lists of cities, and the two bills do not engross together. These changes resolve the duplicate enactments of the same material, and resolve the conflicts resulting from the two bills.

Section 49 – Clarifies a citation to the General Statutes by adding the words "of Article 4A", which were inadvertently omitted in a local act (HB 852, S.L. 1999-208).

Sections 50 – 52 – Makes changes to necessary because of two recently passed bills amending Chapter 57C of the General Statutes – The N.C. Limited Liability Company Act. These sections make technical and conforming changes so that the bills work together.

Section 53 – Amends the "Requested by" list for an appropriation entitled Osteoporosis Program Funds to include the sponsor of the bill that initiated the appropriation.

Section 54 – Deals with the transfer of funds for PCB clean-up in Warren County. Authorizes State Budget Office to transfer up to $7 million of any available funds to DENR match federal funds.

Section 55 – Clarifies that the membership of the Commission to Address Smart Growth, Growth Management, and Development Issues will include a representative of the American Lung Association ***of North Carolina.***

Section 56 – Amends a requirement that the Department of Correction report on the pending Title VII lawsuit settlement prior to final agreement. According to Fiscal Staff, the change is necessary because the Department would either have to report now (which is problematic because there may still be a petition for rehearing) or in August when there is unlikely to be a meeting of Governmental Operations scheduled. The amendment would require a report on the details of the settlement within 60 days of the court's entry of the final order.

Section 57 – This section is intended to correct an error in the budget Access report. The Access report lists a $240,000 appropriation for 2 school leadership pilots. It should have said 4 pilots.

Sections 58 (a) & 58 (b) – Include two provisions that are normally contained in the budget bill, but which were inadvertently overlooked. They were both contained in S.L. 1997-443, but need to be enacted for the current biennium.

Section 59 – Corrects a potential "Y2K" issue within the General Statutes. This would allow the correction of a number of statutes that have a form in it that is prefilled out: "19__" which means it is defective starting next year. The amendment would delete the existing "19" and leave the blank for the year.

Section 60 – This fixes an omission in the effective date of S.L. 1998-229 (H1720) by providing that the act applies to certain petitions and hearings with respect to child abuse and neglect and termination of parental rights on and after the effective date of that act (July 1, 1999). Without this fix it will be unclear whether the changes made to the sections of law amended by H1720 (and by S1260 - [Juvenile Code changes] which enact some of the sections) apply in cases where the petition was filed before 7/1/99 but the case is resolved afterwards.

Section 61 - This makes changes related to the enactment of Senate Bill 10, Long-Term Care Safety Initiative. This section makes a change that conforms the affected statute to changes made in an earlier bill enacted into law (H198). S.L. 1999-113 amended G.S. 131D-2, and Senate Bill 10 subsequently made changes to Chapter 131D that now require additional conforming changes to 131D-2. Since those conforming changes were not made before Senate Bill 10 was ratified, they are made in this bill. This section also makes a technical change in numbering a new statutory section, and clarifies the new definition of "abuse" in the criminal offense of patient abuse and neglect.

Section 62 – Makes a technical change by correcting a statutory citation.

Section 63 – Makes a technical correction to delete a duplicate word that will appear in the statutes because of the enactment of two bills that rewrite the same section of the statutes.

Section 64 - Makes a technical correction to delete a duplicate verb.

Section 65 - Except where otherwise noted, the bill would be effective when it becomes law.

HOUSE BILL 328:
Sentencing Commission/Criminal Law Changes

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Rep. Braswell
Date:	May 13, 1999	**Summary by:**	Brenda J. Carter
Version:	2nd Edition		Committee Co-Counsel

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

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

Section 2 amends the penalty portion of G.S. 14-229, which presently makes it an unspecified misdemeanor for an officer to enter on the duties of his office before executing and delivering the necessary bonds and taking the necessary oath. The amendment specifies that a violation is a Class 1 misdemeanor. (The bill does not increase the penalty, since under G.S. 14-3, a person convicted of a misdemeanor for which no specific classification and no specific punishment is prescribed by statute is punished as a Class 1 misdemeanor).

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

Section 4 amends G.S. 19A-35, which provides the penalty for failure to adequately care for animals in animal shelters, pet shops, boarding kennels, and other animal dealers. The present penalty for failure to properly house, feed, and water animals is an unspecified misdemeanor with a fine of not less than $5 and not more than $1,000. The amendment changes this to a Class 3 misdemeanor, with the fine remaining as is. Counsel to the House Judiciary II

Committee pointed out that as presently written the statute authorizes the Director of the Animal Welfare Section of the Animal Health Division of the Department of Agriculture to sell or euthenize animals seized because of a violation of the Animal Welfare Act once there is a conviction of a person under the Article. The act authorizes the Director to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of the animals, and further provides that fines levied because of violation of the act shall be applied toward reimbursement of funds the Director has expended in providing for the welfare of the animals. It was the opinion of Committee Counsel for House Judiciary II that these last two provisions appear to be in violation of the Executive Budget Act and the Constitution of North Carolina. The provision authorizing the Director "to disburse State funds in such amount as in his discretion is necessary" would allow the Director to expend funds from the General Fund without a specific appropriation, thus violating the Executive Budget Act and Article V, Section 7 of the State Constitution, and the provision allowing fines levied to be applied toward reimbursement of these funds would appear to violate Article IX, Section 7 of the constitution which provides that the clear proceeds of fines collected from breach of State penal laws shall belong to the counties to be used exclusively for maintaining free public schools. The House Judiciary II Committee voted to amend the bill to eliminate the last sentence of G.S. 19A-35. **An amendment is now necessary to replace the deleted language and strike through it in accordance with coded bill drafting requirements.**

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

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

Section 7 amends G.S.106-549.59, dealing with the punishment for violations of the Poultry Products Inspections Act. The penalties were never reclassified under Structured Sentencing or the Fair Sentencing Act. The amendments would make violations a Class 1 misdemeanor (instead of a fine of not more than $1,000 and/or imprisonment of not more than one year), and where the violation involves intent to defraud or distribution of adulterated items, the offense is a Class H felony, which may include a maximum $10,000 fine (presently it is imprisonment for not more than three years and/or the fine). This section also amends subsection (c) of G.S. 106-549.59 which provides the penalty for a person who forcibly assaults, resists, or otherwise interferes with a person performing official duties under the Poultry Products Inspections Act. Present penalty provides for a fine of not more than $5,000 or imprisonment for not more than three years, or both. This violation becomes a Class 2 misdemeanor and may include a maximum $5,000 fine. If deadly or dangerous weapons are involved, a violation is a Class A1

misdemeanor and may include a maximum $10,000 fine, in lieu of the present penalty of imprisonment of not more than 10 years and/or the $10,000 fine.

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

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

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

The bill becomes effective December 1, 1999, and applies to acts committed on or after that date.

H328-SMRV-002

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

MEMORANDUM

TO: Senate Judiciary II Committee

FROM: General Statutes Commission

DATE: July 13, 1999

RE: House Bill 162 (1999 Technical Corrections)

General Comments

This bill makes corrections of a technical nature to various sections of the General Statutes. The amendments recommended by the General Statutes Commission correct typographical, redlining, and other obvious drafting errors, conform terminology, and correct statutory references.

Specific Comments

Section 1. This section amends G.S. 29-12 to update a citation in the section. Chapter 116A of the General Statutes was replaced some years ago with Chapter 116B, and the citation to G.S. 116A-2 should now be to G.S. 116B-2.

Section 2. This section amends G.S. 32A-14.1 to correct a typographical error in a citation to the Internal Revenue Code of 1986 and to replace the phrase "the effective date of this section" with the actual effective date.

Section 3. This section amends the definition of "entity" in G.S. 55-1-40(9) to include limited liability companies. The definition is in the North Carolina Business Corporation Act (Chapter 55 of the General Statutes), which was enacted before the North Carolina Limited Liability Company Act (Chapter 57C of the General Statutes).

Section 4. This section amends G.S. 122C-57 to correct various errors in subsections (d) through (f). G.S. 122C-57 was amended in the 1998 legislative session by S.L. 1998-198, s. 5, and there were a number of typographical and other technical errors in the amendments. In subsection (d), the word "has" was inadvertently redlined out and is being reinserted. In subsections (e) and (f), the word "advanced" should have been "advance", and there should have been conforming amendments deleting references to an attorney-in-fact named pursuant to a

valid advance instruction. The incorrect word and the missing conforming amendment are being fixed in both subsections. In subsection (f), the word "or" should have been "for", and this correction is being made.

Section 5. This section amends G.S. 122C-211(f1) to correct a typographical error in a citation and to insert the complete term "advance instruction for mental health treatment".

Section 6. This section amends G.S. 131E-23(a)(20) by deleting an obsolete phrase. The subsection (c) referred to in G.S. 131E-23(a)(20) was a temporary provision that expired under its own terms June 30, 1984).

Section 7. This section amends G.S. 143-56 to correct a typographical error in the citation to G.S. 143-129.

The remaining sections of the bill were not reviewed by the General Statutes Commission.

VISITOR REGISTRATION SHEET

Jud. II — 7-19-99

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

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V L McBride	DCDD
Gregg Hall	DOC
Howard KRAMER	N.C. Bd. of NURSING
Jim Johnson	FRD
P. Bly Hall	General Statutes Commission
Lisa Reyes	THE INSIDER
Patrick Yancey	APPENC/FOR/Hospice
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Jay Langston	NCADA
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John Madler	Sentencing Commission
Joe McKeithan	Moore & Van Allen

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Steve Kelso	NCMS
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VISITOR REGISTRATION SHEET

Name of Committee | Date

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John Rustin	NCFPC
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SENATE JUDICIARY II COMMITTEE

JULY 20, 1999

ROOM 1124

HB 1135 1999 Governor's DWI Amendments Rep. Hackney

Adjournment

SENATE JUDICIARY II COMMITTEE

JULY 20, 1999

MINUTES

The Judiciary II Committee met at 1:45 p.m. on Tuesday, July 20, 1999, in Room 1124 of the Legislative Building to consider amendments to HB 1135, 1999 Governor's DWI Amendments.

Senator Odom moved to adopt a proposed committee substitute that engrossed two amendments from the previously reported version of the bill. Senator Miller explained that the first amendment changes the interlock portion of the bill so that a person who did not drive after finding alcohol on his or her breath when using the interlock device on the car would not lose his or her license. Senator Odom explained the second amendment that eliminated the section dealing with open containers. Senator Odom moved to give the original Senate committee substitute an unfavorable report, but a favorable to the newly adopted Senate committee substitute. The motion carried unanimously.

Senator Miller adjourned the meeting at 2:00 p.m.

Brad Miller

Senator Brad Miller, Chair

Dot Waugaman

Dot Waugaman, Acting Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Tuesday, July 20, 1999

SENATOR MILLER,
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

H.B.(SCS #1)**1135** 1999 Governor's DWI Amendments.

Draft Number:	PCS6234
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 6

HOUSE BILL 1135
Committee Substitute Favorable 4/22/99
Third Edition Engrossed 4/26/99
Corrected Copy 4/30/99
Committee Substitute #2 Favorable 6/21/99
Sixth Edition Engrossed 6/28/99

Short Title: 1999 Governor's DWI Amendments. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more;

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. -- Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical ~~Analysis; Procedure upon Refusal.~~ Analysis. -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions

of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed affidavit required by subsection ~~(c),~~ (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the

person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent ~~offense;~~ offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent ~~offense;~~ offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of ~~his or her~~ the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court

judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 2. G.S. 20-19 reads as rewritten:

"**§ 20-19. Period of suspension or ~~revocation.~~ revocation; conditions of restoration.**

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's

license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. -- When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing Before Division; Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly

requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a);

(3) The drivers license of the person had an alcohol concentration restriction; and

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. -- There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the superior court of the county in which the hearing took place for discretionary review on the record of the revocation. The superior court may stay the imposition of the revocation only if the court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division

may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been

revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing

proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

Section 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.16 or more; or

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.01 or greater.

(c) Length of Requirement. -- The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(d) Effect of Limited Driving Privileges. -- If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection (c).

(e) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, but may be used in an administrative revocation proceeding as provided in subsection (g) of this section.

(g) Effect of Violation of Restriction When Driving While License Revoked not Charged. -- A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year. An alcohol concentration report from the ignition interlock system indicating an alcohol concentration of 0.01 or greater is sufficient evidence for revocation under this subsection.

(h) Beginning of Revocation Period. -- If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. -- If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to

the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and

(2) The person:

a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or

b. Did not personally activate the ignition interlock system before driving the vehicle; or

c. Drove the vehicle with an alcohol concentration of 0.01 or greater.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. -- When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation occurred prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully complied with subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section."

Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 5. G.S. 20-179.3(g4) reads as rewritten:

"(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART III. OPEN CONTAINER

Section 6. G.S. 18B-401 reads as rewritten:

"**§ 18B-401. Manner of transportation.**

(a) Opened Containers. -- It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. ~~It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine.~~ Violation of this subsection shall constitute a Class 3 misdemeanor.

(a1) Transportation of an open container of malt beverage or unfortified wine shall be governed by G.S. 20-138.7.

(b) Taxis. -- It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than eight liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) Definitions. -- The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle,

the area behind the last upright back seat shall not be considered part of the passenger area."

Section 7. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- If the driver is not consuming alcohol and has no alcohol remaining in the driver's body, it shall not be a violation of subsection (a1) for the driver to drive the motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or

(2) In the living quarters of a house trailer, motor home, or house car.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) is not a lesser

included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) is a lesser included offense of subsection (a). A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1), the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 8. G.S. 20-17(a)(12) reads as rewritten:

"(12) A second or subsequent conviction of transporting an open container of alcoholic beverage under ~~G.S. 20-138.7.~~ G.S. 20-138.7(a)."

PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 10. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. -- A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is

revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

PART VI. INCREASE PUNISHMENT FOR 19- OR 20-YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 11. G.S. 18B-302(i) reads as rewritten:

"(i) Purchase or Possession by 19 or 20-Year Old. -- A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is ~~an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.~~ a Class 3 misdemeanor."

Section 12. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of ~~misdemeanor.~~ misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from

his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and (i) petitioner was not 18 years old at the time of the conviction in question, or (ii) petitioner was not 21 years old at the time of the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge."

Section 13. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~ was charged with an infraction under ~~G.S. 18B-302(i),~~ G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

PART VII. OTHER DWI CHANGES

Section 14. G.S. 20-16.2(i) reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S.

20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 15. G.S. 20-28.2(a) reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of "Impaired Driving License Revocation". -- The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired ~~driving.~~ driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2)."

Section 16. G.S. 20-28.2(e) reads as rewritten:

"(e) Release of Vehicle to Innocent Motor Vehicle Owner. -- At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner,

conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this ~~Chapter;~~ Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2.

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals."

Section 17. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license ~~has been revoked~~ has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the

person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 18. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 19. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially ~~equivalent to~~ similar conduct prohibited by the offenses in ~~subparagraphs a through c.~~ this subsection.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 20. G.S. 20-138.2A reads as rewritten:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an

administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

Section 21. G.S. 20-138.2B reads as rewritten:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

Section 22. G.S. 20-28.2(a1)(2) reads as rewritten:

"(2) Innocent Owner. -- A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied ~~permission;~~ permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

c. Whose vehicle was reported stolen;

~~d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;~~

e. Who is in the business of renting vehicles, ~~the driver~~ and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VIII. EFFECTIVE DATE

Section 23. This act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts. This act does not obligate the General Assembly to appropriate additional funds.

Section 24. Parts I and II of this act become effective July 1, 2000, and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1135
Committee Substitute Favorable 4/22/99
Third Edition Engrossed 4/26/99
Corrected Copy 4/30/99
Committee Substitute #2 Favorable 6/21/99
Sixth Edition Engrossed 6/28/99
Senate Judiciary II Committee Substitute Adopted 7/19/99
Proposed Senate Committee Substitute H1135-PCS6234-SA

Short Title: 1999 Governor's DWI Amendments. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical

analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more;

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. -- Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) Unconscious Person May Be Tested. -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical ~~Analysis; Procedure upon Refusal.~~ Analysis. -- The charging officer, in the presence of the chemical analyst who has notified the

person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed affidavit required by subsection ~~(c),~~ (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was

surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent ~~offense;~~ offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent ~~offense;~~ offense or violated the alcohol concentration restriction on the drivers license;

(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

(4) The person was notified of ~~his or her~~ the person's rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is

again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;

(7) The person's license has been revoked for at least six months for the refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the

refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 2. G.S. 20-19 reads as rewritten:

"**§ 20-19. Period of suspension or ~~revocation.~~ revocation; conditions of restoration.**

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a

vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. -- When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing Before Division; Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5,

if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;

(2) The person was notified of the person's rights as required by G.S. 20-16.2(a);

(3) The drivers license of the person had an alcohol concentration restriction; and

(4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. -- There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the superior court of the county in which the hearing took place for discretionary review on the record of the revocation. The superior court may stay the imposition of the revocation only if the court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

Section 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.7. Restoration of a license after certain driving while impaired convictions; ignition interlock.**

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

(1) The person had an alcohol concentration of 0.16 or more; or

(2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater.

(c) Length of Requirement. -- The requirements of subsection (b) shall remain in effect for:

(1) One year from the date of restoration if the original revocation period was one year;

(2) Three years from the date of restoration if the original revocation period was four years; or

(3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(d) Effect of Limited Driving Privileges. -- If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection (c).

(e) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.

(g) Effect of Violation of Restriction When Driving While License Revoked not Charged. -- A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year.

(h) Beginning of Revocation Period. -- If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. -- If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the

person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The drivers license of the person had an ignition interlock requirement; and

(2) The person:

a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or

b. Did not personally activate the ignition interlock system before driving the vehicle; or

c. Drove the vehicle with an alcohol concentration of 0.04 or greater.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. -- When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation occurred prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully

complied with subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section."

Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 5. G.S. 20-179.3(g4) reads as rewritten:

"(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART III. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 6. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. -- A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

PART IV. INCREASE PUNISHMENT FOR 19- OR 20-YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 7. G.S. 18B-302(i) reads as rewritten:

"(i) Purchase or Possession by 19 or 20-Year Old. -- A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is ~~an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.~~ a Class 3 misdemeanor."

Section 8. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of ~~misdemeanor.~~ misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know

the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and (i) petitioner was not 18 years old at the time of the conviction in question, or (ii) petitioner was not 21 years old at the time of the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts, the names of those persons

granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge."

Section 9. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is~~ was charged with an infraction under ~~G.S. 18B-302(i),~~ G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

PART V. OTHER DWI CHANGES

Section 10. G.S. 20-16.2(i) reads as rewritten:

"**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.**

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more.~~ more; or

c. The person is under 21 years of age and the test reveals any alcohol concentration.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 11. G.S. 20-28.2(a) reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of "Impaired Driving License Revocation". -- The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired ~~driving.~~ driving; or

(3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2)."

Section 12. G.S. 20-28.2(e) reads as rewritten:

"(e) Release of Vehicle to Innocent Motor Vehicle Owner. -- At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this ~~Chapter;~~ Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2.

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A

lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals."

Section 13. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license ~~has been revoked~~ has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section

is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 14. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially ~~equivalent to~~ similar conduct prohibited by the offenses in ~~subparagraphs a through c.~~ this subsection.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 15. G.S. 20-138.2A reads as rewritten:

"**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the

driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

Section 16. G.S. 20-138.2B reads as rewritten:

"**§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.**

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.~~ while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the

driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars ($100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

Section 17. G.S. 20-28.2(a1)(2) reads as rewritten:

"(2) Innocent Owner. -- A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's drivers license was revoked;

b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied ~~permission;~~ permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;

c. Whose vehicle was reported stolen;

~~d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;~~

e. Who is in the business of renting vehicles, ~~the driver~~ and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VI. EFFECTIVE DATE

Section 18. This act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of

the Courts. This act does not obligate the General Assembly to appropriate additional funds.

Section 19. Parts I and II of this act become effective July 1, 2000, and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 1135:
1999 Governor's DWI Amendments

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Rep. Hackney, Bowie & Wainwright
Date:	July 12, 1999	**Summary by:**	Brenda Carter & Susan L. Hayes *
Version:	6th Edition		Staff Counsel

SUMMARY: ***House Bill 1135 enacts the recommendations of the Governor's DWI Task Force.***

BILL ANALYSIS:

Part I. Lower Tolerance for Repeat Offenders

An administrative graduated alcohol concentration scale is created for DWI offenders. When a person convicted of DWI has their license restored DMV must place a restriction that they not operate a motor vehicle with an alcohol concentration of :

0.04 or more if -- It is the first restoration of a license after conviction of a DWI

greater than 0.00 if - 1) It is the second or subsequent restoration of a license after conviction of a DWI, or

2) It is the restoration of a license for a person convicted of DWI in a commercial vehicle, driving while less than 21 after consuming alcohol or drugs, or felony death by vehicle, manslaughter, or negligent homicide when the offense involved impaired driving, or a revocation based on a restriction under this section

The restriction is to remain on the person's license for the following period of time:

-- 7 years if the revocation was a permanent revocation
-- until the person's 21st birthday if the revocation was for driving while less than 21 after consuming alcohol or drugs
--3 years, in all other cases

In order to have their license restored, the person must consent to this restriction, and also must consent to submit to a chemical analysis at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction.

Violation of the restriction results in a one year administration revocation of the drivers license by DMV.

Part II. Ignition Interlock

An ignition interlock requirement is created for DWI offenders who have an alcohol concentration of 0.16 or more, or who have been convicted of another DWI within 7 years of the current offense.

When DMV restores the license of those persons, they must restrict the person to driving only a vehicle equipped with ignition interlock.

The requirement is in effect for:

-- 1 year if the revocation was for 1 year
-- 3 years if the revocation was for 4 years
-- 7 years if the revocation was permanent.

Violation may occur as the result of driving a vehicle without ignition interlock, not personally activating the ignition interlock, or driving a motor vehicle with an alcohol concentration of 0.01 or greater. A person violating these provisions may be charged with Driving While License Revoked by a law enforcement officer, or may have their license administratively revoked by DMV based on an alcohol concentration reading of the ignition interlock.

Part III. Open Container

The open container law is amended to comply with federal mandate, by making it an infraction to have an open container of beer or unfortified wine in a vehicle if the driver has NOT been drinking. Current law makes it a Class 3 misdemeanor if the driver HAS been drinking, but no offense if the driver has not been drinking. There is an exception to the infraction if the driver has not been drinking and the vehicle is designed, maintained, or used primarily for the transportation of persons for compensation, or if the open container is in the living quarters of a house trailer, motor home, or house car.

Part V. Limited Driving Privilege Alcosensor Admissibility

Allows the results of an Alco-Sensor (the roadside test) to be admissible in cases dealing with the violation of a limited driving privilege as proof of the presence of alcohol.

Part VI. Increase Punishment for 19 or 20 Year Old Purchase or Possession of Alcoholic Beverages

Repeals the portion of the statute that makes possession of beer or unfortified wine by a 19 or 20 year old an infraction so that possession by any person under 21 will be a Class 3 misdemeanor.

Part VII. Other DWI Changes

Section 14 changes the pre-arrest test rights to conform with the changes made to pre-trial revocation in the 1998 session.

Sections 15 and 16 amend the DWI forfeiture provisions to make them apply to persons who have an out of state DWI conviction.

Section 17 is a technical conforming change.

Section 18 amends the language regarding sequential breath tests to remove the requirement that refusal of the second test be "willful".

Section 19 amends the language in the definitions section of Chapter 20 regarding out of state convictions to make the language consistent with other parts of the statute, and to add habitual driving and DWI in a commercial vehicle to the offenses included in out of state offenses.

Sections 20 and 21 amend the Operating a commercial vehicle after consuming alcohol, and the Operating a school bus, school activity bus, or child care vehicle after consuming alcohol statutes to provide that if

the driver refuses to submit to an Intoxilyzer test, an alcohol screening test can be admitted to prove the presence of alcohol.

Section 22 makes a technical grammatical correction to a section of the DWI forfeiture statutes.

Part VIII. Effective Date

Section 23 states that this act will implemented with funds available to the Department of Transportation and the Administrative Office of the Courts and does not obligate the General Assembly to appropriate additional funds.

Section 24 makes Parts I and II of this act effective July 1, 2000, applying only to offenses committed on or after that date. All other sections are effective December 1, 1999 and apply to offenses committed on or after that date.

*** Summary of revisions subsequent to First Edition provided by G. Wesley Parker, Director, Governor's Task Force on Driving While Impaired**

H1135-SMRV-002

VISITOR REGISTRATION SHEET

Jud. II — Name of Committee

7-20-99 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Richard E Chase	Nat. Institute on alcohol
Mark Izzell	" " "
Wes Parker	GHSP - Lt. Gov.
Steve Keene	NC Med Soc.
Melissa Lovell	DOJ
Crissi Porter	Bone & Associates
Deborah Bryan	ALA of NC
TOMMY WORTH	NCMS
Amy Joe Baia	Medical Society
Hugh Tilson	NCHA
Henri McClees	McClees Consulting
Doug Lassiter	McClees Consulting
Roz Smith	NCCA
Stacy Flannery	NCHCFA

2000

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JUDICIARY II
COMMITTEE

MINUTES

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**Withdrew from committee 7/15/99*

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — SENATE: JUDICIARY II — Valid Through 6-SEP-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 95	MICHAUX	SMALL LOAN REVISIONS	S -REF TO COM ON JUDICII	04-21-99	
H 160	GOODWIN	INCREASE CHILD ABUSE PENALTY	*R -CH. SL 99-0451	03-24-99	07-12-99
H 160	GOODWIN	INCREASE CHILD ABUSE PENALTY	*R -CH. SL 99-0451	07-14-99	07-20-99
H 162=	CULPEPPER	1999 TECHNICAL CORRECTIONS	*R -CH. SL 99-0456	04-27-99	07-19-99
H 201=	CULPEPPER	APPOINTMENT OF SUCCESSOR TRUSTEES	R -CH. SL 99-0118	03-18-99	05-18-99
H 214	JEFFUS	LAND RECORDS STATUTES TECH. MODS	R -CH. SL 99-0119	03-22-99	05-18-99
H 222	MITCHELL	STRENGTHEN LITTERING LAW	*R -CH. SL 99-0454	04-26-99	06-10-99
H 290	BADDOUR	AMEND CRIME VICTIMS COMP. ACT	R -CH. SL 99-0269	04-12-99	06-24-99
H 304=	EARLE	CHILD CARE SUBSIDY FRAUD	R -CH. SL 99-0279	04-21-99	05-20-99
H 328=	BRASWELL	SENT. COMMN/CRIM LAW CHANGES	*R -CH. SL 99-0408	04-08-99	07-19-99
H 331=	BOWIE	SENTENCING SERVICES PROGRAM	*R -CH. SL 99-0306	04-01-99	06-29-99
H 438	EDWARDS	HOUSING AUTHORITY EXEMPTION	*R -CH. SL 99-0409	04-27-99	07-14-99
H 477=	JEFFUS	COMMUNITY COLLEGE CAMPUS POLICE	R -CH. SL 99-0068	04-21-99	05-06-99
H 478=	JARRELL	THREATEN COURT OFFICERS	*R -CH. SL 99-0398	04-21-99	07-19-99
H 494	HACKNEY	UNIFORM CHILD-CUSTODY ACT	*R -CH. SL 99-0223	04-22-99	06-02-99
H 495	HACKNEY	FAMILY LAW ARBITRATION ACT	*R -CH. SL 99-0185	04-14-99	06-02-99
H 604	THOMAS	CLARIFY ATTY-IN-FACT GIFTS	R -CH. SL 99-0385	04-13-99	07-08-99
H 644=	GULLEY J	QUICK TAKE NOTICE OF APPEAL	*R -CH. SL 99-0410	05-05-99	07-19-99
H 660	NESBITT	COLLECTION AGENCY DEFINITION	R -CH. SL 99-0419	04-12-99	07-12-99
H 661	NESBITT	JUVENILE COMMUNITY SERVICE	*R -CH. SL 99-0444	04-08-99	07-12-99
H 670	EDDINS	EXPEDITE DEATH PENALTY CASES	S -REF TO COM ON JUDICII	04-22-99	
H 685=	BRIDGEMAN	ARREST WARRANTS/COPIES	*R -CH. SL 99-0399	04-14-99	07-14-99
H 763=	MITCHELL	TEACHER/STUDENT/NO SEX ACTS	*S -REF TO COM ON JUDICII	04-22-99	
H 885	LUEBKE	SELF-SERVE STORAGE/LATE PAYMENTS	*R -CH. SL 99-0416	04-26-99	07-12-99
H 898	MCALLISTER	CHILD BICYCLE SAFETY ACT	*S -REF TO COM ON JUDICII	04-29-99	
H 938=	SEXTON	FIREARMS/AMMUN. PREEMPTION	*S -REF TO COM ON JUDICII	04-28-99	
H 939	GOODWIN	RAISE SMALL CLAIMS AMT	*R -CH. SL 99-0411	04-26-99	07-12-99
H 958	EDWARDS	CONFID. MEDICAL INFO/CLARIFICATION	R -CH. SL 99-0272	04-26-99	06-24-99
H 959	RUSSELL	COCK FIGHTING/INCREASE PENALTY	*S -REF TO COM ON JUDICII	05-03-99	
H 968	NESBITT	AMEND CONTESTED CASE PROCEDURE	*R -CH. SL 00-0190	05-19-99	00-07-07

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — SENATE: JUDICIARY II — Valid Through 6-SEP-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 973	HILL	MARRIAGE BY SUPERIOR COURT JUDGE	*R -CH. SL 00-0058	04-29-99	00-05-23
H 975	BRASWELL	SAVAN EXEMPTION	*R -CH. SL 99-0169	04-28-99	05-18-99
H 979	BADDOUR	MODIFY RIGHTS OF DECEDENT'S SPOUSE	R -CH. SL 00-0178	04-27-99	00-06-30
H 980=	BADDOUR	WORKERS' COMP./THIRD PARTY ACTIONS	*R -CH. SL 99-0194	05-05-99	06-01-99
H 991	BADDOUR	WORKERS' COMP AND UIM INSURANCE	*R -CH. SL 99-0195	05-05-99	06-01-99
H1021	HILL	AMEND ART. 3 UCC	R -CH. SL 00-0118	04-27-99	06-01-99
H1021	HILL	AMEND ART. 3 UCC	R -CH. SL 00-0118	06-16-99	00-06-19
H1022	ALLEN	UNLAWFUL USE OF DRIVERS LICENSE	*R -CH. SL 99-0299	04-28-99	06-29-99
H1032=	CULPEPPER	UNDERGROUND UTILITY DAMAGE AMEND.	S -RE-REF COM ON RULES &	05-03-99	05-04-99
H1065=	DECKER	CONCEALED HANDGUNS/RECIPROCITY	*S -REF TO COM ON JUDICII	05-03-99	
H1074	ALEXANDER	ELECTION LAW CHANGES - 1	*R -CH. SL 99-0426	04-28-99	07-07-99
H1100	HAIRE	REMOVAL/RESIGNATION OF TRUSTEES	*S -REF TO COM ON JUDICII	04-26-99	
H1135=	HACKNEY	1999 GOVERNOR'S DWI AMENDMENTS	*R -CH. SL 99-0406	06-29-99	07-19-99
H1135=	HACKNEY	1999 GOVERNOR'S DWI AMENDMENTS	*R -CH. SL 99-0406	07-20-99	07-20-99
H1192	KINNEY	TRACING CRIME WEAPONS	*R -CH. SL 99-0225	04-27-99	06-15-99
H1209	PRESTON	PERSONAL WATERCRAFT SAFETY	*R -CH. SL 99-0447	05-03-99	06-10-99
H1209	PRESTON	PERSONAL WATERCRAFT SAFETY	*R -CH. SL 99-0447	06-14-99	07-14-99
H1245	CLARY	3RD DEGREE SEX OFFENSE	*S -REF TO COM ON JUDICII	04-29-99	
H1499=	CRAWFORD	INTERLOCK/OPEN CONTAINER CHANGES	R -CH. SL 00-0155	00-06-13	00-07-06
H1499=	CRAWFORD	INTERLOCK/OPEN CONTAINER CHANGES	R -CH. SL 00-0155	00-07-07	00-07-11
H1501=	SUTTON	DMV LIENS/VEHICLE WIDTH	R -CH. SL 00-0185	00-05-25	00-06-27
H1502=	SUTTON	ADVERSE WEATHER COURT CLOSING	R -CH. SL 00-0166	00-05-30	00-07-04
H1571=	EARLE	ADULT PROT. SERV/COMPLAINT INVEST	R -CH. SL 00-0131	00-06-28	00-07-05
H1596=	REDWINE	APA TECHNICAL CHANGES	S -RE-REF COM ON JUDICII	00-06-07	00-06-27
H1596=	REDWINE	APA TECHNICAL CHANGES	S -RE-REF COM ON JUDICII	00-06-29	
H1607=	**CULPEPPER**	**MODERNIZE BAIL BOND FORFEITURES**	***R -CH. SL 00-0133**	**00-07-04**	**00-07-06**
H1608=	CULPEPPER	AMEND BAIL BONDSMEN AND RUNNERS LAW	*R -CH. SL 00-0180	00-07-04	00-07-12
H1609=	EARLE	CLARIFY JUVENILE PROCEDURES	*R -CH. SL 00-0183	00-06-29	00-07-05
H1634=	EARLE	GUARDIANSHIP REVISIONS	*S -REF TO COM ON JUDICII	00-06-12	
S 8	HOYLE	SESSION LIMITS IMPLEMENTING	HF-POSTPONED INDEFINITELY	01-28-99	02-23-99

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY II Valid Through 6-SEP-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 9	HOYLE	SESSION LENGTH LIMITS	HF-POSTPONED INDEFINITELY	01-28-99	02-23-99
S 24	DALTON	PRELITIGATION INS. INFO./MEDIATION	S -RE-REF COM ON RULES &	02-03-99	06-30-99
S 41	REEVES	REQUIRE RENTAL PROPERTY HEAT	*R -CH. SL 99-0014	02-04-99	02-18-99
S 62	HORTON	VALIDATING CERTAIN NOTARIAL ACTS	*R -CH. SL 99-0021	02-10-99	02-18-99
S 63	ALLRAN	SESSION LENGTH LIMITS-2	S -REF TO COM ON JUDICII	02-10-99	
S 76=	BALLANCE	TRAFFIC ENFORCEMENT STATISTICS	*R -CH. SL 99-0026	02-15-99	03-04-99
S 109	MILLER B	LOBBYIST DISCLOSURE	*H -CAL PURSUANT RULE 36(B)	02-16-99	04-20-99
S 186	RUCHO	ABSENTEE VOTING CHANGES	S -REF TO COM ON JUDICII	03-01-99	
S 220	SHAW R	GRADUATED LICENSE SUPERVISORS	S -REF TO COM ON JUDICII	03-03-99	
S 232	MARTIN W	BO THOMAS- BICYCLE SAFETY ACT	S -REF TO COM ON JUDICII	03-04-99	
S 243=	SHAW R	COMMUNITY COLLEGE CAMPUS POLICE	S -REF TO COM ON JUDICII	03-04-99	
S 252	HORTON	CHILD ABUSE PENALTY	S -REF TO COM ON JUDICII	03-08-99	
S 290	MILLER B	LOBBYING LAW AMENDMENTS	*R -CH. SL 99-0338	03-08-99	03-15-99
S 291=	PHILLIPS	CHILD CARE SUBSIDY FRAUD	S -RE-REF COM ON APPROPR	03-08-99	03-22-99
S 310	MILLER B	AMEND TIME FOR NOTICE OF APPEAL	*R -CH. SL 99-0309	03-10-99	03-15-99
S 311	MILLER B	MODIFY SUMMONS UNDER RULE 4	HF-POSTPONED INDEFINITELY	03-10-99	03-15-99
S 329	HAGAN	NEW LAPSE STATUTE	*R -CH. SL 99-0145	03-11-99	03-24-99
S 334	BALLANCE	NO DEATH PENALTY/MENTALLY RETARDED	S -REF TO COM ON JUDICII	03-11-99	
S 359=	PHILLIPS	ENHANCE CHILD WELFARE SERVICES	S -REF TO COM ON JUDICII	03-15-99	
S 383	JORDAN	CHILD SUPPORT ATTORNEY CHANGE	S -REF TO COM ON JUDICII	03-16-99	
S 392	KINNAIRD	CAMPUS VOTER REGISTRATION	S -RE-REF COM ON JUDICII	04-14-99	
S 393	MILLER B	WRITTEN MOTIONS/SUPPORTING BRIEFS	*R -CH. SL 00-0127	00-07-05	00-07-06
S 393	MILLER B	WRITTEN MOTIONS/SUPPORTING BRIEFS	*R -CH. SL 00-0127	03-17-99	03-24-99
S 398	SHAW R	GREENSBORO RED LIGHT CAMERAS	*H -REF TO COM ON JUDICIV	03-17-99	04-08-99
S 414	KINNAIRD	CLOSE LOOPHOLE MIN. HOUS. STAND	R -CH. SL 00-0186	03-18-99	03-30-99
S 446=	**REEVES**	**SEAT BELTS ON NEW SCHOOL BUSES**	**S -REF TO COM ON JUDICII**	**03-22-99**	
S 455	LEE	DIVIDE SUPERIOR COURT 19B	S -RE-REF COM ON APPROPR	03-22-99	04-22-99
S 522=	RUCHO	"QUICK TAKE" NOTICE OF APPEAL	S -REF TO COM ON JUDICII	03-25-99	
S 525	HAGAN	PERSONAL REP. QUALIFICATIONS	*R -CH. SL 99-0133	03-25-99	04-01-99
S 526	HAGAN	MOD. AND TERM. OF IRREVOCABLE TRUSTS	*R -CH. SL 99-0266	03-25-99	04-15-99

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY II Valid Through 6-SEP-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 538	JORDAN	CHILD SUPPORT COLLECTION CHARGE	S -REF TO COM ON JUDICII	03-29-99	
S 544	HORTON	LIMIT SCH. APPEALS/LARGE COUNTIES	S -REF TO COM ON JUDICII	03-29-99	
S 558	MILLER B	STANDARDIZE LAW ENF. DISCIPLINE	S -REF TO COM ON JUDICII	03-29-99	
S 568=	KINNAIRD	ABSENTEE VOTING CHANGES	*R -CH. SL 99-0455	03-29-99	04-08-99
S 582	HORTON	ELECTRONIC PAWN RECORDS	SF-POSTPONED INDEFINITELY	03-29-99	04-27-99
S 673=	JORDAN	THREATEN COURT OFFICERS	S -REF TO COM ON JUDICII	03-31-99	
S 690	DALTON	DISTRICT COURT ELECTIONS NONPARTISAN	HF-POSTPONED INDEFINITELY	04-01-99	04-06-99
S 693	KINNAIRD	PROSECUTION BONDS/WHEN REQUIRED	R -CH. SL 99-0106	04-01-99	04-15-99
S 742=	DALTON	TEACHER/STUDENT/NO SEX ACTS-2	*R -CH. SL 99-0300	04-05-99	04-15-99
S 750	DALTON	HONORING LATTIMORE	S -ADOPTED	04-05-99	04-06-99
S 756=	HORTON	INCREASE AUTO INSURANCE COVERAGE	*R -CH. SL 99-0228	04-05-99	04-15-99
S 759	KINNAIRD	SEXUAL PRIVACY ACT	S -REF TO COM ON JUDICII	04-05-99	
S 767	**MILLER B**	**LOBBYIST FUND-RAISING/ONE-STOP VOTIN**	**R -CH. SL 00-0136**	**04-06-99**	**04-19-99**
S 768=	MILLER B	WORKERS' COMP/THIRD PARTY ACTIONS	S -REF TO COM ON JUDICII	04-06-99	
S 812	REEVES	ALCOHOLIC BEVERAGE SALES	R -CH. SL 99-0322	04-12-99	04-22-99
S 814=	GULLEY W	MATTHEW SHEPARD MEMORIAL ACT	S -REF TO COM ON JUDICII	04-12-99	
S 816	KINNAIRD	PRIVACY PROTECTION ACT	S -REF TO COM ON JUDICII	04-12-99	
S 851=	JORDAN	N.H./PENDER JUDICIAL DISTRICTS	S -RE-REF COM ON APPROPR	04-13-99	04-27-99
S 867	GULLEY W	REAL ESTATE LICENSURE LAW CHANGES	*R -CH. SL 99-0229	04-13-99	04-28-99
S 877	KERR	WORKERS' COMP./NATIONAL/STATE GUARD	*R -CH. SL 99-0418	04-13-99	04-22-99
S 906=	LEE	UNDERGROUND UTILITY DAMAGE AMEND	S -REF TO COM ON JUDICII	04-14-99	
S 920	FORRESTER	UPDATE CONT. SUBSTANCE SCHEDULES	*R -CH. SL 99-0165	04-14-99	04-28-99
S 921	MILLER B	AMEND RULE 55	R -CH. SL 99-0187	04-14-99	04-20-99
S 923	MILLER B	UNDERINSURED MOTORISTS/WORKERS' COMP	S -REF TO COM ON JUDICII	04-14-99	
S 925=	MILLER B	STATE TORT CLAIMS/PUBLIC DUTY	S -REF TO COM ON JUDICII	04-14-99	
S 929	REEVES	ABATEMENT OF NUISANCES	*R -CH. SL 99-0371	04-14-99	04-27-99
S 931	KINNAIRD	FELONY MURDER/LIFE IMPRISONMENT	S -REF TO COM ON JUDICII	04-14-99	
S 955	DALTON	PROPER TRIAL DIVISION/COUNSEL FEES	S -RE-REF COM ON RULES &	04-15-99	04-27-99
S 956	DALTON	THREATS AGAINST CHILDREN/SPOUSE	*R -CH. SL 99-0262	04-15-99	04-22-99
S 984	MILLER B	ACCOUNTANT/CPA AUDITS	*S -RE-REF COM ON FINANCE	04-26-99	04-27-99

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY II Valid Through 6-SEP-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 989=	ODOM	1999 GOVERNOR'S DWI AMENDMENTS	S -REF TO COM ON JUDICII	04-15-99	
S 991	BALLANCE	RACIAL JUSTICE ACT	S -REF TO COM ON JUDICII	04-15-99	
S 992	BALLANCE	WORKERS' COMP. FOR PRISONERS	*S -RE-REF COM ON APPROPR	04-15-99	04-22-99
S 994	ODOM	AMEND BAIL BOND LAWS	S -REF TO COM ON JUDICII	04-15-99	
S 995	ODOM	POLICE PEER COUNSELOR PRIVILEGE	*R -CH. SL 99-0374	04-15-99	04-27-99
S 997	ODOM	LARCENY/LAW ENFORCEMENT EQUIPMENT	S -REF TO COM ON JUDICII	04-15-99	
S 999=	ODOM	FIREARMS/AMMUN. PREEMPTION	*S -RE-REF COM ON JUDICII	04-15-99	04-27-99
S 999=	ODOM	FIREARMS/AMMUN. PREEMPTION	*S -RE-REF COM ON JUDICII	04-28-99	
S1001	ODOM	TRAFFICKING IN MDA/MDMA	S -REF TO COM ON JUDICII	04-15-99	
S1002=	MOORE K	CONCEALED HANDGUNS/RECIPROCITY	S -REF TO COM ON JUDICII	04-15-99	
S1003	KINNAIRD	GIFTS BY GUARDIANS	*R -CH. SL 99-0270	04-15-99	04-28-99
S1018	DALTON	MARRIAGE LICENSES	*R -CH. SL 99-0375	04-15-99	04-20-99
S1019	DALTON	LTD. ENTRY BY SURVEYOR	HF-POSTPONED INDEFINITELY	04-15-99	04-20-99
S1060	HAGAN	DIVISION OF TRUSTS	*R -CH. SL 99-0144	04-15-99	04-26-99
S1074	REEVES	YEAR 2000 CONSUMER PROTECTION ACT	*R -CH. SL 99-0308	04-15-99	04-27-99
S1096	GARROU	NO GUNS AT SCHOOL LAW/SCHOOL EMPLOYE	*R -CH. SL 99-0211	04-15-99	04-27-99
S1098=	WEBSTER	FIREARMS/AMMUN. PREEMPTION	S -REF TO COM ON JUDICII	04-15-99	
S1102	KINNAIRD	DEATH PENALTY MORATORIUM	S -REF TO COM ON JUDICII	04-15-99	
S1113	KERR	WORKERS' COMP/MED. PROVIDER CONTACT	*R -CH. SL 99-0150	04-26-99	04-28-99
S1126	HORTON	REPEAL PENAL BOND EXCEPTION	S -REF TO COM ON JUDICII	04-15-99	
S1129	JORDAN	GUILTY PLEAS/AUDIO & VIDEO TRANS	S -REF TO COM ON JUDICII	04-15-99	
S1130	JORDAN	SPEEDIER TRIALS	S -REF TO COM ON JUDICII	04-15-99	
S1142	MARTIN W	DESIGNATE COMM. OF INDIAN AFFAIRS	*H -REF TO COM ON MIL&VET	04-15-99	04-22-99
S1199=	GULLEY W	INTERLOCK/OPEN CONTAINER CHANGES	S -REF TO COM ON JUDICII	00-05-10	
S1230=	MARTIN R	TEMP. CUSTODY-HEALTH CARE PROVIDER	S -REF TO COM ON JUDICII	00-05-15	
S1233=	MILLER B	AMEND STATE TORT CLAIMS LAW	S -REF TO COM ON JUDICII	00-05-15	
S1253=	ODOM	AMEND BAIL BONDSMEN AND RUNNERS LAW	S -REF TO COM ON JUDICII	00-05-16	
S1257=	**MARTIN W**	**ABANDONED INFANT PROTECTION ACT**	**S -REF TO COM ON JUDICII**	**00-05-16**	
S1267=	**ROBINSON**	**MODERNIZE BAIL BOND FORFEITURES**	**S -REF TO COM ON JUDICII**	**00-05-17**	
S1269=	WARREN E	LIMIT LIABILITY/DEFIBRILLATOR	*R -CH. SL 00-0113	00-05-18	00-05-30

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S1275=	JORDAN	EXTEND BILLBOARD MORATORIUM	R -CH. SL 00-0101	00-06-28	00-06-28
S1284=	FOXX	APA TECHNICAL CHANGES	R -CH. SL 00-0189	00-05-17	00-05-30
S1308=	KERR	EXPAND APA OVERSIGHT	S -REF TO COM ON JUDICII	00-05-18	
S1315=	MILLER B	PRIVATE COUNSEL/ATTY FEES/STATE EMP	S -REF TO COM ON JUDICII	00-05-18	
S1316=	MILLER B	ENGINEERS/LAND SURVEYS LICENSURE	*R -CH. SL 00-0115	00-05-18	00-05-30
S1323=	**BALLANCE**	**INDIGENT DEFENSE SERVICES**	***R -CH. SL 00-0144**	**00-05-18**	**00-06-20**
S1339=	MARTIN W	VIOLENT CAREGIVER CHANGES	S -REF TO COM ON JUDICII	00-05-18	
S1340=	WELLONS	GUARDIANSHIP REVISIONS	*R -CH. SL 00-0124	00-05-18	00-06-06
S1344=	JORDAN	REMOVAL OF ABANDONED VESSELS	S -REF TO COM ON JUDICII	00-05-18	
S1347=	PHILLIPS	DRIVERS POINTS NO CHILD RESTRAINT	*R -CH. SL 00-0117	00-05-22	00-06-07
S1456=	CLODFELTER	MECKLENBURG/FUNDING FOR COURT SYSTEM	S -REF TO COM ON JUDICII	00-05-25	
S1480	CLODFELTER	LOCAL FUNDING FOR COURT SYSTEM	S -REF TO COM ON JUDICII	00-05-25	
S1530	DALTON	PERSONAL PRIVACY PROTECTION ACT	S -RE-REF COM ON JUDICII	00-06-21	

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SENATE JUDICIARY II COMMITTEE

MAY 23, 2000

MINUTES

The Senate Judiciary II Committee met on Tuesday, May 23, 2000, at 10:00 a.m. in room 1124 of the Legislative Building. Nine members were present, including Senator Brad Miller, who presided.

Senator Miller called the meeting to order and explained the Proposed Committee Substitute for HB 973, Marriage License Change/Study. The proposed change would allow Superior Court Judges to perform marriage ceremonies, but with a sunset from the time that the act becomes law until September 15, 2000. Senator Forrester moved to adopt the Proposed Committee Substitute. The motion carried unanimously. **Unfavorable as to Committee Substitute #1, but favorable as to Senate Committee Substitute.**

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Tuesday, May 23, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)973 Marriage License Change/Study.

Draft Number:	PCSA224
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Sen. Miller to sign.

SENATE JUDICIARY II COMMITTEE

MAY 23, 2000

ROOM 1124

HB 973	Marriage License Change/Study	Rep. Hill
Adjournment		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 973
Committee Substitute Favorable 4/21/99

Short Title: Marriage License Change/Study. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES CONCERNING THE ISSUANCE OF A MARRIAGE LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 51-8 reads as rewritten:

"**§ 51-8. License issued by register of deeds.**

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons if it appears that ~~such~~ these persons ~~are authorized to~~ may be married in accordance with the laws of this State. In making a determination as to whether or not the parties ~~are authorized to~~ may be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates ~~or birth registration cards provided for in G.S. 130-73,~~ or ~~such~~ any other evidence ~~as~~ the register of deeds deems necessary to ~~such~~ this determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. If the applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of such a statement, the register of deeds shall issue the license, provided all other requirements are met, and shall retain the statement with the register's copy of the license. The

register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 973
Committee Substitute Favorable 4/21/99
Proposed Senate Committee Substitute H973-PCSA224-LU

Short Title: Marriage by Superior Court Judge. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES ALLOWING A SUPERIOR COURT JUDGE TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by his church, superior court judge, or of a magistrate, and the consequent declaration by such ~~minister~~ minister, judge, or officer that such persons are husband and wife, shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

Section 2. This act is effective when it becomes law and expires on September 15, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 973
Committee Substitute Favorable 4/21/99
Proposed Senate Committee Substitute H973-CSLU-01
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Marriage By Superior Court Judge. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES ALLOWING A SUPERIOR COURT JUDGE TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 51-1 reads as rewritten:

"**§ 51-1. Requisites of marriage; solemnization.**

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by his church, superior court judge, or of a magistrate, and the consequent declaration by such ~~minister~~ minister, judge, or officer that such persons are husband and wife, shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages solemnized before March 9, 1909, by

ministers of the gospel licensed, but not ordained, are validated from their consummation."

Section 2. This act is effective when it becomes law and expires on September 15, 2000.

HOUSE BILL 973 (PCS):
Marriage by Superior Court Judge

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Hill
Date:	May 23, 2000	**Summary by:**	Brenda J. Carter Committee Co-Counsel
Version:	Proposed Senate Committee Sub **H973-CSLU-01**		

SUMMARY: The proposed Senate Committee Substitute authorizes superior court judges to perform marriage ceremonies, for a limited time. If enacted, the bill would be effective when it becomes law, and expire on September 15, 2000.

CURRENT LAW: Under G.S. 51-1, marriage ceremonies may be performed by an ordained minister of any religious denomination, a minister authorized by his church, or by a magistrate.

BILL ANALYSIS: The bill would amend G.S. 51-1, regarding the solemnization of marriage, to provide that a superior court judge may perform marriage ceremonies.

BACKGROUND: A similar bill was enacted in 1998, when the law was amended to permit "a district court judge who was formerly an assistant district attorney of the thirteenth judicial district" to perform the marriage ceremony. That provision became effective August 27, 1998 and expired on July 31, 1999.

VISITOR REGISTRATION SHEET

D #11
Name of Committee

May 23-2000
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Nat Mund	CCNC
BRUCE THOMPSON	NCGV
Greg Retkiner	NY Times Gr
Sona Shandilya	Anne Winner

SENATE JUDICIARY II COMMITTEE

MAY 25, 2000

MINUTES

The Senate Judiciary II Committee met on May 25, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Ten members were present, including Senator Brad Miller, who presided.

Senator Warren was introduced to explain SB 1269, Limit Liability/Defibrillator. He, in turn, called on Ken Levinbrook, from the Legislative Study Commission staff, to discuss the liability issue. Mr. Levinbrook explained that agencies or companies employing the use of a defibrillator, who provided nationally recognized training in the use of defibrillators, would not be held liable when the device is used to save a life or attempt to save a life.

Speaking from the public in support of the bill were: Harry Kaplan, American Heart Association; Drexdal Pratt, North Carolina Office of Emergency Medical Services; Linwood Mercer, American Heart Association; and Peyton Maynard, Academy of Family Physicians, NC.

Senator Horton moved to amend the bill on page 2, by deleting lines 18 through 21. The motion carried unanimously.

Senator Kerr moved to amend the bill on page 1, deleting lines 7 through 11. The motion carried unanimously.

Senator Kerr moved to engross the two amendments into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 1284, APA Technical Changes, was explained by Senator Foxx. Senator Moore moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

SB 1316, Professional Engineers/Land Surveyors Licensure, was explained by Senator Miller. Senator Miller moved to adopt a proposed committee substitute. The motion carried unanimously. Senator Kerr moved to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Tuesday, May 30, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1284** APA Technical Changes.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1269** Limit Liability/Defibrillator.
Draft Number: PCS4785
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1316** Professional Engineers/Land Surveyors Licensure.
Draft Number: PCS3958
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: Sen. Miller to sign.

SENATE JUDICIARY II COMMITTEE

MAY 25, 2000

ROOM 1124

SB 1269	Limit Liability/Defibrillator	Senator Warren
SB 1284	APA Technical Changes	Senator Foxx
SB 1316	Professional Engineers/Land Surveyors Licensure	Senator Miller
SB 1340	Guardianship Revisions	Senator Wellons

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1269

Short Title: Limit Liability/Defibrillator. (Public)

Sponsors: Senators Warren; Allran, Carpenter, Carter, Forrester, Garwood, Hagan, Horton, Hoyle, Kerr, Kinnaird, Lucas, Martin of Guilford, Odom, Phillips, Reeves, Robinson, Rucho, Soles, and Wellons.

Referred to: Judiciary I.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO LIMIT LIABILITY WHEN A PERSON USES AN AUTOMATED EXTERNAL DEFIBRILLATOR TO RENDER EMERGENCY HEALTH CARE TREATMENT TO ATTEMPT TO SAVE THE LIFE OF A PERSON WHO IS IN OR WHO APPEARS TO BE IN CARDIAC ARREST.

The General Assembly of North Carolina enacts:

Section 1.

AN ACT TO LIMIT LIABILITY WHEN A PERSON USES AN AUTOMATED EXTERNAL DEFIBRILLATOR TO RENDER EMERGENCY HEALTH CARE TREATMENT TO ATTEMPT TO SAVE THE LIFE OF A PERSON WHO IS IN OR WHO APPEARS TO BE IN CARDIAC ARREST.

The General Assembly of North Carolina enacts:

Section 1. Article 1B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.15. Emergency treatment using automated external defibrillator; immunity.**

(a) Intent. -- It is the intent of the General Assembly that, when used in accordance with this section, an automated external defibrillator may be used during an emergency for the purpose of attempting to save the life of another person who is in or who appears to be in cardiac arrest.

(b) Definitions. -- For purposes of this section:

(1) 'Automated external defibrillator' means a device, heart monitor, and defibrillator that meets all of the following requirements:

a. The device has received approval from the United States Food and Drug Administration of its premarket notification filed pursuant to 21 U.S.C. § 360(k), as amended.

b. The device is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention by an operator, whether defibrillation should be performed.

c. Upon determining that defibrillation should be performed, the device automatically charges and requests delivery of, or delivers, an electrical impulse to an individual's heart.

(2) 'Training' means successful completion of a nationally recognized course or training program in cardiopulmonary resuscitation (CPR) and automated external defibrillator use including the programs approved and provided by the:

a. American Heart Association.

b. American Red Cross.

(c) Duties. -- In order to enhance public health and safety, a seller of an automated external defibrillator shall notify an agent of the local emergency communications or vehicle dispatch center of the existence, location, and type of automated external defibrillator.

(d) Immunity. -- The use of an automated external defibrillator when used to attempt to save or to save a life is 'first-aid or emergency health care treatment' as defined in G.S. 90-21.14(a).

(e) Scope of Immunity. --

(1) In addition to the person actually using the automated external defibrillator, the immunity from civil liability under subsection (d) of this section includes (i) the person or entity who provides the CPR and automated external defibrillator training, (ii) the person or entity responsible for the site where the automated external defibrillator is located provided there is a program of training, and (iii) a North Carolina licensed physician writing a prescription for an automated external defibrillator whether or not required by any federal or state law for no compensation.

(2) No immunity from civil liability is granted, under this section, to any emergency health care provider who receives compensation for rendering cardiac defibrillation to patients as a regular part of that provider's services to patients.

(f) Other Immunities. -- This section does not diminish the qualified immunity from civil liability for volunteers provided by G.S. 1-539.10, for persons rendering aid at the scene of an accident provided by G.S. 20-166, for members of a volunteer fire department or rescue squad provided by G.S. 58-82-5, or any other existing grant of immunity.

(g) Use Not 'Practice of Medicine'. -- The use of an automated external defibrillator is not the 'practice of medicine' as defined in G.S. 90-18(b).

(h) No Purchase, Placement, or Use Requirement. -- Nothing in this section requires the purchase, placement, or use of automated external defibrillators by any person, entity, or agency of State, county, or local government."

Section 2. G.S. 90-18(c) reads as rewritten:

"(c) The following shall not constitute practicing medicine or surgery as defined in subsection (b) of this section:

. . .

(17) The use of an automated external defibrillator as provided in G.S. 90-21.15(g)."

Section 3. This act becomes effective October 1, 2000, and applies to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1284*

Short Title: APA Technical Changes. (Public)

Sponsors: Senators Foxx; Ballance, Hartsell, Kerr, Miller, Purcell, and Webster.

Referred to: Judiciary II.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO REVISE OBSOLETE STATUTORY REFERENCES TO VARIOUS ADMINISTRATIVE PROCEDURE ACT PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1368.6(e) reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking post-release supervision, the Commission shall, unless the supervisee waived the hearing or the time limit, provide a hearing within 45 days of the supervisee's reconfinement to determine whether to revoke supervision finally. For purposes of this subsection, the 45-day period begins when the preliminary hearing required by subsection (b) of this section is held or waived, or upon the passage of seven working days after arrest, whichever is sooner. The Commission shall adopt rules governing the ~~hearing and shall file and publish them as provided in Article 5 of Chapter 150B of the General Statutes.~~ hearing."

Section 2. G.S 15A-1376 reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking parole, the Post-Release Supervision and Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The Post-Release Supervision and Parole Commission must adopt ~~regulations~~ rules governing the ~~hearing and must file and publish them as provided in Article 5 of Chapter 150B of the General Statutes.~~ hearing."

Section 3. G.S. 15B-6(a)(1) reads as rewritten:

"(a) In addition to powers authorized by this Chapter and Chapter 150B, the Commission may:

(1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and Article ~~2~~ 2A of Chapter 150B of the General Statutes necessary to carry out the purposes of this Chapter;".

Section 4. G.S. 90-88(d) reads as rewritten:

"(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes ~~places [place]~~ place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by ~~G.S. [Chapter]~~ Chapter 150B of the General Statutes is required if the Commission makes a decision to similarly control a ~~substance, but any rule so adopted shall be filed pursuant to Article 5 of Chapter 150B.~~ substance. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to ~~G.S. [Chapter] 150B~~ Chapter 150B of the General Statutes within 180 days of its decision to object."

Section 5. G.S. 90-116 reads as rewritten:

"§ 90-116. Board of Examiners in Optometry.

In order to properly regulate the practice of optometry, there is established a North Carolina State Board of Examiners in Optometry, which shall consist of five regularly graduated optometrists who have been engaged in the practice of optometry in this State for at least five years and two members to represent the public at large.

No public member shall at any time be a health care provider, be related to or be the spouse of a health care provider, or have any pecuniary interest in the profitability of a health care provider. For purposes of this section, the term "health care provider" shall have the same meaning as provided in G.S. 58-47-5(4). The Governor shall appoint the two public members not later than July 1, 1981.

The optometric members of the Board shall be appointed by the Governor from a list provided by the North Carolina State Optometric Society. For each vacancy, the society must submit at least three names to the Governor. The society shall establish procedures for the nomination and election of optometrist members of the Board. These procedures shall be adopted under the rule-making procedures described in Article ~~2,~~ 2A, Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed optometrists residing in North Carolina. Such procedures shall not conflict with the provisions of this section. Every optometrist with a current North Carolina license residing in the State shall be eligible to vote in all such elections, and the list of licensed optometrists shall constitute the registration list for elections. Any decision of the society relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the society has rendered the decision in controversy, and all such cases shall be heard de novo.

All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive five-year terms, except that each member shall serve until his successor is chosen and qualifies.

The Governor may remove any member for good cause shown. Any vacancy in the optometrist membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of at least three names submitted by the North Carolina State Optometric Society Executive Council. Any vacancy in the public membership of the Board shall be filled by the Governor for the unexpired term."

Section 6. G.S. 90-140 reads as rewritten:

"**§ 90-140. Selection of chiropractic members of Board.**

The Governor and the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint chiropractic members of the Board for terms of three years from a list provided by the Board, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint a chiropractic member of the Board for a term of two years from a list provided by the Board. For each vacancy, the Board must submit at least three names to the Governor, President Pro Tempore of the Senate and Speaker of the House.

The Board shall establish procedures for the nomination and election of chiropractic members. These procedures shall be adopted under Article ~~2~~ 2A of Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed chiropractors residing in North Carolina. These procedures shall not conflict with the provisions of this section. Every chiropractor with a current North Carolina license residing in this State shall be eligible to vote in all such elections, and the list of licensed chiropractors shall constitute the registration list for elections. Any decision of the Board relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the Board has rendered the decision in controversy, and all such cases shall be heard de novo."

Section 7. G.S. 90-223(b)(1) reads as rewritten:

"(b) The Board shall have the authority to make or amend rules and regulations not inconsistent with this Article governing the practice of dental hygiene and the granting, revocation and suspension of licenses and provisional licenses of dental hygienists.

(1) Any rule ~~promulgated or amended~~ adopted under this Article shall ~~be filed and distributed in accordance with the provisions of Article 5 of Chapter 150B of the General Statutes of North Carolina. A copy must~~ be distributed to all licensed dentists and all licensed dental hygienists within 30 days of final approval by the Board."

Section 8. G.S. 113-55.2(a) reads as rewritten:

"(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the Secretary may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement

officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the Secretary within the requirements of this section. These criteria are exempt from Article ~~2~~ 2A of Chapter 150B of the General ~~Statutes but shall be filed in accordance with Article 5 of that Chapter.~~ Statutes."

Section 9. G.S. 113-221(e1) reads as rewritten:

"(e1) Pursuant to the request of five or more members of the Marine Fisheries Commission, its chairman may call an emergency meeting of the Commission to review: (1) a proposed issuance or issuance of proclamations under the authority delegated to the Fisheries Director pursuant to (e) of this section, except those proclamations issued for reasons of public health; or (2) the need to issue a proclamation to allow the taking of certain fisheries resources in areas not opened through proclamations issued by the Fisheries Director. At least 48 hours prior to any such meeting, a public announcement of the meeting shall be issued that describes the action requested by the members of the Commission; and the Department must make every reasonable effort to give actual notice of the meeting to persons who may be affected thereby. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may (1) approve, cancel, or modify the proposed proclamation or issued proclamation under review; or (2) direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources.

The variable conditions that affect such resource management decisions require that these emergency meetings and any resulting orders by the Commission be exempt from the provisions of ~~Articles 2 and 5~~ Article 2A of Chapter 150B. The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious."

Section 10. G.S. 113-275(a1) reads as rewritten:

"(a1) Notwithstanding the fees specified for nonresident individuals by G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, 113-272.2, and 113-273, if the Wildlife Resources Commission finds that a state has a nonresident license fee related to wildlife resources that exceeds the fee for a comparable nonresident license in North Carolina, the Wildlife Resources Commission may, by resolution in official session, increase the nonresident license fee applicable to citizens of that state to an amount equal to the fee a North Carolina resident is required to pay in that state.

The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection is not subject to the provisions of Article ~~2~~ 2A of Chapter 150B of the General Statutes. ~~Notwithstanding the provisions of G.S. 150B-59(a), the~~ The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection becomes effective on the date specified by the Wildlife Resources Commission."

Section 11. G.S. 113A-115(a) reads as rewritten:

"(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings required by this

section are in addition to the hearing required by Article ~~2~~ 2A of Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:

(1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.

(3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.

(4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby."

Section 12. G.S. 130A-309.29 reads as rewritten:

"**§ 130A-309.29. Adoption of rules.**

The Commission may adopt rules to implement the provisions of this Part pursuant to Article ~~2~~ 2A of Chapter 150B of the General Statutes."

Section 13. G.S. 130B-8(a)(8) reads as rewritten:

"(a) Neither the Commission nor any contractor performing services on behalf of the Commission shall be subject to the following provisions of the General Statutes:

. . .

(8) Article ~~2~~ 2A of Chapter 150B shall not apply to contractor selection or technology selection pursuant to G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of Chapter 150B shall not apply to final decisions regarding site selection, contractor selection or technology selection pursuant to G.S. 130B-11, 130B-13, and 130B-14."

Section 14. G.S. 150B-1(d)(2) is repealed.

Section 15. Effective dates. Section 14 of this act is effective July 1, 2000. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1316*

Short Title: Professional Engineers/Land Surveyors Licensure. (Public)

Sponsors: Senator Miller.

Referred to: Judiciary II.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO AUTHORIZE THE BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS TO ADOPT RULES TO REQUIRE ADDITIONAL INFORMATION PRIOR TO THE REEXAMINATION OF AN APPLICANT; LIMIT THE NUMBER OF OFFICES A LICENSEE MAY SUPERVISE; AND CHANGE THE ANNUAL LICENSE RENEWAL DATE FOR BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-14(e) reads as rewritten:

"(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, documented evidence of actions taken by the candidate to enhance the candidate's prospects for passing the exam, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 2. G.S. 89C-7 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for licensure of corporations and business firms that engage in the practice of engineering or land surveying shall expire on the last day of the month of June following their issuance or renewal, and shall become invalid on that date unless renewed. All other certificates ~~Certificates~~ for licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require any evidence necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person licensed under this Chapter of the date of expiration of the certificate, the amount of the fee required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed seventy-five dollars ($75.00). Failure on the part of any registrant to renew the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first 12 months immediately following its invalidation by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a licensee to renew the license for a period of 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application on the prescribed form, and to meet all other requirements for licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that the applicant has maintained active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 3. G.S. 89C-24 reads as rewritten:

"§ 89C-24. Licensure of corporations and business firms that engage in the practice of engineering or land surveying.

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is licensed by the Board and has paid an application fee established by the Board in an amount not to exceed one hundred dollars ($100.00). A corporation or business firm is subject to the same duties and responsibilities as an individual licensee. Licensure of a corporation or business firm does not affect the requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities. The Board may establish a limit on the number of offices that a licensee of the Board may directly or personally supervise at one time.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1340*

Short Title: Guardianship Revisions. (Public)

Sponsors: Senators Wellons, Martin of Guilford; and Carpenter.

Referred to: Judiciary II.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-600 reads as rewritten:

"**§ 7B-600. Appointment of guardian.**

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has appointed a relative or other suitable person as guardian of the person for a juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the guardian is unfit, or has neglected a

guardian's duties, or is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition pursuant to G.S. 7B-906(b)(4), 7B-906(b)(5), or 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person for the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian's fitness or ability to continue assuming a guardian's duties and consider their recommendations for the disposition of the motion or petition.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

Section 2. G.S. 7B-906(b) reads as rewritten:

"(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made finding in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 3. G.S. 7B-1000(a) reads as rewritten:

"(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 4. This act becomes effective October 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-25-00

S. B. No. 1269 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Horton
)
Sen.)

moves to amend the bill on page 2, line 18-21

( ) WHICH CHANGES THE TITLE

by deleting those lines in their entirety and by renumbering the remaining subsections accordingly ~~and on page 1, lines 7-11 by deleting~~

SIGNED Horton

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. 1269

COMMITTEE SUBSTITUTE _____

DATE 5/25/00

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

Rep.)
) Kerr
Sen.)

1 moves to amend the bill on page 1, line 7 - 11

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines

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ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

Senate Bill 1269
Proposed Committee Substitute S1269-PCS4785-RV001

Short Title: Limit Liability/Defibrillator. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO LIMIT LIABILITY WHEN A PERSON USES AN AUTOMATED EXTERNAL DEFIBRILLATOR TO RENDER EMERGENCY HEALTH CARE TREATMENT TO ATTEMPT TO SAVE THE LIFE OF A PERSON WHO IS IN OR WHO APPEARS TO BE IN CARDIAC ARREST.

The General Assembly of North Carolina enacts:

Section 1. Article 1B of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.15. Emergency treatment using automated external defibrillator; immunity.**

(a) Intent. -- It is the intent of the General Assembly that, when used in accordance with this section, an automated external defibrillator may be used during an emergency for the purpose of attempting to save the life of another person who is in or who appears to be in cardiac arrest.

(b) Definitions. -- For purposes of this section:

(1) 'Automated external defibrillator' means a device, heart monitor, and defibrillator that meets all of the following requirements:

a. The device has received approval from the United States Food and Drug Administration of its premarket notification filed pursuant to 21 U.S.C. § 360(k), as amended.

b. The device is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without

intervention by an operator, whether defibrillation should be performed.

c. Upon determining that defibrillation should be performed, the device automatically charges and requests delivery of, or delivers, an electrical impulse to an individual's heart.

(2) 'Training' means successful completion of a nationally recognized course or training program in cardiopulmonary resuscitation (CPR) and automated external defibrillator use including the programs approved and provided by the:

a. American Heart Association.

b. American Red Cross.

(c) Immunity. -- The use of an automated external defibrillator when used to attempt to save or to save a life is 'first-aid or emergency health care treatment' as defined in G.S. 90-21.14(a).

(d) Scope of Immunity. --

(1) In addition to the person actually using the automated external defibrillator, the immunity from civil liability under subsection (d) of this section includes (i) the person or entity who provides the CPR and automated external defibrillator training, (ii) the person or entity responsible for the site where the automated external defibrillator is located provided there is a program of training, and (iii) a North Carolina licensed physician writing a prescription for an automated external defibrillator whether or not required by any federal or state law for no compensation.

(2) No immunity from civil liability is granted, under this section, to any emergency health care provider who receives compensation for rendering cardiac defibrillation to patients as a regular part of that provider's services to patients.

(e) Other Immunities. -- This section does not diminish the qualified immunity from civil liability for volunteers provided by G.S. 1-539.10, for persons rendering aid at the scene of an accident provided by G.S. 20-166, for members of a volunteer fire department or rescue squad provided by G.S. 58-82-5, or any other existing grant of immunity.

(f) Use Not 'Practice of Medicine'. -- The use of an automated external defibrillator is not the 'practice of medicine' as defined in G.S. 90-18(b).

(g) No Purchase, Placement, or Use Requirement. -- Nothing in this section requires the purchase, placement, or use of automated external defibrillators by any person, entity, or agency of State, county, or local government."

Section 2. G.S. 90-18(c) reads as rewritten:

"(c) The following shall not constitute practicing medicine or surgery as defined in subsection (b) of this section:

. . .

(17) The use of an automated external defibrillator as provided in G.S. 90-21.15(g)."

Section 3. This act becomes effective October 1, 2000, and applies to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1316
Proposed Committee Substitute S1316-CSSG-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Professional Engineers/Land Surveyors Licensure.

(Public)

Sponsors:

Referred to: Judiciary II.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO AUTHORIZE THE BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS TO ADOPT RULES TO REQUIRE ADDITIONAL INFORMATION PRIOR TO THE REEXAMINATION OF AN APPLICANT; LIMIT THE NUMBER OF OFFICES A LICENSEE MAY SUPERVISE; AND CHANGE THE ANNUAL LICENSE RENEWAL DATE FOR BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-14(e) reads as rewritten:

"(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, documented evidence of actions taken by the candidate to enhance the candidate's prospects for passing the exam, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month

period, the applicant may take the examination no more than once every calendar year."

Section 2. G.S. 89C-7 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for licensure of corporations and business firms that engage in the practice of engineering or land surveying shall expire on the last day of the month of June following their issuance or renewal, and shall become invalid on that date unless renewed. All other certificates ~~Certificates~~ for licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require any evidence necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person licensed under this Chapter of the date of expiration of the certificate, the amount of the fee required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month ~~of January immediately following,~~ immediately following the month of expiration, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed seventy-five dollars ($75.00). Failure on the part of any registrant to renew the certificate annually in the month ~~of January,~~ immediately following the month of expiration, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first 12 months immediately following its invalidation by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a licensee to renew the license for a period of 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application on the prescribed form, and to meet all other requirements for licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may

adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that the applicant has maintained active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 3. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is licensed by the Board and has paid an application fee established by the Board in an amount not to exceed one hundred dollars ($100.00). A corporation or business firm is subject to the same duties and responsibilities as an individual licensee. Licensure of a corporation or business firm does not affect the requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities. The Board may adopt a rule establishing a reasonable limit on the number of separate offices or places of business at which a licensee may serve as the resident professional engineer or the resident land surveyor.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1316*
Proposed Committee Substitute S1316-PCS3958-SG001

Short Title: Professional Engineers/Land Surveyors Licensure. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO AUTHORIZE THE BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS TO ADOPT RULES TO REQUIRE ADDITIONAL INFORMATION PRIOR TO THE REEXAMINATION OF AN APPLICANT; LIMIT THE NUMBER OF OFFICES A LICENSEE MAY SUPERVISE; AND CHANGE THE ANNUAL LICENSE RENEWAL DATE FOR BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-14(e) reads as rewritten:

"(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, documented evidence of actions taken by the candidate to enhance the candidate's prospects for passing the exam, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 2. G.S. 89C-7 reads as rewritten:

"**§ 89C-17. Expirations and renewals of certificates.**

Certificates for licensure of corporations and business firms that engage in the practice of engineering or land surveying shall expire on the last day of the month of

June following their issuance or renewal and shall become invalid on that date unless renewed. All other certificates ~~Certificates~~ for licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require any evidence necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed seventy-five dollars ($75.00). The secretary of the Board shall notify by mail every person licensed under this Chapter of the date of expiration of the certificate, the amount of the fee required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month ~~of January immediately following,~~ immediately following the month of expiration, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed seventy-five dollars ($75.00). Failure on the part of any registrant to renew the certificate annually in the month ~~of January,~~ immediately following the month of expiration, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first 12 months immediately following its invalidation by payment of the established renewal fee and a late penalty of one hundred dollars ($100.00). Failure of a licensee to renew the license for a period of 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application on the prescribed form, and to meet all other requirements for licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that the applicant has maintained active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

Section 3. G.S. 89C-24 reads as rewritten:

"**§ 89C-24. Licensure of corporations and business firms that engage in the practice of engineering or land surveying.**

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is licensed by the Board and has paid an application fee established by the Board in an amount not to exceed one hundred dollars ($100.00). A corporation or business firm is subject to the same duties and responsibilities as an individual licensee. Licensure of a corporation or business firm does not affect the requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities. The Board may adopt a rule establishing a reasonable limit on the number of separate offices or places of business at which a licensee may serve as the resident professional engineer or the resident land surveyor.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

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

SENATE BILL 1269:
LIMIT LIABILITY/DEFIBRILLATOR

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Warren
Date:	May 25, 2000	**Summary by:**	Brenda J. Carter
Version:	1st		Committee Counsel

SUMMARY: ***This bill was recommended by an LRC Study Committee as a way to encourage the placement of automated external defibrillators (AED). An AED is a device that automatically analyzes heart rhythms and delivers an electric current to the heart when necessary to restore the heart to a normal rhythm. The bill clarifies State law regarding limited immunity for a person who uses an AED in a medical emergency. It also provides limited immunity to those persons or agencies placing the AED if there is a program of training, to persons or agencies providing the program of training, and to a licensed physician who writes a required prescription to allow for the placement of the AED.***

CURRENT LAW: G.S. 90-21.14 currently provides a limitation of liability for persons who provide first aid or emergency treatment without compensation. In the absence of gross negligence, wanton conduct or intentional wrongdoing, a person is not liable for damages when he or she renders first aid or emergency health care treatment to one who is unconscious, ill, or injured when the circumstances require prompt decisions and actions in medical care and when it is apparent that any delay in rendering care would seriously worsen the condition or endanger the life of the victim.

BILL ANALYSIS: Section 1 of the bill adds a new G.S. 90-21.15 which covers the use of and liabilities for the use of automated external defibrillators. The core provision of the bill provides that the use of an AED to save or attempt to save a life is 'first aid or emergency treatment' subject to immunity under existing law as explained in the paragraph above. AEDs are important because they can restore a normal heart rhythm in persons suffering from ventricular fibrillation (sudden cardiac arrest).

The bill extends the scope of the immunity to include the person or entity providing training for use of the defibrillators and to the person or entity responsible for the site where the defibrillator is located. The immunity also extends to a licensed physician who writes a prescription for a defibrillator.

The bill specifies that use of an AED is not the practice of medicine subject to regulation by the North Carolina medical board, and Section 2 of the bill amends the list of actions not constituting the practice of medicine.

EFFECTIVE DATE: The bill would become effective October 1, 2000 and apply to causes of action arising on or after that date.

SENATE BILL 1284:
APA Technical Changes

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Foxx
Date:	May 25, 2000	**Summary by:**	Mary Shuping
Version:	First Edition		Committee Staff

SUMMARY: ***This bill makes technical changes or repeals obsolete references to the APA still contained in the General Statutes.***

BILL ANALYSIS:

Sections 1-13

Former Article 2 of the APA governed the rule-making process agencies must follow. Former Article 5 of the APA governed effective dates and publication of agency rules. Both Article 2 and Article 5 were repealed in 1991; however, numerous references to these articles remain in the General Statutes.

Under the current APA, rule-making procedures, effective dates of rules, and the publication of rules are contained in Article 2A of the APA.

99-SCZ-002(4.17) repeals the obsolete references to Article 5, and replaces references to Article 2 with Article 2A.

SECTION(S)	EXPLANATION
1-2	Deletes obsolete references to Article 5 of the APA in the Parole Commission's statutes.
3	Replaces "Article 2" with "Article 2A", in the Crime Victims Compensation Commission's statutes.
4	Replaces "Article 2" with "Article 2A", and deletes reference to Article 5 in the Commission for Mental Health/Developmental Disabilities, & Substance Abuse Services' statutes governing controlled substances. Section 4 also makes other technical changes.
5	Replaces "Article 2" with "Article 2A" in the Board of Examiners of Optometry statutes.
6	Replaces "Article 2" with "Article 2A" in the Board of Chiropractic Examiners statutes.
7	Deletes reference to Article 5 and makes clarifying changes to State Board of Dental Examiners' statutes. The Board of Dental Examiners is subject to the APA, and therefore, is also subject to the filing and publication requirements in the APA. Subdivision (b)(1) continues to require that any rules adopted by the Board must be sent to dental hygienists within 30 days of the approval of the rules.
8	Replaces "Article 2" with "Article 2A" and deletes reference to Article 5 in DENR statutes governing issuance of warning tickets for forest law violations.
9	Replaces "Articles 2" with Article 2A and deletes reference to Article 5 for the Marine Fisheries Commission issuance of proclamations.
10	Replaces "Article 2" with "Article 2A" in Wildlife Resources Commission statutes.
11	Replaces "Article 2" with "Article 2A" in Coastal Resources Commission statutes.

12	Replaces "Article 2" with "Article 2A" in Health Services Commission statutes.
13	Replaces "Article 2" with "Article 2A" in Hazardous Waste Management Commission statutes.

Section 14. Section 14 repeals the section of the APA that exempted the NC Low-Level Radioactive Waste Management Authority's exemption from Article 2A of the APA. Pursuant to SL 99-357, the Authority is being repealed effective July 1, 2000.

Section 15. Effective Dates. Section 14 is effective July 1, 2000. The remainder of the act is effective when it becomes law.

SENATE BILL 1316: Professional Engineers & Land Surveyors Licensure

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Miller
Date:	May 25, 2000	**Summary by:**	Mary Shuping
Version:	1st edition		Research Assistant

SUMMARY: Senate Bill 1316 would allow the Board of Examiners for Engineers and Land Surveyors to adopt rules 1) requiring that an applicant who has failed an exam three times must present evidence that the applicant has taken actions to enhance his/her chances of passing the exam; 2) requiring resident professional engineers and resident professional land surveyors must spend a majority of their working hours in the place of business; and, 3) changing the license renewal date for businesses from December 31st to June 30th.

BACKGROUND: On April 13, the Rules Review Commission (RRC) objected to three of the rules adopted by the Board of Examiners for Engineers and Land Surveyors. As permitted under G.S. 150B-21.8, the RRC reviews, and may object to, language in an agency's rule that is not being amended. The objections by the RRC to the Boards rules were to existing language in the rules. The Board has requested legislation to give the Board the authority to properly adopt rules dealing with expiration of business licenses, requirements for information from applicants for re-examination; and resident professional engineers and land surveyors spend a majority of their working hours in the place of business.

BILL ANALYSIS:

Section 1. Current Law: Under current law, candidates for licensure who fail the exam three times are eligible for re-examination after submitting a new application with the appropriate fee and may be considered for re-examination by the Board after 12 months.

Proposed Amendment: Section 1 of the bill would also require that applicants for re-examination provide documented evidence of actions taken to enhance the applicant's likelihood of passing the exam.

Section 2. Current Law: Under current law, all certificates of licensure expire December 31st of each year.

Proposed Amendment: Section 2 of the bill would change the licensure expiration date for business firms and corporations from December 31st to June 30th of each year. Other licenses would continue to expire on December 31st.

Section 3. Current Law: Under current law, work done by business firms and corporations must be done under the responsible charge of individual registrants (defined by the Board as the "resident professional engineer" or "resident professional land surveyor"); however, there is no authority for the Board to require the resident professional engineer or land surveyor to spend a majority of his/her normal working hours in a particular place of business.

Proposed Amendment: Section 3 would allow the Board to adopt rules to establish a limit on the number of offices that a licensee of the Board may directly supervise at any one time.

Section 4. Effective Date. The bill is effective when it becomes law.

SENATE BILL 1340: GUARDIANSHIP REVISIONS

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Wellons and Senator Bill Martin
Date:	May 25, 2000		
Version:	1st	**Summary by:**	Brenda J. Carter Committee Co-Counsel

SUMMARY: ***This bill is a recommendation of the Child Fatality Task Force. It makes changes with regard to the status of a guardian of the person of a juvenile.***

CURRENT LAW: Under G.S. 7B-600, in any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian operates under the supervision of the court and has the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court.

G.S. 7B-907 provides that in any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge is required to conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, The purpose of the permanency hearing is to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or make any disposition authorized by G.S. 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile.

BILL ANALYSIS: **Section 1** of the bill amends the law regarding appoint of guardians in juvenile matters to provide that in a case where the court has appointed a person to serve as guardian of the person for a juvenile and has also made findings that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order the juvenile to be returned to the home of the parents without a finding that the guardian is unfit, has neglected his or her duties as guardian, or is unwilling or unable to continue assuming a guardian's duties.

The bill further amends the law to provide that if a party files a motion or petition for review of a custody order, the court may order the county department of social services to conduct an investigation, file a report, and give testimony regarding the performance of the guardian; use community resources to study guardian's fitness; ensure that a guardian ad litem has been appointed for the juvenile; take other action necessary in order to make a determination. If appointed, the guardian ad litem program is responsible for making an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; to conduct follow-up investigations to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

Under current law, in any case where custody is removed from a parent, guardian, custodian, or caretaker the court is required to conduct a review hearing within 90 days from the date of the dispositional hearing and to conduct a review hearing within six months thereafter. Under certain circumstances, the court may waive the holding of review hearings, may require written reports in lieu of review hearings, or may order that review hearings be held less frequently than every six months. However, the court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. **Section 2** of the bill specifies the procedure that the court is to follow when a guardian of the person has been appointed for the juvenile and the guardianship is the permanent plan for the juvenile.

Section 3 of the bill amends the law regarding the court's authority to modify or vacate, to specify the procedure that the court is to follow when a guardian of the person has been appointed for the juvenile and the guardianship is the permanent plan for the juvenile.

EFFECTIVE DATE: The bill would become effective October 1, 2000.

VISITOR REGISTRATION SHEET

Judiciary II — Name of Committee

5-25-00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Greg Messinger	Amer. Heart Association
Jerry Carter	NC Bd. of Engineers
Mike Mann	SSI
Charles Cramer	NCATL
Paul Pulley	NCATL
J. McCants	AOC
R. Paul Wilms	NCMBA
JoAnn Lamm	NCDSS/DHHS
Ilene Nelson	AOC
Thomas Vance Bennett	NCCFTF
Jack Cozort	Parker Poe
[illegible]	NCCADV
[illegible]	[illegible]
Bruce Thompson	Consulting Engineers
Alice Garland	Electricities
Dirk Taylor	NCATL

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth A. Bondurant	Sen. Virginia Foxx Intern
Alicia Gruenebaum	YAIO
Drexdal Pratt	NC Office of EMS
BILL SCOGGIN	KENNEDY COVINGTON
William Pattse	NCDS & NCPTA
James P. Coates	intern Sen. Foxx
Sara Shandley	Anne Winner (intern)
Chuck Harris	NC DSS
S Kinsome	DSS

SENATE JUDICIARY II COMMITTEE

MAY 30, 2000

MINUTES

The Senate Judiciary II Committee met on May 30, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Ten members were present, including Senator Brad Miller, who presided.

Senator Wellons was recognized to explain SB 1340, Guardianship Revisions. Senator Robinson moved to adopt a proposed committee substitute. The motion carried unanimously.

Senator Horton moved to amend the bill. The motion carried unanimously.

Speaking from the public in favor of the bill was Chuck Harris, with the North Carolina Division of Social Services.

Sen. Hagan moved to engross the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Tuesday, June 06, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

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

S.B. **1340** Guardianship Revisions.

Draft Number:	PCS8662
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

SENATE JUDCIARY II COMMITTEE

MAY 30, 2000

ROOM 1124

SB 1199	Interlock/Open Container Changes	Senator Gulley
SB 1230	Temp. Custody – Health Care Provider	Senator R. Martin
SB 1340	Guardianship Revisions	Senator Wellons

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1199*

Short Title: Interlock/Open Container Changes. (Public)

Sponsors: Senator Gulley.

Referred to: Judiciary II.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL HIGHWAY FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater."

Section 2. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall drive a motor vehicle on a highway or public vehicular area while there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a driver to drive a motor vehicle while any passenger is in possession of an alcoholic beverage other than in the unopened manufacturer's original container if the container is:

(1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.;or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and

of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section is a lesser included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or public vehicular area with an open container of alcoholic beverage.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 3. This act become effective December 1, 2000, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1230

Short Title: Temp. Custody - Health Care Provider. (Public)

Sponsors: Senators Martin of Pitt; Albertson, Clodfelter, Hoyle, and Purcell.

Referred to: Judiciary II.

May 15, 2000

A BILL TO BE ENTITLED

AN ACT TO ALLOW MEDICAL DOCTORS AND OTHER HEALTH CARE PERSONNEL TO TAKE A JUVENILE SUSPECTED OF BEING ABUSED OR NEGLECTED INTO TEMPORARY CUSTODY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-101 is amended by adding a new subdivision to read:

"(21) Temporary custody. -- The taking of physical custody of a juvenile and providing or arranging for personal care and supervision of that juvenile until a court order for nonsecure custody can be obtained."

Section 2. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. When the director is notified that a juvenile has been taken into temporary custody under G.S. 7B-500, the director shall immediately initiate the investigation. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department."

Section 3. G.S. 7B-308 is repealed.

Section 4. G.S. 7B-500 reads as rewritten:

"**§ 7B-500. Taking a juvenile into temporary custody.**

~~Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained.~~

(a) A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) A juvenile may be taken into temporary custody without a court order by a physician or an administrator of a health care facility to which a juvenile is brought for medical diagnosis or treatment when the physician who examines the juvenile certifies in writing that the juvenile is suspected of being abused or neglected and should remain for medical treatment or that, according to the juvenile's medical evaluation, it is unsafe for the juvenile to return to the juvenile's parent, guardian, custodian, or caretaker. A copy of the written certification shall be attached to the juvenile's medical records and a copy shall be given to the juvenile's parent, guardian, custodian, or caretaker. Upon taking a juvenile into temporary custody under this subsection, the physician or administator shall immediately notify the director of the department of social services of the county in which the medical facility is located."

Section 5. G.S. 7B-501 reads as rewritten:

"**§ 7B-501. Duties of person taking juvenile into temporary ~~custody.~~ custody; conditions of temporary custody.**

(a) A person who takes a juvenile into custody without a court order under G.S. 7B-500 shall proceed as follows:

(1) Notify the juvenile's parent, guardian, custodian, or caretaker that the juvenile has been taken into temporary custody and advise the parent, guardian, custodian, or caretaker of the right to be present with the juvenile until a determination is made as to the need for nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile.

(2) Release the juvenile to the juvenile's parent, guardian, custodian, or caretaker if the person having the juvenile in temporary custody decides that continued custody is unnecessary.

(3) The person having temporary custody shall communicate with the director of the department of social services of the county in which the juvenile was taken into temporary custody who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge or person delegated authority

pursuant to G.S. 7B-502 for a determination of the need for continued custody.

(b) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless:

(1) A petition or motion for review has been filed by the director of the department of social services, and

(2) An order for nonsecure custody has been entered by the court.

(c) If, upon hearing, the court determines that the juvenile is found in a county other than the county of legal residence, in accord with G.S. 153A-257, the juvenile may be transferred, in accord with G.S. 7B-903(a)(2), to the custody of the department of social services of the county where the juvenile resides.

(d) If the court, upon inquiry, determines that any medical treatment rendered during the period of temporary custody was necessary and appropriate, the cost of that treatment may be charged to the parents, guardian, custodian, or caretaker, or, if the parents are unable to pay, to the county of residence in accordance with G.S. 7B-903 and G.S. 7B-904."

Section 6. This act becomes effective October 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1340*

Short Title: Guardianship Revisions. (Public)

Sponsors: Senators Wellons, Martin of Guilford; and Carpenter.

Referred to: Judiciary II.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-600 reads as rewritten:

"**§ 7B-600. Appointment of guardian.**

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has appointed a relative or other suitable person as guardian of the person for a juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the guardian is unfit, or has neglected a

guardian's duties, or is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition pursuant to G.S. 7B-906(b)(4), 7B-906(b)(5), or 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person for the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian's fitness or ability to continue assuming a guardian's duties and consider their recommendations for the disposition of the motion or petition.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

Section 2. G.S. 7B-906(b) reads as rewritten:

"(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made finding in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 3. G.S. 7B-1000(a) reads as rewritten:

"(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 4. This act becomes effective October 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1340*
Proposed Committee Substitute S1340-PCS8662-RV003

Short Title: Guardianship Revisions. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-600 reads as rewritten:

"**§ 7B-600. Appointment of guardian.**

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the

guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, or finds that the guardian is unfit, that the guardian has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition pursuant to G.S. 7B-906(b)(4), 7B-906(b)(5), or 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person for the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian's fitness or ability to continue assuming a guardian's duties and consider their recommendations for the disposition of the motion or petition.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

Section 2. G.S. 7B-906(b) reads as rewritten:

"(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;

(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;

(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made finding in accordance with G.S. 7B-907 that

guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 3. G.S. 7B-1000(a) reads as rewritten:

"(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 4. This act becomes effective October 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1340
S1340-PCSLY-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Guardianship Revisions. (Public)

Sponsors:

Referred to: Judiciary II

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUS OF A GUARDIAN OF THE PERSON OF A JUVENILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-600 reads as rewritten:

"§ 7B-600. Appointment of guardian.

(a) In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to

Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the child is no longer in the child's best interest, that the guardian is unfit or has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition pursuant to G.S. 7B-906(b)(4), 7B-906(b)(5), or 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person for the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian's fitness or ability to continue assuming a guardian's duties and consider their recommendations for the disposition of the motion or petition.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

Section 2. G.S. 7B-906(b) reads as rewritten:

"(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every six months, if the court finds by clear, cogent, and convincing evidence that:

(1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;

(2) The placement is stable and continuation of the placement is in the juvenile's best interests;
(3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every six months;
(4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and
(5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. However, if a guardian of the person has been appointed for the juvenile and the court has also made finding in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 3. G.S. 7B-1000(a) reads as rewritten:

"(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the juvenile and the court has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the juvenile, the court shall proceed in accordance with G.S. 7B-600(b)."

Section 4. This act becomes effective October 1, 2000.

SENATE BILL 1340: GUARDIANSHIP REVISIONS

BILL ANALYSIS

Committee: Senate Judiciary II
Date: May 30, 2000
Version: 1st

Introduced by: Senator Wellons and Senator Bill Martin

Summary by: Brenda J. Carter
Committee Co-Counsel

SUMMARY: This bill is a recommendation of the Child Fatality Task Force. It makes changes with regard to the status of a guardian of the person of a juvenile.

CURRENT LAW: Under G.S. 7B-600, in any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian operates under the supervision of the court and has the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court.

G.S. 7B-907 provides that in any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge is required to conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, The purpose of the permanency hearing is to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or make any disposition authorized by G.S. 7B-903 including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile.

BILL ANALYSIS: **Section 1** of the bill amends the law regarding the appointment of guardians in juvenile matters involving abuse, neglect and dependency to provide that in a case where the court has appointed a relative or other suitable person to serve as guardian of the person for a juvenile and has also made findings that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order the juvenile to be returned to the home of the parents without a finding that the guardian is unfit, has neglected his or her duties as guardian, or is unwilling or unable to continue assuming a guardian's duties. *(Note: A proposed committee substitute would rewrite this provision to state that in a case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a jevenile is in the best interest of the juvenile and has also made findings that guardianship is the permanent plan for the juvenile, the court may not terminate the guardianship or order the juvenile to be returned to the home of the parents without a finding that the relationship between the guardian and the child is no longer in the child's best interest, that the guardian is unfit, has neglected his or her duties as guardian, or is unwilling or unable to continue assuming a guardian's duties)*

The bill further amends the law to provide that if a party files a motion or petition for review of a custody order, the court may order the county department of social services to conduct an investigation, file a report, and give testimony regarding the performance of the guardian; use community resources to study guardian's fitness; ensure that a guardian ad litem has been appointed for the juvenile; take other action

necessary in order to make a determination. If appointed, the guardian ad litem program is responsible for making an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; to conduct follow-up investigations to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

Under current law, in any case where custody is removed from a parent, guardian, custodian, or caretaker the court is required to conduct a review hearing within 90 days from the date of the dispositional hearing and to conduct a review hearing within six months thereafter. Under certain circumstances, the court may waive the holding of review hearings, may require written reports in lieu of review hearings, or may order that review hearings be held less frequently than every six months. However, the court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review. **Section 2** of the bill specifies the procedure that the court is to follow when a guardian of the person has been appointed for the juvenile and the guardianship is the permanent plan for the juvenile.

Section 3 of the bill amends the law regarding the court's authority to modify or vacate, to specify the procedure that the court is to follow when a guardian of the person has been appointed for the juvenile and the guardianship is the permanent plan for the juvenile.

EFFECTIVE DATE: The bill would become effective October 1, 2000.

VISITOR REGISTRATION SHEET

D # (Miller Chair) May 30 2000
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
David Meredith	NC State Grange
Amy Jo Bain	NC Medical Society
David Ferrell	NC College of Emergency Physicians
Lisa Tofil	Carolinas HealthCare System
George Reed	NC Council of Churches
Tom Vitaglione	NC Child Advocacy Inst.
Anne Nelson	AOC
JoAnn Lamm	DHHS/DSS
Chuck Harris	NC DSS
Shannon Ramsey	NC DSS
J. B. McCants	AOC
Charles Cromer	NCATL
Hugh Tilson	NCHA
Elizabeth Dalton	Intern
Melissa Bishop Murphy	Pfizer

SENATE JUDICIARY II COMMITTEE

JUNE 1, 2000

MINUTES

The Senate Judiciary II Committee met on June 1, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

Senator Miller opened the meeting by stating the HB 968, Amend Contested Case Procedure, would be discussed and that he would allow public comment. He further stated that the committee would not vote on the bill at this meeting and that he hoped to take up the bill for a vote the following week.

Representative Nesbitt was recognized to explain HB 968. He said that the purpose of the bill is to provide a fair vehicle for State employee grievances, as opposed to the present system that tends to favor State agencies.

Senator Miller called on Julian Mann, Chief Administrative Law Judge with the Office of Administrative Hearings, who explained that decisions issued from his office were recommendations and that final decisions were rendered by State agencies. He cited statistics on the number of cases handled by the OAH and the percentage of those cases that were overruled by State administrative agencies.

Thomas Moffitt, with the Attorney General's Office, was recognized to explain his opposition to the bill. He questioned the constitutionality of the bill and explained that Article 4 of the State Constitution provides that the Judiciary shall be comprised of three parts: District Court, Superior Court and Appellate Court. There is no provision for an Administrative Court. Giving OAH final decision making status would create a de facto court, which would violate the State Constitution. He questioned the ability of ALJs to rule in certain areas where they may lack expertise and expressed concern that giving ALJs final decision making ability could result in inconsistent rulings.

Jerry Cohen, with the Legislative Drafting Division, disagreed with Mr. Moffitt's opinion. He said that the State Constitution grants the Legislature the power to determine who the officers in the Executive branch will be and that the Legislature had chosen ALJs to be part of the Executive branch.

Senator Miller called on David Lee, a health care technician with Dorothea Dix, who spoke in support of the bill.

The meeting adjourned at 12:00 p.m., to reconvene immediately after session.

The Senate Judiciary II Committee reconvened on June 1, 2000 at approximately 3:00 p.m. in room 643 of the Legislative Office Building. Five members were present, including Senator Brad Miller, who presided.

The following people from the public spoke either in opposition to the bill or expressed concerns with it:

Ron Penny, Director, OSP
Dan McLawhorn, General Counsel, DENR
Brad Sneeden, Dep. State Superintendent, DPI
Glen Peterson, General Counsel, Dept. of Administration
Elizabeth Bunting, Assoc. VP Legal Affairs, UNC
Sally Cameron, Chair, Coalition for Persons Disabled by Mental Illness
Paula Cox
David Knight, NC Sierra Club, NC Wildlife Assoc.
Drake Maynard, Human Resources Adm., UNC
Wendy Mills, SEANC
Dr. Iverson Riddle, Dir., Div. Of Mental Health, Developmental Disabilities & Substance Abuse Services
Mark Lodge, General Counsel, Dept. of Health and Human Services
Charlene Hayes, Assoc. Vice Chancellor for Human Resources, NCSU
Sharon Hearsch, Exec. Dir., NC Assoc. of County Directors of Social Services

Listed below are people from the public who spoke in support of the bill:

Bob Slocum, Exec. VP, NC Forestry Assoc.
Leslie Bavaqua, NC Citizens for Business and Industry
Dick Taylor, NC Academy of Trial Lawyers
Steve Woods, NC Farm Bureau
Lu-Ann Coe, Exec. VP, Agribusiness Council
Bill Alexander, NC Police Benevolent Assoc.
Perry Morgan, Natl. Federation of Independent Businesses
Elizabeth McLaughlin, NC Justice & Community Dev. Center
Andy Ellen, General Counsel, Retail Merchants Assoc.

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 968
Committee Substitute Favorable 4/22/99

Short Title: Amend Contested Case Proc. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

Section 2. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the

administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review."

Section 3. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. ~~Recommended~~ Final decision or ~~order of administrative law judge.~~ order.**

(a) Except as provided in ~~G.S. 150B-36(c),~~ subsection (c) of this section, in each contested case the administrative law judge shall make a ~~recommended~~ final decision or order that contains findings of fact and conclusions of law.

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissable under G.S. 150B-29(a), 150B-30, or 150B-31.

(d) Except for the exemptions contained in G.S. 150B-1, and subsection (c) of this section, the provisions of this section shall apply to all agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges and final agency decisions."

Section 4. G.S. 150B-35 reads as rewritten:

"**§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the administrative law judge assigned to a contested case ~~nor a member or employee of the agency making a final decision in the case~~ may not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

Section 5. G.S. 150B-36 is repealed.

Section 6. G.S. 150B-37 reads as rewritten:

"**§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
(5) Repealed by Session Laws 1987, c. 878, s. 25.
(6) The administrative law judge's ~~recommended~~ final decision, or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the recommended~~ decision to each party."

Section 7. G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 90 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision.~~ Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 180 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency ~~or, if the case was heard by an administrative law judge,~~ or by the administrative law judge."

Section 8. G.S. 150B-43 reads as rewritten:

"**§ 150B-43. Right to judicial review.**

Any ~~person~~ party who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him~~ the party by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person~~ party from invoking any judicial remedy available to ~~him~~ the party under the law to test the validity of any administrative action not made reviewable under this Article."

Section 9. G.S. 150B-47 reads as rewritten:

"**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the ~~agency that made the final decision in the contested case~~ Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under ~~review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

Section 10. G.S. 150B-49 reads as rewritten:

"**§ 150B-49. New evidence.**

~~An aggrieved person~~ A party who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a ~~recommended~~ final decision in the case, the court shall remand the case to the agency that conducted the administrative ~~hearing.~~ hearing, under Article 3A of this Chapter and under G.S. 150B-34(c) of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made ~~a recommended~~ the final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and ~~recommended~~ final decision. ~~The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision.~~ The additional evidence and any affirmation or modification of a ~~recommended decision or~~ final decision shall be made part of the official record."

Section 11. G.S. 150B-50 reads as rewritten:

"**§ 150B-50. Review by superior court without jury.**

The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall be conducted by the court without a jury."

Section 12. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope of review.**

~~(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states~~

~~the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.~~

~~(b) Standard of Review. After making the determinations, if any, required by subsection (a), the~~ The court reviewing a final decision may affirm the decision ~~of the agency~~ or remand the case for further proceedings. It may also reverse or modify the ~~agency's~~ decision if the substantial rights of the petitioners may have been prejudiced because the ~~agency's~~ findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary or capricious."

Section 13. This act becomes effective January 1, 2000, and applies to contested cases commenced on or after the effective date.

SENATE JUDICIARY II

JUNE 1, 2000

ROOM 1124

HB 968	Amend Contested Case Procedure	Rep. Nesbitt

Adjournment

HOUSE BILL 968:
Amend Contested Case Procedure

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Reps. Nesbitt, Wilson, Redwine
Date:	May 30, 2000		
Version:	2nd Edition	**Summary by:**	Karen Cochrane Brown Staff Attorney, Research Div.

SUMMARY:

House Bill 968 amends the Administrative Procedure Act to give administrative law judges within the Office of Administrative Hearings final decision-making authority in contested cases, and to give both parties to a contested case the right to seek judicial review of the final administrative decision in Superior Court.

CURRENT LAW:

Under current law, administrative actions may be challenged by means of a contested case hearing. The Administrative Procedure Act (APA) sets forth the process for commencing and conducting a hearing and authorizes the Office of Administrative Hearings to assign an administrative law judge (ALJ) to hear each case. After hearing evidence in accordance with the Rules of Evidence as applied in the trial division of the General Court of Justice, the ALJ makes a recommended decision including findings of fact and conclusions of law.

The recommended decision is then returned with the official record to the agency that made the initial decision for a final decision. The agency may adopt or reject the recommended decision. If the agency rejects the recommended decision, it must include in its final decision the specific reasons why it did not adopt the ALJ's recommended decision and the final decision must be supported by substantial evidence. Substantial evidence means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

Once a final decision is made, an aggrieved person (which, by definition cannot be an agency in most cases) may seek judicial review of the final decision in Superior Court.

BILL ANALYSIS:

This bill simplifies the administrative review process by making the ALJ the final decision-maker. Contested cases will continue to be commenced and conducted as they are under present law. However, once the ALJ makes a decision, it will be the final administrative decision, rather than merely a recommendation. The bill also amends the APA to allow agencies to seek judicial review of administrative decisions by which they are aggrieved, in the same manner as now applies to petitioners.

The bill make one significant exception for cases involving Certificate of Need, under Chapter 131E. These cases will continue to be finally decided by the agency. However, the agency will be required to cite specific reasons based on evidence in the record, for not adopting the findings of fact made by the ALJ.

This act would become effective January 1, 2000, and apply to contested cases commenced on or after that date.

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May 30, 2000

MEMORANDUM

TO: Senator Brad Miller

FROM: Gerry Cohen, Director of Legislative Drafting

SUBJECT: Final Decisions by ALJ's

I have read the July 6, 1999 AG opinion from Ann Reed, Lars Nance, and Tom Moffitt stating that House Bill 968 violates the separation of powers doctrine, as well as a later article by Tom and Mary Thompson expanding on the opinion.

Upon reviewing the matter at hand, it is my opinion that to grant final decision-making to Administrative Law Judges is onably necessary for the purpose for which they were created, and thus assigning that power would not be an onstitutional grant of quasi-judicial powers and thus would not be the establishment of a court in contravention of the Constitution.

The two documents from the AG's office basically state that the power to decide these contested cases is a quasi-judicial power vested in the executive agency, under the power of Article IV, Section 3 of the Constitution, which states that "The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

My initial opinion had been that if the power was exercised by an executive agency (State Personnel), it could also be exercised by another administrative agency (the ALJ's). Upon re-reading the opinion and article, I am convinced that in fact the contested case procedure before State Personnel is quasi-judicial in nature, and a quasi-judicial proceeding can only be assigned by the General Assembly to the Executive Branch "as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created", which in the case involved relates to personnel issues. Assigning the quasi-judicial power to OAH would not be permitted unless it was "incident to the accomplishment of the purposes for which the agencies were created", because if it was not then the assignment of the powers to ALJ's would be the unconstitutional creation of a new court.

In the case of EMPLOYMENT SEC. COMM'N OF NORTH CAROLINA V. PEACE, 128 N.C. App. 1, 493 S.E.2d (Ct. App. 1997)*, the Court of Appeals stated: "an ALJ's decision with respect to a deferred charge is not a judicial decision, but rather a final agency decision. This becomes apparent upon an evaluation of the rationale for the creation OAH. According to the Administrative Procedure Act as originally adopted, 1973 N.C. Sess. Laws ch. 1331, § 150-a), the presiding officers for administrative hearings were designated by either an agency itself or by statute. In an

effort to obtain nonbiased hearing officers with specialized knowledge of the issues presented, the General Assembly created OAH, an independent, quasi-judicial agency in order to "provide a source of independent hearing officers preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functi the administrative process." N.C. Gen. Stat. § 7A-750 (1985)." Thus, because OAH was established as part of the executive branch pursuant to N.C. Const. art. III, § 11, it is not a court, and does not function as such when making final agency decisions on charges deferred from EEOC. The holding in the Peace case essentially is that hearing and deciding cases is a purpose incident to the purpose for which OAH was created. Although this may be a classic case of "bootstrapping", it appears to be good law.

- appeal dismissed 349 N.C. 315, 507 S.E.2d 272 (1999). (On 6 January 1998, the ESC petitioned this Court for discretionary review seeking to have this Court determine whether the OAH acted ultra vires when it adjudicated petitioner's title VII claim. Contemporaneously with its petition for discretionary review, ESC {*321} filed with this Court a notice of appeal asserting a substantial constitutional question pursuant to N.C.G.S. § 7A-30(1) as to whether the provisions of N.C.G.S. § 7A-759(d) and (e) violate the provisions of Article IV, Sections 1 and 3 of the North Carolina Constitution. This Court entered an order allowing discretionary review and retaining ESC's notice of appeal; upon review, we conclude this petition was improvidently allowed, and such appeal should be dismissed)

CONTESTED CASES UNDER ARTICLE 3 OF THE APA

Background Information & Opinions on the Constitutionality of OAH Final Decision-Making Authority

Presented to the
Joint Legislative Administrative Procedure Oversight Committee

February 17, 2000

Compiled by: Mary Shuping
Research Division
February 17, 2000

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ATTACHMENT: Article 60 of Chapter 7A of the General Statutes, Office of Administrative Hearings

CONTESTED CASES UNDER CHAPTER 150B - ADMINISTRATIVE PROCEDURE ACT

WHAT IS A "CONTESTED CASE"

- Under the APA, a "contested case" is defined as an administrative proceeding to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing and the levying of a monetary penalty.

OAH HAS THE FINAL DECISION-MAKING AUTHORITY FOR CONTESTED CASES INVOLVING

- Equal employment opportunity issues under the federal Civil Rights Act of 1964. *(G.S. 7A-759)*
- Disagreements regarding the designation of students as academically or intellectually gifted. *(G.S. 115C-150.8)*

CONTESTED CASES UNDER ARTICLE 3 OF THE APA

- Unless specifically exempted, most agencies are subject to Article 3 of Chapter 150B regarding contested cases. *(See Attachment A for a list of exempt agencies.)*
- Generally, contested cases are filed against an agency, heard by an administrative law judge in the Office of Administrative Hearings who makes a *recommended decision*, and the *agency makes the final decision.*

CONTESTED CASES UNDER ARTICLE 3A OF THE APA

- The following agencies' contested cases are conducted under Article 3A of Chapter 150B:
    - Occupational licensing agencies.
    - State Banking Commission, Commissioner of Banks, Savings Institutions Division and Credit Union Division of the Department of Commerce.
    - Department of Insurance and the Commissioner of Insurance.
- Contested case hearings under Article 3A are *conducted by the agency*, and therefore, are *not* conducted by the Office of Administrative Hearings unless requested by the agency.
- The agency has many of the same powers and duties as an administrative law judge in conducting the hearing.

Prepared by: Mary Shuping
Research Division
Rev. February 15, 2000

AGENCIES THAT ARE EXEMPT FROM THE ARTICLE 3 CONTESTED CASE PROVISIONS

AGENCIES HAVING FULL EXEMPTIONS FROM THE APA, *INCLUDING* ARTICLE 3 CONTESTED CASES

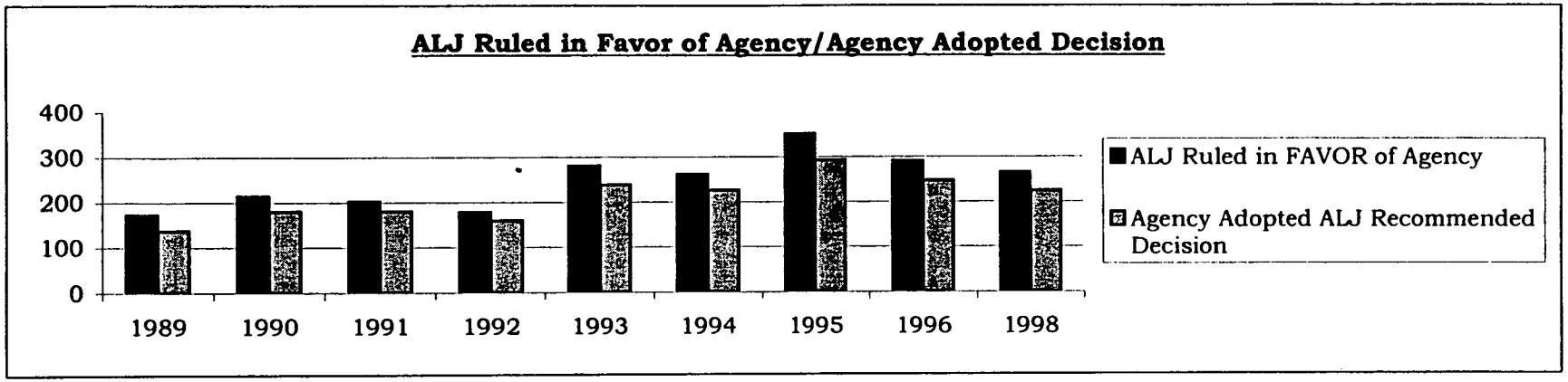
- The NC National Guard in exercising it court-martial jurisdiction. *(G.S. 150B-1(c)(1))*
- DHHS in exercising its authority over Camp Butner. *(G.S. 150B-1(c)(2))*
- The Utilities Commission. *(G.S. 150B-1(c)(3))*
- The Industrial Commission. *(G.S. 150B-1(c)(4))*
- The Employment Security Commission. *(G.S. 150B-1(c)(5))*
- The University of NC, except for Article 4, Judicial Review. *(G.S. 150B-1(f))*
- The NC Tobacco Research Commission. *(G.S. 106-568.8)*
- Local boards of trustees for community colleges. *(G.S. 115D-80)*
- State departments, institutions and commissions with regard to rules for the selection and retention of law-enforcement officers. *(G.S. 143-166.40)*
- The Department of Administration, State Property Office, in granting certain easements where approval is not required by the Governor or the Council of State. *(G.S. 146-12(i))*
- The State Board of Elections with regard to precinct boundaries. *(G.S. 163-132.5B)*

AGENCIES EXEMPT FROM ARTICLE 3 CONCERNING CONTESTED CASES

- DHHS and DENR in complying with procedural safeguards in the federal Education of the Handicapped Act Amendments of 1986. *(G.S. 150B-1(e)(1))*
- NC Low-Level Radioactive Waste Management Authority. *(G.S. 150B-1(e)(3))*
- NC Hazardous Waste Management Commission. *(G.S. 150B-1(e)(4))*
- Hearings required pursuant to the Rehabilitation Act of 1973. *(G.S. 150B-1(e)(5))*
- The Department of Revenue. *(G.S. 150B-1(e)(6))*
- The Department of Correction. *(G.S. 150B-1(e)(7))*
- The Department of Transportation, except for G.S. 136-29, regarding adjustment and resolution of highway contract claim. *(G.S. 150B-1(e)(8))*
- OSHA Review Board. *(G.S. 150B-1(e)(9))*
- NC Global TransPark Authority with respect to the acquisition, construction, operation or use, including fees or charges, of any portion of a cargo airport complex. *(G.S. 150B-1(e)(11))*
- DHHS hearings regarding eligibility and provision of services for eligible assaultive and violent children. *(G.S. 150B-1(e)(11))*
- Proclamations issued by the Marine Fisheries Director pursuant to G.S. 113-221(e). *(G.S. 113-221(e1))*
- Decisions of the Standard Commercial Fishing (SCFL) Eligibility Board regarding whether or not an applicant is eligible to receive a SCFL. *(S.L. 1998-225, Sec. 4.24)*

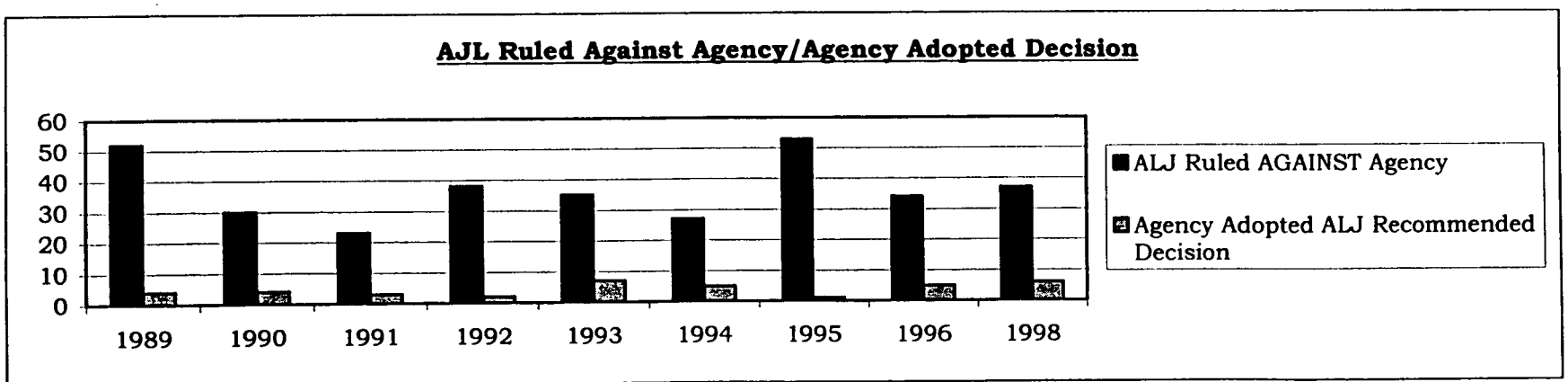
CONTESTED CASE STATISTICS
*1989-1998**

CHART I	1989	1990	1991	1992	1993	1994	1995	1996	1998
ALJ Ruled in FAVOR of Agency	172	214	202	178	281	261	351	291	265
Agency Adopted ALJ Recommended Decision	137	180	180	159	238	226	293	247	224



4

CHART II	1989	1990	1991	1992	1993	1994	1995	1996	1998
ALJ Ruled AGAINST Agency	52	30	23	38	35	27	53	34	37
Agency Adopted ALJ Recommended Decision	4	4	3	2	7	5	1	5	6



* Numbers were not available for 1997.

CURRENT CONTESTED CASE SYSTEM UNDER ARTICLE 3 OF THE ADMINISTRATIVE PROCEDURE ACT

AGENCY DECIDES AGAINST PETITIONER

↓

PETITIONER APPEALS AGENCY DECISION to Office of Administrative Hearing (OAH).

↓

ADMINISTRATIVE LAW JUDGE
ALJ in OAH decides the case based on a preponderance of the evidence and makes a *recommended* decision.

↓

AGENCY
- Reviews ALJ's recommended decision with no standard of review;
- Can *change* the ALJ's findings of fact, and conclusions of law; and
- Can reach its own decision, regardless of the ALJ's recommendation.

↓

ALJ RECOMMENDED DECISIONS AGAINST THE AGENCY/FOR THE PETITIONER
Approximately 25% of the time, the ALJ finds *against* the Agency. Of the recommended decisions *against* the agency, ***approximately 90% of the time, the agency reverses*** the ALJ's recommended decision.

↓

APPEAL TO SUPERIOR COURT; OR COURT OF APPEALS
Petitioner must then appeal to either the
- Superior Court; or
- Court of Appeals if the decision involves a Certificate of Need granted by the Division of Facility Services in DHHS.

↓

Judge looks at substantial evidence in the record. *This standard of review requires the court to uphold the agency's final decision if there is any reasonable evidence in the record to support the agency's final decision.*

↓

ALJ RECOMMENDED DECISIONS FOR THE AGENCY/AGAINST THE PETITIONER
Approximately 75% of the time, the ALJ finds *in favor* of the agency. Of the recommended decisions *in favor* of the agency, ***almost 100% of the time, the agency adopts*** the ALJ's recommended decision.

↓

APPEAL TO SUPERIOR COURT; OR COURT OF APPEALS
Petitioner must then appeal to either the
- Superior Court; or
- Court of Appeals if the decision involves a Certificate of Need granted by the Division of Facility Services in DHHS.

↓

Judge looks at substantial evidence in the record. *This standard of review requires the court to uphold the agency's final decision if there is any reasonable evidence in the record to support the agency's final decision.*

NOTE: This process includes only those agencies subject to Article 3 of Chapter 150B. It does not include exempt agencies and agencies subject to Article 3A of Chapter 150B, including occupational licensing boards; the State Banking Commission, Savings Institution Division, and Credit Union Division in the Dept. of Commerce; and the Department of Insurance.

April 12, 1999

HOUSE BILL 968:
Amend Contested Case Procedure

BILL ANALYSIS

Committee:	House Ways and Means	**Introduced by:**	Reps. Nesbitt, Wilson, Redwine
Date:	April 20, 1999		
Version:	Proposed Committee Substitute (H968-CSRO-003)	**Summary by:**	Karen Cochrane Brown Staff Attorney

SUMMARY:

The proposed committee substitute for House Bill 968 amends the Administrative Procedure Act to give administrative law judges within the Office of Administrative Hearings, final decision-making authority in contested cases, and to give both parties to a contested case the right to seek judicial review of the final administrative decision in Superior Court.

CURRENT LAW:

Under current law, administrative actions may be challenged by means of a contested case hearing. The Administrative Procedure Act (APA) sets forth the process for commencing and conducting a hearing and authorizes the Office of Administrative Hearings to assign an administrative law judge (ALJ) to hear each case. After hearing evidence, in accordance with the Rules of Evidence as applied in the trial division of the General Court of Justice, the ALJ makes a recommended decision including findings of fact and conclusions of law.

The recommended decision is then returned with the official record to the agency that made the initial decision for a final decision. The agency may adopt or reject the recommended decision. If the agency rejects the recommended decision, it must include in its final decision the specific reasons why it did not adopt the ALJ's recommended decision and the final decision must be supported by substantial evidence. Substantial evidence means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

Once a final decision is made, an aggrieved person (which, by definition cannot be an agency in most cases) may seek judicial review of the final decision in Superior Court.

BILL ANALYSIS:

This bill simplifies the administrative review process by making the ALJ the final decision-maker. Contested cases will continue to be commenced and conducted as they are under present law. However, once the ALJ makes a decision, it will be the final administrative decision, rather than merely a recommendation. The bill also amends the APA to allow agencies to seek judicial review of administrative decisions by which they are aggrieved, in the same manner as now applies to petitioners.

The bill make one significant exception for cases involving Certificate of Need, under Chapter 131E. These cases will continue to be finally decided by the agency. However, the agency will be required to cite specific reasons based on evidence in the record, for not adopting the findings of fact made by the ALJ.

This act would become effective January 1, 2000, and apply to contested cases commenced on or after that date

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

2

HOUSE BILL 968
Committee Substitute Favorable 4/22/99

Short Title: Amend Contested Case Proc. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

Section 2. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the

administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review."

Section 3. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. ~~Recommended~~ Final decision or ~~order of administrative law judge.~~ order.**

(a) Except as provided in ~~G.S. 150B-36(c),~~ subsection (c) of this section, in each contested case the administrative law judge shall make a ~~recommended~~ final decision or order that contains findings of fact and conclusions of law.

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissable under G.S. 150B-29(a), 150B-30, or 150B-31.

(d) Except for the exemptions contained in G.S. 150B-1, and subsection (c) of this section, the provisions of this section shall apply to all agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges and final agency decisions."

Section 4. G.S. 150B-35 reads as rewritten:

"**§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the administrative law judge assigned to a contested case ~~nor a member or employee of the agency making a final decision in the case~~ may not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

Section 5. G.S. 150B-36 is repealed.

Section 6. G.S. 150B-37 reads as rewritten:

"**§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) Repealed by Session Laws 1987, c. 878, s. 25.

(6) The administrative law judge's ~~recommended~~ final decision, or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the recommended~~ decision to each party."

Section 7. G.S. 150B-44 reads as rewritten:

"**§ 150B-44: Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 90 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision.~~ Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 180 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency ~~or, if the case was heard by an administrative law judge,~~ or by the administrative law judge."

Section 8. G.S. 150B-43 reads as rewritten:

"**§ 150B-43. Right to judicial review.**

Any ~~person~~ party who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him~~ the party by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person~~ party from invoking any judicial remedy available to ~~him~~ the party under the law to test the validity of any administrative action not made reviewable under this Article."

Section 9. G.S. 150B-47 reads as rewritten:

"**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the ~~agency that made the final decision in the contested case~~ Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under ~~review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a), and (ii) the agency's final decision or order.~~ review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

Section 10. G.S. 150B-49 reads as rewritten:

"**§ 150B-49. New evidence.**

~~An aggrieved person~~ A party who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a ~~recommended~~ final decision in the case, the court shall remand the case to the agency that conducted the administrative ~~hearing.~~ hearing, under Article 3A of this Chapter and under G.S. 150B-34(c) of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made ~~a recommended~~ the final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and ~~recommended~~ final decision. ~~The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision.~~ The additional evidence and any affirmation or modification of a ~~recommended decision or~~ final decision shall be made part of the official record."

Section 11. G.S. 150B-50 reads as rewritten:

"**§ 150B-50. Review by superior court without jury.**

The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall be conducted by the court without a jury."

Section 12. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope of review.**

~~(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states~~

~~the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.~~

~~(b) Standard of Review. After making the determinations, if any, required by subsection (a), the~~ The court reviewing a final decision may affirm the decision ~~of the agency~~ or remand the case for further proceedings. It may also reverse or modify the ~~agency's~~ decision if the substantial rights of the petitioners may have been prejudiced because the ~~agency's~~ findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary or capricious."

Section 13. This act becomes effective January 1, 2000, and applies to contested cases commenced on or after the effective date.

State of North Carolina
Department of Justice
P. O. BOX 629
RALEIGH
27602-0629

MICHAEL F. EASLEY
ATTORNEY GENERAL

REPLY TO: Ann Reed
Administrative Division
(919) 716-6800
FAX: (919) 716-6755

July 6, 1999

Mr. Ronald G. Penny
State Personnel Director
Office of State Personnel
116 West Jones Street
Raleigh, North Carolina 27603-8004

Re: Advisory Opinion: Separation of Powers; House Bill 968; State Personnel Act

Dear Mr. Penny:

This letter responds to your request for a legal opinion regarding the provision in House Bill 968 empowering administrative law judges in the Office of Administrative Hearings ("OAH") to make final decisions in contested cases. You asked whether transferring final decision-making power, relating to employment controversies subject to Chapter 126 of the General Statutes, from the State Personnel Commission to an administrative law judge violates the Separation of Powers provision of the Constitution of North Carolina. N.C. Const. art. I, § 6. It is our opinion that a court would likely find such a provision unconstitutional because it would result in executive branch officers exercising purely judicial powers of adjudicating legal controversies -- a function that only a court may exercise. Bestowing final decision-making power on OAH also would change the nature of that agency from a "quasi-judicial" executive branch agency to a court, likely in violation of Article IV, § 1 of the Constitution, which forbids the General Assembly to "establish or authorize any courts other than as permitted by this Article." N.C. Const. art. IV, § 1.

Article I, § 6 provides that "[t]he legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." The Supreme Court held in *State ex rel. Wallace v. Bone*, 304 N.C. 591, 286 S.E.2d 79 (1982), that the separation of powers doctrine is strictly adhered to in this state. *See also, Advisory Opinion In re Separation of Powers*, 305 N.C. 767, 771-72, 295 S.E.2d 589, 591 (1982). As the Supreme Court noted in *State ex rel. Wallace v. Bone* and *Advisory Opinion In re Separation of Powers*, the power of the government in North Carolina "shall be divided into three branches distinct from each other, viz: The power of making laws; The power of executing laws and The power of Judging." *Bone*, 304 N.C. at 597, 286 S.E.2d at 82; *Advisory Opinion*, 305 N.C. at 774, 295 S.E.2d at 593.

There is no question that the Office of Administrative Hearings is an agency in the executive branch of government. The statute creating OAH provides that:

> There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III,

> Sec. 11 of the Constitution [1] and, in accordance with Article IV, Sec. 3 [2] of the Constitution has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it was created. The Office of Administrative Hearings is established to provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process . . . .

N.C. Gen. Stat. § 7A-750 (1995 & Supp. 1998).

The express language of N.C. Gen. Stat. § 7A-750 makes it plain that OAH was created as a limited executive branch tribunal to preside over administrative proceedings arising within the executive branch. *See State ex rel. Martin v. Melott*, 320 N.C. 518, 359 S.E.2d 783 (1987) (Court discussed nature of OAH in context of upholding statute authorizing Chief Justice to appoint Chief Administrative Law Judge.) *See also, Employment Security Commission v. Peace*, 128 N.C. App. 1, 8-9, 493 S.E.2d 466, 471 (1997) (OAH was created as source of independent hearing officers in the executive branch and not as a court). Administrative law judges were given only "quasi-judicial" power to avoid the commingling of judicial and executive power in the hands of administrative law judges who unquestionably are members of the executive branch of government. As the Supreme Court made clear in *Bone*, it is the commingling of such governmental powers and functions that the Separation of Powers provision in Article I, § 6 forbids.

House Bill 968 would amend present law to grant administrative law judges in OAH the power to make final decisions in contested cases. Such an amendment would convert the role of OAH from that of providing hearing officers to preside over administrative proceedings and make recommended decisions to the role of adjudicating controversies between adverse parties. The administrative law judges then would not only find facts but also would apply the law to the facts to decide the outcome of controversies. At that point, they would be acting as courts in the exercise of "The power of Judging" (*see Bone* and *Advisory Opinion*, *supra*) -- a purely judicial function which only a court may exercise. As the Supreme Court made plain in *Bone*, such an exercise of judicial power by a member of the executive branch violates Article I, § 6 of the Constitution. Further, when the General Assembly vests a power constitutionally reserved to the judiciary in an administrative agency, it creates a court in violation of Article IV, § 1 of the Constitution. N.C.

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[1] Article III, § 11 provides that all executive branch "administrative departments, agencies and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to their major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department."

[2] Article IV, § 3 provides that "[t]he General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice."

Const. art. IV, § 1. *State v. Matthews*, 270 N.C. 35, 153 S.E.2d 791 (1967); *Utilities Commission v. Old Fort Finishing Plant*, 264 N.C. 416, 142 S.E.2d 8 (1965).

As noted earlier, N.C. Gen. Stat. § 7A-750 provides that administrative law judges in OAH are authorized to exercise only such "judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes" for which that agency was created, referencing Article IV, § 3. It is clear that the power to make final decisions in contested cases is not "reasonably necessary" to "provide a source of independent hearing officers to preside in administrative cases *and thereby prevent the commingling of legislative, executive and judicial functions in the administrative process.*" N.C. Gen. Stat. § 7A-750 (emphasis added). To the contrary, giving administrative law judges the authority to make final decisions would result in commingling of governmental power in the hands of administrative law judges – a result which the statute seeks to avoid.

Finally, we are concerned that the vesting of power in OAH to trump decisons made directly by the Governor or indirectly by his appointees is inconsistent with Article III, § 1 of the Constitution. That section provides that "[t]he executive power of the State shall be vested in the Governor." While the General Assembly certainly may prescribe how and through whom the Governor will exercise the executive power, we doubt that the General Assembly may deny him the power altogether and vest it in an appointee of the Chief Justice.

For the foregoing reasons, we conclude that HB 968 presents substantial constitutional questions and probably would not survive a challenge in the courts. If you have any additional questions, do not hesitate to call us.

Sincerely,

Ann Reed by 2PN

Ann Reed
Senior Deputy Attorney General

Lars Nance

Lars Nance
Special Deputy Attorney General

Thomas F. Moffitt by 2PN

Thomas F. Moffitt
Special Deputy Attorney General

THE CONSTITUTIONALITY OF HOUSE BILL 968

Issue:

Would the transfer of final decision making power from the State Personnel Commission, or any other agency, to an administrative law judge, as proposed in House Bill 968, violate any provision of the State Constitution?

Summary Conclusion:

Article IV, section 3 of the State Constitution permits the General Assembly to "vest administrative agencies established pursuant to law with such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created." The Office of Administrative Hearings (OAH) is an executive branch agency established by the General Assembly under Article III, section 11 of the Constitution. The purpose of this agency is to provide independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. Final decision-making authority is a reasonably necessary judicial power to allow OAH to accomplish this purpose. Without this power, the agencies, whose actions are the subjects of contested cases, will continue to commingle the three governmental functions. Thus, transferring final decision-making power to OAH, as proposed by House Bill 968, would be a constitutionally permissible exercise of the General Assembly's authority under Article IV, section 3.

Analysis:

Under current law, administrative actions may be challenged by means of a contested case hearing. The Administrative Procedure Act (APA) sets forth the process for commencing and conducting a hearing and authorizes an administrative law judge (ALJ) in the Office of Administrative Hearings, an executive branch agency, to hear each case. After hearing evidence, the ALJ makes a recommended decision, which is then returned with the official record to the agency that made the initial decision. The agency may adopt or reject the recommended decision. If the agency rejects the recommended decision, it must include in its final decision the specific reasons why it did not adopt the ALJ's recommended decision and the final decision must be supported by substantial evidence[1]. Once a final decision is made, an aggrieved person (which, by definition, cannot be an agency in most cases) may seek judicial review of the final decision in Superior Court[2].

In cases involving disputes between State employees and employing agencies, Chapter 126 limits the grounds upon which an employee may file a contested case, and also, provides that the State Personnel Commission, rather than the agency that made the initial decision, makes the final decision in these cases[3].

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[1] N.C.G.S. 150B-23, et seq.
[2] N.C.G.S. 150B-43, et seq.
[3] N.C.G.S. 126-37

Separation of Powers

Article I, sec. 6, of the State Constitution clearly provides that the "legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." This principle, as applied in North Carolina, has been definitively stated in the seminal cases of *State ex rel. Wallace v. Bone,* 304 N.C. 591, 286 S.E. 2d 79 (1982), and *Advisory Opinion In re Separation of Powers,* 305 N.C. 767, 295 S.E. 2d 589 (1982). In these cases, the question was whether legislators, serving in the General Assembly, could concurrently serve as members of executive branch boards or commissions or otherwise administer the laws they created. After reviewing the history of the provision and the decisions of several sister states, the Supreme Court resoundingly concluded that they could not. Citing with approval a Georgia case involving the same issue, the court noted that "*the legislature cannot constitutionally create a special instrumentality of government to implement specific legislation and then retain some control over the process of implementation by appointing legislators to the governing body of the instrumentality.*" (*Bone,* 304 N.C. at 608).

Today, this result appears startlingly self-evident. Legislators may not constitutionally execute or judge the laws they create. Nor may judges enact or administer the laws. However, with regard to the executive branch of government, the principle becomes a little less clear. The courts and the Constitution of this State have long since recognized that there is some necessary overlap in function involved in administering the laws.

For many years now, the courts have acknowledged the ability of the legislature to delegate powers to administrative bodies. In *Adams v. North Carolina Department of Natural and Economic Resources,* 295 N.C. 683, 696-7, 249 S.E. 2d 402, 410 (1978), the Supreme Court noted:

> *It is obvious that if interpreted literally, the constitution would absolutely preclude any delegation of legislative power. However, it has long been recognized by this court that the problems which a modern legislature must confront are of such complexity that strict adherence to ideal notions of the non-delegation doctrine would unduly hamper the General Assembly in the exercise of its constitutionally vested powers. A modern legislature must be able to delegate – in proper instances – a limited portion of its legislative powers to administrative bodies which are equipped to adapt legislation to complex conditions involving numerous details with which the legislature cannot deal directly . . . the constitutional inhibition against delegating legislative authority does not preclude the legislature from transferring adjudicative and rule making powers to administrative bodies provided such transfers are accompanied by adequate guiding standards to govern the exercise of the delegated powers.*

Thus, the court has found authority for the delegation of quasi-legislative powers to executive branch agencies even in the absence of any express language to support it in the Constitution. In addition, the *Adams* case makes it clear that a strict separation of powers analysis, as articulated in the *Bone* case, will not resolve the issue in this case. The question now becomes what adjudicative powers may the legislature vest in an executive branch agency.

The Constitution gives the legislature a great deal of control over how the executive branch is structured and how it will function. With the exception of the State Board of Education[4], no executive branch agency has a constitutional existence. The Constitution clearly provides that the General Assembly shall determine what agencies shall exist and what their relative functions, powers and duties shall be[5].. The only guidance given to the legislature is found in Article III, sec. 11, which provides that:

> *...all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may,* ***but need not,*** *be allocated within a principal department."* (emphasis added)

Hence, the legislature may not create more than 25 principal departments and should group them by major purpose as far as practicable. The last sentence of this section gives the legislature great latitude in allocating the quasi-legislative and quasi-judicial functions among agencies. This provision makes it clear that the legislature is not bound by the Constitution to give any individual agency which it may create all of the quasi-legislative and quasi-judicial powers relating to the agency's primary purpose. This is an important point because agencies frequently argue that only the agency with substantive expertise over the subject matter of a controversy can, *constitutionally,* make quasi-judicial determinations on that subject. In view of the plain language of Article III, sec. 11, this argument lacks merit.

Judicial Powers of Administrative Agencies

Fortunately, the Constitution provides an answer to the question of what judicial power the legislature may transfer to an agency, without encroaching on the prerogatives of the judicial branch of government. The "supreme judicial power" referred to in Article I, sec. 6, of the Constitution is described further in Article IV, sec. 1, of the Constitution. This provision states, in part: "*The judicial power of the State shall,* ***except as provided in Section 3 of this Article,*** *be vested in a Court for the Trial of Impeachments and in a General Court of Justice."* (emphasis added) Article IV, sec. 3 provides:

> *The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.*

Clearly, this language can only be read to mean that there is no violation of the Separation of Powers provision if the legislature vests judicial powers in an administrative agency in accordance with Article IV, sec. 3. Therefore, the analysis of the constitutionality of House Bill 968 should not begin with the Separation of Powers provision. Rather, the proposed legislation must fit within the constitutional exception created by Article IV, sec. 3 in order to pass constitutional muster. If it does, then there is no constitutional violation.

At this point, it must be noted that the precise question raised by House Bill 968 has been definitively answered by the Court of Appeals. In 1997, the Court reviewed an appeal taken by

[4] See, N.C. Constitution, Article IX, section 4.
[5] N.C. Constitution, Article III, section 5(10).

the Employment Security Commission (ESC) from an order of Wake County Superior Court affirming a final order of the Office of Administrative Hearings in a Title VII retaliatory discharge case. A former ESC employee challenged his dismissal on a number of grounds, including employment discrimination proscribed by federal law. The ESC argued that "*only courts, and not administrative agencies, have jurisdiction to hear Title VII cases, and if OAH is authorized to hear Title VII claims, then it is functioning as a court in violation of N.C. Const. Art. IV, sec.1.*"(*Employment Security Commission v. Peace,* 128 N.C. App. 1, 7, 493 S.E.2d 466, (1997), appeal dismissed, 349 N.C. 315, 321 (1998))

G.S. 7A-759 identifies the Office of Administrative Hearings as the State's deferral agency for claims under the jurisdiction of the federal Equal Employment Opportunity Commission. Federal law requires that claimants pursue state and local remedies before seeking relief under federal law. State law further provides that after a contested case hearing, the administrative law judge makes a final agency decision, which is binding on the parties. As in other employment cases decided by the State Personnel Commission, the agency/employer can appeal an adverse administrative determination made by OAH in Superior Court.

In addition to the power to make the final decision, ALJ's are authorized to take "whatever remedial action is appropriate to give full relief" and "to monitor compliance with any negotiated settlement, conciliation agreement or order entered in a deferred case[6]."

Clearly, these are among the most judicial of "judicial powers". Yet, the court in the *Peace* case did not find that the legislation vesting these very judicial powers in OAH was unconstitutional. Instead the court looked to Article IV, sec. 3 of the Constitution and found that these powers were consistent with the purpose for which OAH was created. Specifically, the court stated:

> "*...an ALJ's decision with respect to a deferred charge is not a judicial decision, but rather a final agency decision. This becomes apparent upon an evaluation of the rationale for the creation of OAH. ....In an effort to obtain nonbiased hearing officers with specialized knowledge of the issues presented, the General Assembly created OAH, an independent, quasi-judicial agency in order to 'provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process' N.C. Gen. Stat. Sec.7A-750 (1985). Thus, because OAH was established as part of the executive branch pursuant to N.C. Const. Art. III, Sec. 11, it is not a court and does not function as such when making final agency decisions on charges deferred from EEOC." (Peace,* 128 N.C. App. 1, at 8)

The *Peace* case clearly appears to answer the question of the constitutionality of House Bill 968. Furthermore, there are other cases interpreting this provision of the Constitution which support this conclusion[7]. . In *In re Appeal from Civil Penalty,* the court considered whether Article IV, sec. 3 would permit an administrative agency to assess a civil penalty, which varied in amount in the discretion of the agency. Quoting from the *Lanier* case, the court set forth the sequence to be followed in the analysis of such cases, stating:

> ..."'*Whether a judicial power is 'reasonably necessary as an incident to the accomplishment of the purposes for which' an administrative office or agency was created must be determined in each instance in the light of the nature and extent of the judicial power*

[6] N.C G.S. 7A-759 (e) and (f).

[7] (See, *State ex rel. Lanier v. Vines,* 274 N.C. 486, 164 S.E. 2d 161 (1968); *In re Appeal from Civil Penalty Assessed for Violations of Sedimentation Pollution Control Act,* 92 N.C. App. 1, 373 S.E.2d 572 (1988), rev'd on other grounds, 324 N.C. 373, 379 S.E.2d 30 (1989))

undertaken to be conferred.' 274 N.C. at 497, 164 S.E.2d at 168. The application of Article IV, Section 3 thus requires three questions be answered: (1) For what purposes was the agency created? (2) Which peculiarly 'judicial' power has the General Assembly attempted to vest in the agency? And (3) Is the Legislature's grant of such judicial power reasonably necessary as an incident to the accomplishment of the purposes for which the agency was created?"

For What Purpose Was OAH Created?

The language used to bring OAH into existence strongly suggests that the legislature anticipated a constitutional challenge. G.S. 7A-750 reads as follows:

> *"There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Sec. 11 of the Constitution and, in accordance with Article IV, Sec. 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established to provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. It shall also maintain dockets and records of contested cases and shall codify and publish all administrative rules."*

Simply stated, the primary purpose of OAH is to provide independent hearing officers to preside in administrative cases to prevent the commingling of legislative, executive, and judicial functions in the administrative process. Precisely how these hearing officers are to prevent the inappropriate commingling is not stated. Article 60 of Chapter 7A does not specifically define the powers and duties of the agency, as do the statutes creating most administrative agencies. In fact the procedures to be used in administrative cases and the powers available to ALJs are set forth in an entirely separate statute[8]. To further understand this purpose, it is instructive look at what came before.

Prior to the creation of OAH in 1985, many agencies employed hearing officers within the agency to conduct fact-finding hearing and make recommendations to the head of the agency, when anyone challenged the agency's actions. In these cases, the agency was in the awkward position of performing the legislative function of developing the policy, the executive functions of applying the policy, investigating the claim and prosecuting it before the hearing officer, as well as the judicial function of adjudicating the matter. Clearly, this was the commingling which the legislature wished to avoid.

What Judicial Power is being vested?

House Bill 968 would add to the already considerable array of judicial powers vested in OAH, the power to decide the case. It has been suggested that OAH was created to serve a supporting function to other agencies with substantive expertise in the policy area in which the case arises, that these agencies must retain the power to finally decide the cases in a manner consistent with the agency's statutory goals, and that to give this power to OAH, which lacks the agencies' substantive expertise, would be unconstitutional.

[8] See, N.C.G.S Chap. 150B, Art. 3.

Nothing in G.S. 7A-750 supports the argument that OAH was created to provide support staff to other agencies. On the contrary, the purpose of preventing the commingling of all three governmental functions in an agency leads more naturally to the conclusion that OAH should have the power to both hear and decide cases. It could be argued that under current law, OAH has failed to do the very thing it was created to do. As final decision-makers in contested cases, agencies continue to perform all three functions at once.

Is this power reasonably necessary?

Statistics over the past nine years dramatically demonstrate that when the ALJ rules against an agency in a contested case, which only happens in a relatively small percentage of cases, the agency simply rejects the ALJ's recommended decision and substitutes its own decision. Agencies argue that they must retain the power to do this in order to preserve the integrity of their policies, about which they are the undisputed experts. However, it is important to remember that when agencies administer their policies in a manner that deprives a citizen of a property interest or prejudices individual rights, it must do so in manner that satisfies the requirements of due process contained in the State and federal constitutions. (See, *Goldberg v. Kelly*. * U.S. *). Maintaining the integrity of administrative policies simply is not a constitutionally recognized value and certainly cannot ever justify the denial of due process. Rather, it is more likely that preventing the commingling of governmental functions in a single agency was intended to promote both the appearance and the substance of due process.

Under the circumstances, the General Assembly could easily find that the stated purpose for creating OAH, (i.e., preventing commingling of governmental functions in the administrative process) has not been fulfilled under current law and that ALJ's must be given the power to finally decide contested cases in order to accomplish the stated purpose. Moreover, the legislature could also find that the unstated, but surely desired, purpose of assuring citizens that their rights to due process will be observed, would also be accomplished by changing the law.

Conclusion

Applying the analysis set forth in the *Lanier* and *In re Appeal from Civil Penalty* cases (supra), to House Bill 968, a court could easily find that enactment of the bill would be a permissible exercise of the General Assembly's authority under Article IV, sec. 3 of the State Constitution. This analysis and the clear holding in the *Peace* case supply more than ample support for the constitutionality of the proposed legislation.

By: Karen Cochrane Brown, Committee Counsel
Joint Legislative Administrative Procedure Oversight Committee

November 22, 1999

FINALITY OF ALJ HEARING DECISIONS[1]

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N. C. Department of Justice

I. Introduction

An important development relating to the Administrative Procedure Act that would have a major impact on administrative law in North Carolina has been the effort in the General Assembly to authorize Administrative Law Judges ("ALJs") in the Office of Administrative Hearings ("OAH") to make final agency decisions in contested cases. Since OAH was created, ALJs have had the authority to serve as hearing officers and to make non-binding recommended decisions in contested cases. See N.C. Gen. Stat. § 150B-34. Except for a few limited circumstances, ALJs have not been given the authority to make final agency decisions. See N.C. Gen. Stat. § 150B-36(c) (providing for final decisons by ALJs to dismiss contested cases for various reasons including lack of OAH jurisdiction, failure to prosecute a case, noncompliance with procedural requirements and disposition of all issues pursuant to Rule 12(b) of the Rules of Civil Procedure). Granting ALJs the power to make final agency decisions would unconstitutionally convert OAH into a de facto administrative court in violation of Article IV, §§ 1-3 of the Constitution of North Carolina. Granting such power also would transfer to ALJs policy-making authority incident to implementing and enforcing State regulatory programs which are the responsibility of the Governor and other State elected officials. Such a transfer of authority would encroach on the executive power in violation of Article III, § 1 of the Constitution.

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[1] The opinions expressed in this paper are solely those of the authors and do not represent, and may not be cited as, an opinion of the Attorney General's Office.

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II. House Bill 968 and the Attorney General's Opinion

During the 1999 Session, House Bill 968 ("HB 968") was introduced. (A copy of HB 968 is included at Tab 1 of your materials.) If enacted, HB 968 would have significantly increased the powers of ALJs by authorizing them to make final agency decisions in virtually all contested cases before OAH. The State Personnel Director requested an opinion from the Attorney General's Office as to whether providing ALJs with such final agency decision-making power would be constitutional. The Attorney General's Office answered the question in the negative:

> It is our opinion that a court would likely find such a provision unconstitutional because it would result in executive branch officers exercising purely judicial powers of adjudicating legal controversies -- a function that only a court may exercise. Bestowing final decision-making power on OAH also would change the nature of that agency from a "quasi-judicial" executive branch agency to a court, likely in violation of Article IV, § 1 of the Constitution, which forbids the General Assembly to "establish or authorize any courts other than as permitted by this Article." N.C. Const. art. IV, § 1.

Attorney General's Opinion re: House Bill 968 (July 6, 1999), at page 1. (A copy of this opinion letter is included at Tab 2 of your materials.)

II. The Separation of Powers Provision of the North Carolina Constitution

The Attorney General's conclusion is based on the Separation of Powers provision, Article I, § 6, of the North Carolina Constitution. That provision declares that "[t]he legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." N.C. Const. art. I, § 6. The Supreme Court of North Carolina has interpreted Article I, § 6 in two very important opinions.

State ex rel. Wallace v. Bone, 304 N.C. 591, 286 S.E.2d 79 (1982), involved a constitutional challenge to a statute that added four legislators to the Environmental Management Commission ("EMC"), the State agency responsible for implementing and enforcing many of the State's environmental pollution laws. The Supreme Court held the statute unconstitutional because it allowed members of the legislative branch, while serving on the Commission, to exercise power that belonged to the executive branch of government. In reaching its decision, the Court reviewed the powers and duties of the EMC and found it "crystal clear" that the duties of the EMC were "administrative or executive in character and have no relation to the function of the legislative branch of government, which is to make laws." Id. at 608, 286 S.E.2d at 88. The Court held that such commingling of executive and legislative powers in the same hands violated the separation of powers principle set forth in Article I, § 6 of the North Carolina Constitution -- a principle which the Supreme Court described as "basic and vital" and a "cornerstone" of

this State's government that has been strictly adhered to over the past 200 years. Id. at 599, 601, 604, 286 S.E.2d at 83, 86.

A month after the Bone decision, the Supreme Court reiterated and more fully explained its holding in Bone in an advisory opinion relating to legislative efforts (1) to control block grant funds received from the federal government and (2) to exercise control over the expenditure of funds by the executive branch after the General Assembly enacted the State budget. Advisory Opinion In re Separation of Powers, 305 N.C. 767, 771-72, 295 S.E.2d 589, 591 (1982). The Justices of the Supreme Court left no doubt that Article I, § 6 demanded strict adherence to the principle of separation of powers and concluded that the statute in question violated that principle because it granted legislators the authority to encroach on the Governor's executive power to administer the budget. The Justices said:

> The first section of our Constitution pertinent to our inquiry is Section 6 of Article I which provides:
>
> > Separation of powers. The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.
>
> This section is commonly referred to as the "separation of powers" provision of our Constitution. In the recent cases of State of North Carolina ex rel. Wallace et al. v. Bone et al. and Barkalow et al. v. Harrington et al., 304 N.C. 591, 286 S.E.2d 79 (joint opinion filed 12 January 1982) we discussed the history and meaning of the separation of powers doctrine. For the sake of brevity we will not restate all that we said in that opinion. It suffices to say that the principle of separation of powers was clearly in the minds of the framers of our Constitution; and that the people of North Carolina, by specifically including a separation of powers provision in the original Constitution adopted in 1776, and readopting the provision in 1868 and 1970, are firmly and explicitly committed to the principle.
>
> After declaring the principle of separation of powers in Article I, our Constitution then provides in Article II, Section 1, that "the legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives." Article III, Section 1, provides that "the executive power of the State shall be vested in the Governor." Article IV, Section 1, vests all judicial power in the judicial branch of our government. It is clear that the framers of our Constitution followed the instructions given to them that our government "shall be divided into three branches distinct from each other, viz:

> The power of making laws
> The power of executing laws and
> The power of Judging.
>
> . . .
>
> In Wallace et al. v. Bone et al., supra, after reviewing the history of the separation of powers provisions of our State Constitution, and after reviewing decisions from numerous sister states, we concluded that Section 6 of Chapter 1158 of the 1979 Session Laws which provided for the appointment of two members of the House of Representatives and two members of the Senate to the Environmental Management Commission violated Section 6 of Article I of the Constitution. **This is so because "the duties of the EMC are administrative or executive in character and have no relation to the function of the legislative branch of government which is to make laws."**

Advisory Opinion In re Separation of Powers, 305 N.C. at 773-74, 295 S.E.2d at 592-93 (emphasis added, footnote omitted).

The Bone decision and Advisory Opinion make two points clear and unmistakable. First, the Separation of Powers provision of the North Carolina Constitution must be strictly applied. Second, the function an agency performs in carrying out the duties and responsibilities it was created to fulfill is crucial in any separation of powers analysis.

III. Constitutional Provisions Relating to Judicial Power

Article IV of the Constitution of North Carolina allocates the judicial power of the State. Article IV, § 1 provides that the "judicial power of the State shall, except as provided in Section 3 of this Article, be vested in . . . a General Court of Justice" and **forbids** the General Assembly to "establish or authorize any courts" other than those permitted under Article IV. N.C. Const., art. IV, § 1. Next, Article IV, § 2 provides that the General Court of Justice "shall constitute a unified judicial system . . . consist[ing] of an Appellate Division, a Superior Court Division, and a District Court Division." N.C. Const., art. IV, § 2. Finally, the Constitution grants the General Assembly in Article IV, § 3 the power to "vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created," and, further, that "[a]ppeals from administrative agencies shall be to the General Court of Justice." N.C. Const., art. IV, § 3.

These provisions create a framework in which the "supreme judicial power" referenced in Article I, § 6 resides in the courts of the General Court of Justice. Only a small portion of that judicial power is given to executive branch agencies, and, then, only

to the extent that such power is "reasonably necessary" to accomplish the purposes for which those agencies were created.[4] Thus, the "quasi-judicial" power delegated to administrative agencies is limited, circumscribed and subject to appellate review by courts in the General Court of Justice.

IV. Separation of Powers Principles and Administrative Agencies

The power delegated to administrative agencies in the executive branch of government must be limited to preserve the separation of powers between our three branches of government. On one hand, administrative agencies must have enough power to implement complex regulatory programs. On the other hand, the Constitution requires that each branch of government retain its respective supreme power. Balancing these interests is accomplished by delegating to administrative agencies a limited amount of legislative and judicial power.

As the Supreme Court explained, "the constitutional inhibition against delegating legislative authority does not preclude the legislature from transferring adjudicative and rule-making powers to administrative bodies provided such transfers are accompanied by adequate guiding standards to govern the exercise of the delegated powers." Adams v. North Carolina Department of Natural and Economic Resources, 295 N.C. 683, 697, 249 S.E.2d 402, 410 (1978) citing Hospital v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977); Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S.Ct. 1774, 32 L.Ed.2d 119 (1972), and other cases. In the delegation of legislative powers, these "guiding standards" include (1) procedural safeguards and (2) general policies and standards which are "sufficient to provide direction to an administrative body possessing the expertise to adapt the legislative goals to varying circumstances." Adams, 295 N.C. at 698, 249 S.E.2d at 411. In other words, when the General Assembly delegates legislative (rule-making) power to an agency, the "guiding standards" set out above must be met to keep the delegation of such power within constitutional limits. The

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[4] Administrative agencies have no inherent judicial power. As the Supreme Court explained in the case of In the Matter of Alamance County Court Facilities, 329 N.C. 84, 93, 94, 405 S.E.2d 125, 129 (1991), "[a] court's inherent power is that belonging to it by virtue of its being one of three separate, coordinate branches of government," and, further, that "the exercise of inherent power by courts of this state has been limited to matters discretely within the judicial branch." See also, Hogan v. Cone Mills Corp., 315 N.C. 127, 137-38, 337 S.E.2d 477, 483 (1985) (holding that the Industrial Commission is not a court, but instead is a 'limited tribunal' "invested with certain judicial functions" and "clothed with such implied power as is necessary to perform the duties required of it" to administer the provisions of the Workers' Compensation Act, the State law it was specifically created by the General Assembly to administer).

legislature simply cannot delegate its supreme legislative power to an administrative agency in the executive branch of government.

The constitutional limitation on the grant of "quasi-judicial" power by the General Assembly to administrative agencies is set forth right in the Constitution as the "reasonably necessary" requirement of Article IV, § 3. Under Article IV, Section 3, the General Assembly can confer only so much of the State's judicial power as is "reasonably necessary" for an agency to carry out the purpose for which it was created. In State ex rel. Lanier v. Vines, 274 N.C. 486, 497, 164 S.E.2d 161, 168 (1968), the Supreme Court explained that "[w]hether a judicial power is 'reasonably necessary as an incident to the accomplishment of the purposes for which' an administrative office or agency was created must be determined in each instance in the light of the purpose for which the agency was established and in the light of the nature and extent of the judicial power undertaken to be conferred."

V. Restrictions on Grants of Judicial Power to Administrative Agencies

A grant of judicial power is intertwined with an agency's specific purpose and function. See In the Matter of Appeal from Civil Penalty Assessed for Violation of the Sedimentation Pollution Control Act, 92 N.C. App. 1, 17, 373 S.E.2d 572, 581 (1988) ("a major purpose of Article IV, Section 3 is to reconcile the retention of judicial power in the judicial branch by Article IV, Section 1 with the recognized need to utilize administrative expertise in implementing complicated regulatory schemes such as the [Sedimentation Pollution Control] Act."), reversed on other grounds, 324 N.C. 373, 381, 379 S.E.2d 30, 34 (1989). In carrying out its duties and responsibilities, an agency generally takes numerous "agency actions" to carry out its purpose and functions, e.g., agencies may issue or deny regulatory permits or assess civil penalties to force compliance with the law. Anyone directly affected by such agency actions may contest them in a "quasi-judicial" contested case proceeding which includes the opportunity for an adversarial administrative hearing. See, e.g., N.C. Gen. Stat. §§ 150B-22, et seq. (contested case provisions for agencies subject to Article 3 of Chapter 150B of the General Statutes for State agencies covered by the APA).

The purpose of a contested case hearing is to gather evidence to enable the ultimate agency decision-maker to make a correct decision based on a sound well-developed factual record. With the benefit of such a record, the agency reviews its challenged action and makes its final agency decision as to the contested matter. N.C. Gen. Stat. § 150B-36. The rationale for the contested case review of the initial agency action is to give the agency – the entity with the most substantive expertise in the regulatory area – a chance to review its action and correct it, if necessary. See Flowers v. Blackbeard Sailing Club, Ltd., 115 N.C. App. 349, 353, 444 S.E.2d 636, 638 (1994) ("The administrative body with expertise in the subject matter of the action should be given the first opportunity to correct any errors."), citing Presnell v. Pell, 298 N.C. 715, 721, 260

S.E.2d 611, 615 (1979). After the agency makes its official "final agency decision," that decision may be appealed to the courts in the General Court of Justice through the process of judicial review. See N.C. Gen. Stat. §§ 150B-43, et seq. (judicial review provisions of Article 4 of Chapter 150B of the General Statutes). Courts recognize that administrative agencies develop a high degree of technical, specialized expertise necessary to implement, enforce and fill in the interstices of complex regulatory programs created by the General Assembly. On judicial review, courts give due deference to an agency's substantive expertise. Cf. High Rock Lake Association v. N.C. Environmental Management Commission, 51 N.C. App. 275, 279, 276 S.E.2d 472, 475 (1981) (the "whole record" test on judicial review "properly takes into account the specialized expertise of the staff of an administrative agency, and, thus, does not allow the reviewing court to substitute its own judgment for that of the [agency].") See also Citizens Against the Refinery's Effects, Inc. v. Environmental Protection Agency, 643 F.2d 178, 181 (4th Cir. 1981) (analysis of highly technical materials that are particularly within an agency's expertise should be given great weight by the courts).

An administrative agency's function or purpose typically is to implement and enforce a substantive statutory program created by the General Assembly, e.g., a regulatory program relating to protection of the environment, public health, education or a myriad of other State programs. As noted above, in carrying out their duties and responsibilities, administrative agencies develop specialized substantive knowledge and expertise not possessed by other agencies.[5] The agency's specific function and substantive expertise are inexorably linked so that any review of the agency's purpose will necessarily include a reference to the agency's substantive expertise. For example, the justification of a grant of judicial authority to the Department of Insurance in Lanier illustrates the intertwining of discussion regarding purpose and substantive expertise:

> The power to revoke a license granted to an insurance agent by the [Insurance] Commissioner, pursuant to chapter 58 of the General Statutes, is 'reasonably necessary' to the effective policing of the activities of such agents so as to protect the public from fraud and imposition, one of the

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[5] Agencies that implement and enforce laws in a particular field are better equipped to make final agency decisions due to their specialized expertise. Indeed, the General Assembly has exempted some agencies, like the Utilities Commission and the Industrial Commission, from coverage under the APA. N.C. Gen. Stat. § 150B-1(c). To those agencies, the General Assembly has allocated specialized, substantive, regulatory functions and quasi-judicial power to make final agency decisions relating to carrying out those functions, subject to judicial review by the courts. See, e.g., State ex rel. North Carolina Utilities Commission v. Old Fort Finishing Plant, 264 N.C. 416, 420, 142 S.E.2d 8, 11 (1965) (statute provides Utilities Commission with "powers and duties [that] are of a dual nature, -- supervisory or regulatory and judicial.").

> purposes for which the Department of Insurance was established. The power to hold hearings and determine facts relating to the conduct of such agent is 'reasonably necessary' to the effective and just exercise of the power to grant and revoke such license. The grant of such judicial power to the Commissioner for that purpose is clearly within the authority conferred upon the Legislature by Art. IV, § 3, of the Constitution.

Lanier, 274 N.C. at 497, 164 S.E.2d at 167.

The discussion of the purpose of the statutory regulatory program implemented and enforced by the Insurance Commissioner in Lanier, that is, to protect the public from fraud, necessarily references the agency's substantive area of expertise, which is regulation of the insurance industry, and more specifically, the licensing of insurance agents. Thus, the Insurance Commissioner's "quasi-judicial" power to revoke licenses was predicated on the agency's purpose and substantive expertise. Likewise, the grant of some limited judicial power to a State agency to make final agency decisions is predicated on that agency's specific purpose and expertise, whether it be insurance, environmental protection or some other substantive area of regulation.

VI. OAH's Purpose, Function and Expertise

The General Assembly created the Office of Administrative Hearings for a specific purpose, and that purpose or function is critical when evaluating whether the grant of certain powers, e.g., the power to make final agency decisions on substantive matters within a regulatory agency's purview, is "reasonably necessary" to effectuate its purpose. The statute creating OAH provides that:

> There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, **quasi-judicial agency under Article III, Sec. 11 of the Constitution** [6] and, in accordance with Article IV, Sec. 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it was created. The Office of Administrative Hearings is established to provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process . . . .

N.C. Gen. Stat. § 7A-750 (1995 & Supp. 1998). Thus, it is clear that (1) OAH is a constituent part of the executive branch of State government with limited "quasi-judicial"

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[6] Article III, § 11 relates to the structure of the executive branch of State government.

power "reasonably necessary" to carry out the purpose for its creation, and (2) OAH was not created to be an agency possessing substantive regulatory or enforcement power relating to a specific governmental program like other State executive branch agencies or to have expertise in any field except holding administrative hearings.

OAH was created to provide ALJs to serve a supporting function for other agencies with substantive regulatory power by providing hearing officers to preside over contested cases. That supporting function is to develop a factual record relating to controversies arising from the activities of other State agencies exercising regulatory and enforcement power affecting the public. See State ex rel. Martin v. Melott, 320 N.C. 518, 359 S.E.2d 783 (1987) (general discussion of the nature of OAH in context of upholding statute authorizing Chief Justice to appoint Chief Administrative Law Judge.) OAH exists to alleviate the administrative burden on other agencies by providing a tribunal with expertise in handling contested case hearings so that the agency with subject matter jurisdiction can make a fair and correct final agency decision grounded in a sound factual basis. OAH's expertise lies in conducting administrative hearings and ensuring the preparation of a complete record for the agency's use in the decision-making process. OAH is not charged with technical expertise incident to implementing and enforcing complex regulatory programs which must take into account particular policy goals and objectives. Without the responsibility to develop coherent regulatory policies and to develop the technical expertise to pick and choose among competing theories advanced by experts in a particular regulatory field based on sound policy reasons, OAH's expertise is limited to determining evidentiary facts presented in individual contested cases and in rendering a recommended decision based on those facts. Then, it is up to the agency to apply its technical knowledge, expertise and policy perspective to the recommended decision in deciding whether to accept, reject or modify it. In this respect, the agency is responsible for the big picture, i.e., fitting the decision of an individual case into the broad mosaic of the agency's substantive regulatory program. OAH does not have this responsibility.

The current process of an ALJ rendering a recommended decision to the agency entrusted with the substantive executive decision-making power to implement a State regulatory program correctly places the burden of reviewing the substantive decision with the agency which was created to regulate in that specific substantive area and which has developed the knowledge, experience and expertise to do so. Allowing ALJs to make final agency decisions, rather than recommended decisions, on the substance of the controversies arising from the various programs would extend the ALJs' power well beyond their true area of expertise, i.e., serving as hearing officers to preside over administrative proceedings, and would tend to usurp the agency's role in carrying out its statutory duties and responsibilities. Such a grant of power, in effect, would authorize ALJs to substitute their judgments in place of the agency with specialized knowledge on the substance of the matters within the agency's purview. Such a grant of judicial power fails to pass constitutional muster under Article IV, § 3 because such a power simply is not "reasonably necessary" for ALJs in OAH to serve as hearing officers and preside over contested cases.

Vesting final decision-making authority in ALJs also encroaches upon the executive power of the Governor (typically carried out through his cabinet secretaries and appointees) and other members of the Council of State responsible for administrative agencies which have the duty and responsibility of implementing and enforcing regulatory programs. Executive agencies must have the power and flexibility to make necessary policy decisions in carrying out their duties and responsibilities. Making final agency decisions in contested cases enables an agency to apply the law it administers to specific facts, to flesh out its interpretation of its regulatory program and to articulate, establish and clarify its policy in specific factual settings -- all essential to effective decision-making by executive branch agencies. As long as an agency retains the power to review ALJs' recommended decisions and accept or reject them, the essential executive decision-making remains with the agency.

On matters of policy, an agency must remain accountable for its decisions. This accountability is maintained through the political process because the Governor and other elected members of the Council of State must answer at election time to the voters for the decisions made by the agencies they head. Placing decision-making power in ALJs removes accountability for the execution of laws from the Governor and other elected officers of the executive branch, and, places it in the hands of ALJs who are not accountable to the voters for the decisions they make. Thus, granting ALJs the power to make final agency decisions encroaches on the executive power of the elected heads of the executive branch of government in violation of Article III, §1 of the Constitution.

VII. Prohibition on De Facto Courts

Granting ALJs the authority to make final agency decisions also would convert OAH into a de facto court system in violation of Article IV, § 2 of the Constitution of North Carolina. Even though an agency may make final agency decisions in contested cases, it does not adjudicate a dispute in the sense of "judging" or creating a "judgment" as a court does. Judges have general expertise in applying law and making legal decisions. In contrast, agency regulators have specialized knowledge and expertise about a technical field which they regulate and a perspective on the policies of the agency which the agency's final decisions seek to further.

Final agency decisions are clearly and unambiguously supposed to be the decisions of executive branch agencies which exercise substantive regulatory power in a manner which takes into account the agency's policy perspective and goals, i.e., to fit individual cases into the "big picture." An ALJ's expertise, as explained above, is in the application of the law relating to administrative procedure, i.e., presiding over evidentiary hearings, in individual cases before the ALJ. To change the role of ALJs from presiding over contested case hearings to adjudicating final decisions in place of the agency simply would create another layer of "judicial review" and thwart the opportunity for the agency to review its actions based on a complete factual record after a contested case hearing.

Moreover, permitting ALJs in OAH to act as a trial tribunal that renders final agency decisions that are, in effect, judgments adjudicating the rights and liabilities of the parties would convert OAH into a de facto administrative court system. The Constitution does not permit such a result. Indeed, Article IV, § 1 expressly **forbids** the General Assembly to establish **any** courts other than those authorized in Article IV. As noted earlier, Article IV, § 2 limits the courts to the District, Superior and Appellate Court Divisions. In State ex rel. North Carolina Utilities Commission v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965), the Supreme Court made it very clear that administrative agencies simply may not become de facto courts:

> Administrative agencies referred to in Section 3 of Article IV ex vi termini are distinguished from courts. They are not constituent parts of the General Court of Justice. Section 1 of Article IV provides expressly that the General Assembly shall have no power to establish or authorize 'any courts other than as permitted by this Article.' It is provided in Section 3 of Article IV that appeals from such **administrative agencies** 'shall be to the General Court of Justice.'
>
> The General Court of Justice consists exclusively of **the courts** constituting the appellate, superior court and district court divisions thereof.

Old Fort Finishing Plant, 264 N.C. at 422, 142 S.E.2d at 12 (emphasis in the original).

Article IV, § 3 limits the grant of judicial power the General Assembly can make to OAH to just that quantum of judicial power that is "reasonably necessary" for it to accomplish the purpose for which it was created. See, Lanier and Appeal of Civil Penalty, supra. N.C. Gen. Stat. § 7A-750 makes it clear that OAH was created to provide ALJs to serve a supporting function for other agencies with substantive regulatory power by providing hearing officers to preside over contested cases. Although it is "reasonably necessary" for ALJs to have sufficient power and authority to conduct contested case hearings, compile a complete evidentiary record, and propose a recommended decision so that the agency with substantive expertise and a broader policy perspective can review its own actions and issue a well-founded final agency decision, it is not "reasonably necessary" for OAH be converted to a de facto court to accomplish this purpose.

VIII. Conclusion

Granting ALJs in OAH the authority to make final agency decisions in contested cases is not "reasonably necessary" to carry out the purpose for which OAH was created – to provide hearing officers to preside over contested cases proceedings. Such a grant of power also would result in the transfer of policy-making authority from the agencies to OAH, an entity for which there is no political accountability for policy decisions. In addition, exercising such power would convert OAH into an administrative court system. For these

reasons, allowing ALJs to make final agency decisions would violate Article I, § 6, Article III, §1, and Article IV, §§ 1, 2 and 3 of the Constitution of North Carolina.

Attachment

ARTICLE 60.
Office of Administrative Hearings.

Sec.
7A-750. Creation; status; purpose.
7A-751. Agency head; powers and duties; salaries of Chief Administrative Law Judge and other administrative law judges.
7A-752. Chief Administrative Law Judge; appointments; vacancy.
7A-753. Additional administrative law judges; appointment; specialization.
7A-754. Qualifications; standards of conduct; removal.
7A-755. Expenses reimbursed.
7A-756. Power to administer oaths and issue subpoenas.
7A-757. Temporary administrative law judges; appointments; powers and standards; fees.
7A-758. Availability of administrative law judge to exempt agencies.
7A-759. Role as deferral agency.
7A-760 through 7A-769. [Reserved.]

§ 7A-750. Creation; status; purpose.

There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Sec. 11 of the Constitution and, in accordance with Article IV, Sec. 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established to provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. It shall also maintain dockets and records of contested cases and shall codify and publish all administrative rules.

(1985, c. 746, s. 2; 1991, c. 103, s. 1.)

Editor's Note. - Section 19 of Session Laws 1985, c. 746, which enacted §§ 7A-750 to 7A-758, provided that c. 746 would expire January 1, 1992. However, Session Laws 1991, c. 103 deleted the sunset provision. Therefore, §§ 7A-750 through 7A-758 remain in effect.

CASE NOTES

Office of Administrative Hearings Not a Court. - Because the Office of Administrative Hearings was established as a part of the executive branch pursuant to N.C. Const. Art. III, § 11, it is not a court and does not function as such when making final agency decisions on charges deferred from EEOC. Employment Sec. Comm'n v. Peace, 128 N.C. App. 1, 493 S.E.2d 466 (1997), aff'd, 349 N.C. 315, 507 S.E.2d 272 (1998).

Cited in Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992).

§ 7A-751. Agency head; powers and duties; salaries of Chief Administrative Law Judge and other administrative law judges.

(a) The head of the Office of Administrative Hearings is the Chief Administrative Law

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Judge, who shall serve as Director of the Office. The Chief Administrative Law Judge has the powers and duties conferred on that position by this Chapter and the Constitution and laws of this State and may adopt rules to implement the conferred powers and duties.

The salary of the Chief Administrative Law Judge shall be the same as that fixed from time to time for district court judges.

In lieu of merit and other increment raises, the Chief Administrative Law Judge shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act.

(b) The salary of other administrative law judges shall be ninety percent (90%) of the salary of the Chief Administrative Law Judge.

In lieu of merit and other increment raises, an administrative law judge shall receive longevity pay on the same basis as is provided to employees who are subject to the State Personnel Act.

(1985, c. 746, s. 2; 1987, c. 774, s. 1; c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1100, s. 16(b); c. 1111, s. 14(b); 1989, c. 500, s. 45; 1991, c. 103, s. 1; 1997-34, s. 11; 1997-443, s. 33.8.)

CASE NOTES

Cited in Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992).

§ 7A-752. Chief Administrative Law Judge; appointments; vacancy.

The Chief Administrative Law Judge of the Office of Administrative Hearings shall be appointed by the Chief Justice for a term of office of four years. The first Chief Administrative Law Judge shall be appointed as soon as practicable for a term to begin on the day of his appointment and to end on June 30, 1989. Successors to the first Chief Administrative Law Judge shall be appointed for a term to begin on July 1 of the year the preceding term ends and to end on June 30 four years later. A Chief Administrative Law Judge may continue to serve beyond his term until his successor is duly appointed and sworn, but any holdover shall not affect the expiration date of the succeeding term.

The Chief Administrative Law Judge shall designate one administrative law judge as senior administrative law judge. The senior administrative law judge may perform the duties of Chief Administrative Law Judge if the Chief Administrative Law Judge is absent or unable to serve temporarily for any reason.

(1985, c. 746, s. 2; 1985 (Reg. Sess., 1986), c. 1022, ss. 3, 6(2), 6(3); 1987 (Reg. Sess., 1988), c. 1111, ss. 15, 25; 1991, c. 103, s. 1.)

Editor's Note. - Session Laws 1985, c. 746, s. 18.1 directed the substitution of "Attorney General" for "Chief Justice" in the first sentence of the first paragraph, but s. 19 of c. 746 made this amendment effective only if the Supreme Court issued an advisory opinion that the appointment of the chief hearing officer by the Chief Justice was unconstitutional.

Section 18.2 of Session Laws 1985, c. 746, provided: "The President of the Senate and the Speaker

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of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6 of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act."

By letter of October 28, 1985, addressed to the President of the Senate and the Speaker of the House, the Supreme Court declined to issue an advisory opinion as contemplated by Session Laws 1985, c. 746, on the grounds that to issue such an opinion would be to place the Court directly in the stream of the legislative process, and in view of the prerogative of the General Assembly to first address and determine the constitutionality of its own legislation. See In re Advisory Opinion, - N.C. - , 335 S.E.2d 890 (1985).

At the direction of the Revisor of Statutes, the amendment by Session Laws 1985, c. 746, s. 18.1 has not been effectuated.

Legal Periodicals. - For note on the separation of powers and the power to appoint, see 66 N.C.L. Rev. 1109 (1988).

CASE NOTES

Cited in Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992).

§ 7A-753. Additional administrative law judges; appointment; specialization.

The Chief Administrative Law Judge shall appoint additional administrative law judges to serve in the Office of Administrative Hearings in such numbers as the General Assembly provides. No person shall be appointed or designated an administrative law judge except as provided in this Article.

The Chief Administrative Law Judge may designate certain administrative law judges as having the experience and expertise to preside at specific types of contested cases and assign only these designated administrative law judges to preside at those cases.

(1985, c. 746, s. 2; 1985 (Reg. Sess., 1986), c. 1022, ss. 4, 6(2); 1987 (Reg. Sess., 1988), c. 1111, ss. 24, 25; 1991, c. 103, s. 1.)

CASE NOTES

Cited in Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992).

§ 7A-754. Qualifications; standards of conduct; removal.

Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and chief administrative law judge or as an administrative law judge in the Office of Administrative Hearings. Neither the chief administrative law judge nor any administrative law judge may engage in the private practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall be grounds for removal. Each administrative law judge shall take the oaths required by Chapter 11 of the General Statutes. An administrative law judge may be removed from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in G.S. 126-35.

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(1985, c. 746, s. 2; 1985 (Reg. Sess., 1986), c. 1022, s. 6(1), 6(3); 1991, c. 103, s. 1.)

CASE NOTES

Cited in Ford v. North Carolina Dep't of Env't, Health, & Natural Resources, 107 N.C. App. 192, 419 S.E.2d 204 (1992).

§ 7A-755. Expenses reimbursed.

The Chief Administrative Law Judge of the Office of Administrative Hearings and all administrative law judges shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

(1985, c. 746, s. 2; 1985 (Reg. Sess., 1986), c. 1022, s. 6(2); 1987 (Reg. Sess., 1988), c. 1111, s. 25; 1991, c. 103, s. 1.)

§ 7A-756. Power to administer oaths and issue subpoenas.

The chief administrative law judge and all administrative law judges in the Office of Administrative Hearings may, in connection with any pending or potential contested case under Chapter 150B:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the Office of Administrative Hearings requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence; and

(3) Apply to the General Court of Justice, Superior Court Division, for any order necessary to enforce the powers conferred in this Article.

(1985, c. 746, s. 2; 1985 (Reg. Sess., 1986), c. 1022, s. 6(1), 6(2); 1987, c. 827, s. 1; 1991, c. 103, s. 1.)

§ 7A-757. Temporary administrative law judges; appointments; powers and standards; fees.

When regularly appointed administrative law judges are unavailable, the Chief Administrative Law Judge of the Office of Administrative Hearings may contract with qualified individuals to serve as administrative law judges for specific assignments. A temporary administrative law judge shall have the same powers and adhere to the same standards as a regular administrative law judge in the conduct of a hearing. A temporary administrative law judge shall not be considered a State employee by virtue of this assignment, and shall be remunerated for his service at a rate not to exceed three hundred dollars ($300.00) per day and shall be reimbursed for travel and subsistence expenses at the rate allowed to State officers and employees by G.S. 138-6(a). The Chief Administrative Law Judge may also designate a full-time State employee to serve as a temporary administrative law judge with the consent of the employee and his supervisor; however, the employee is not entitled to any additional pay for this

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service.

(1985, c. 746, s. 2; 1985 (Reg. Sess., 1986), c. 1022, s. 5; 1987, c. 878, s. 14; 1987 (Reg. Sess., 1988), c. 1111, s. 25; 1991, c. 103, s. 1.)

§ 7A-758. Availability of administrative law judge to exempt agencies.

The Chief Administrative Law Judge of the Office of Administrative Hearings may, upon request of the head of the agency, provide an administrative law judge to preside at hearings of public bodies not otherwise authorized or required by statute to utilize an administrative law judge from the Office of Administrative Hearings including, but not limited to, State agencies exempt from the provisions of Chapter 150B, municipal corporations or other subdivisions of the State, and agencies of such subdivisions.

(1985, c. 746, s. 2; 1987, c. 827, s. 1; c. 878, s. 15; 1987 (Reg. Sess., 1988), c. 1111, s. 25; 1991, c. 103, s. 1.)

§ 7A-759. Role as deferral agency.

(a) The Office of Administrative Hearings is designated to serve as the State's deferral agency for cases deferred by the Equal Employment Opportunity Commission to the Office of Administrative Hearings as provided in Section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. for charges filed by State or local government employees covered under Chapter 126 of the General Statutes and shall have all of the powers and authority necessary to function as a deferral agency.

(b) The Chief Administrative Law Judge is authorized and directed to contract with the Equal Employment Opportunity Commission for the Office of Administrative Hearings to serve as a deferral agency and to establish and maintain a Civil Rights Division in the Office of Administrative Hearings to carry out the functions of a deferral agency.

(b1) As provided in the contract between the Office of Administrative Hearings and the Equal Employment Opportunity Commission, a deferred charge for purposes of 42 U.S.C. § 2000e-5(c) or (d) is a charge that is filed by a State or local government employee covered under Chapter 126 of the General Statutes and alleges an unlawful employment practice prohibited under that Chapter or any other State law. A deferred charge may be filed with either agency.

The date a deferred charge is filed with either agency is considered to be a commencement of proceedings under State law for purposes of 42 U.S.C. § 2000e-5(c) or (d). The filing of a deferred charge automatically tolls the time limit under G.S. 126-7.2, 126-35, 126-38, and 150B-23(f) and any other State law that sets a time limit for filing a contested case under Article 3 of Chapter 150B of the General Statutes alleging an unlawful employment practice. These time limits are tolled until the completion of the investigation and of any informal methods of resolution pursued pursuant to subsection (d) of this section.

(c) In investigating charges an employee of the Civil Rights Division of the Office of Administrative Hearings specifically designated by an order of the Chief Administrative Law Judge filed in the pending case may administer oaths and affirmations.

(c1) In investigating charges, an employee of the Civil Rights Division shall have access at

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reasonable times to State premises, records, and documents relevant to the charge and shall have the right to examine, photograph, and copy evidence. Any challenge to the Civil Rights Division to investigate the deferred charge shall not constitute grounds for denial or refusal to produce or allow access to the investigative evidence.

(d) Any charge not resolved by informal methods of conference, conciliation or persuasion may be heard as a contested case as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Notwithstanding G.S. 150B-34 and G.S. 150B-36, an order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations or State statutes or rules.

(f) In addition to the authority vested in G.S. 7A-756 and G.S. 150B-33, an administrative law judge may monitor compliance with any negotiated settlement, conciliation agreement or order entered in a deferred case.

(g) The standards of confidentiality established by federal statute or regulation for discrimination charges shall apply to deferred cases investigated or heard by the Office of Administrative Hearings.

(h) Nothing in this section shall be construed as limiting the authority or right of any federal agency to act under any federal statute or regulation.

(i) This section shall be broadly construed to further the general purposes stated in this section and the specific purposes of the particular provisions involved.

(1987 (Reg. Sess., 1988), c. 1111, s. 14(c); 1993, c. 234, s. 1; 1997-513, s. 1; 1998-212, s. 22.)

Editor's Note. - Session Laws 1997-513, s. 4 states that this act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that State agency.

Session Laws 1997-513, s. 5, as amended by Session Laws 1998-212, s. 22, provides that s. 1 is effective when it becomes law (September 17, 1997) and is applicable to charges pending or filed on and after that date.

CASE NOTES

Construction with Federal Provision. - Where a complainant steadfastly maintained that he had brought only a Title VII (of the Civil Rights Act of 1964) claim and the state referral agency unequivocally addressed only that claim, proceedings under state law had not commenced for purposes of 42 U.S.C.A. § 2000e-5(c). Davis v. North Carolina Dep't of Cors., 48 F.3d 134 (4th Cir. 1995).

Administrative Law Judge's Decision an Agency Decision. - An Administrative Law Judge's decision with respect to a deferred charge is not a judicial decision, but rather a final agency decision. Employment Sec. Comm'n v. Peace, 128 N.C. App. 1, 493 S.E.2d 466 (1997), aff'd, 349 N.C. 315, 507 S.E.2d 272 (1998).

Cited in Employment Sec. Comm'n v. Peace, 122 N.C. App. 313, 470 S.E.2d 63 (1996), review granted, 345 N.C. 640, 483 S.E.2d 706 (1997); Peace v. Employment Sec. Comm'n, 349 N.C. 315, 507 S.E.2d 272 (1998).

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May 3, 2000

Senator Brad Miller
North Carolina General Assembly
621 Legislative Office Building
Raleigh, NC 27601-2808

Dear Senator Miller:

Thank you for your request for my views on the House–passed bill (House Bill 968) that would make decisions of Administrative Law Judges final decisions in administrative hearings under the North Carolina Administrative Procedure Act.

I have been studying aspects of administrative procedure for more than a quarter century. In general, I think North Carolina's administrative agencies have done a creditable job of carrying out our public policy and I mean no comment in this letter to suggest otherwise. The proposed legislation, nevertheless, seems to me to be a step in the right direction from the standpoint of desirable public policy.

There are a number of measures that would make modest improvements, but none would be as effective as making the ALJ's decision binding on agencies. I do recognize that reasonable persons can come to different conclusions. Nevertheless, I think the House version of fully binding decisions is the best policy. My reasons include the following:

1. **Greater Appearance of Fairness.** The affected public will have the impression that there is a real point in going to hearings before a party who does not have its mind already made up. As it now stands, no matter how persuasive the evidence presented to and arguments made before the ALJ are, the agency can simply reject the recommended decision. The requirement to state reasons seems to lack real substance, because it does not appear to constrain agency rejection very much, if at all. And the courts are really not giving the requirement must credence.

Agencies overwhelmingly reject ALJ recommendations when the recommendation is not in favor of the agency's decision. When this happens, the cases seem to show that the Superior Court upholds the agency about half of the time. And I have found no case that effectively lays out what standard of reasons the courts will hold the agency to as a requirement to explain its rejection of the the ALJ's recommendation.

The public and regulated parties (many of whom I know are large corporations and businesses) could reasonably see a fairly stacked deck in the administrative process.

2. **Agencies Carry out "Law" and "Public Policy."** Agencies are created to carry out law and policy. Agencies do develop competence in the fields in which they are charged to work. In general, however, as a Harvard law professor said a half-century ago, "Expertness has been oversold in this country."

Agency expertise or special competence does not clothe agency personnel with any superior ability to read law or to interpret public policy. And courts in this state rightly say that review of "law-based" questions is de novo. Whether in fact it is "truly" de novo is a bit more debatable.

With respect to factual findings agency expertise can be part of the problem. If facts are shaded to help the agency execute what it believes its mission is or should be, that is the exact reason why we worry about commingling functions of investigation, advocacy, and fact-finding in the same person or entity.

It is a bit of an anomaly for agencies to be free to reject even factual findings, when they did not even see the witnesses and cannot determine credibility, except as it somehow appears in the record made by the ALJ. Such a procedure distorts the concept of a "fair hearing" when the decision-maker who ***never heard*** the witnesses can base a decision on facts it finds in contradiction to those found by one who ***did hear*** the witnesses.

3. **Binding ALJ Decisions Will Not Unduly Restrict Agency Discretion**. When the legislature creates agencies it gives them specific charges to do particular things. Agencies are not created to do what they believe ought to be done regardless of the facts and the law. It is not in the public interest to give any entity or body excessive discretion. At present it appears that the deck gets stacked the farther one gets from the lower levels of decision-making within agencies.

Working with the agency at the lower levels to seek informal resolution becomes very problematic if agencies know their decisions (imposing civil penalties, suspending or granting permits, or ordering particular conduct) will stand virtually without regard to what they decide. Appeals ***within*** the agency will impose virtually no restraint on agency decision makers.

Appeals ***outside*** the agency to ALJs for a "fair hearing" will be without effect if agencies can, as they do now, reject recommended decisions without much constraint.

Court decisions give deference to fact finding and (I think not withstanding the rubric of de novo review for questions of law) also give deference to other aspects of agency decisions because "fact" and "law" are sometimes intertwined. And these connections can be virtually inextricable for questions of broad public policy. These broad questions are very likely to be comprised of mixed questions of law and fact – such as a determination, not only what the petitioner did, but did with what motive, knowledge, effect, or justification in light of some consequence to the public interest.

In such cases, the real task is to find the reasoned basis for effecting the right public policy in light of the purpose for which the agency was created. Questions such as these are matters in which unfettered discretion leaves much room for a narrow agenda, that will not likely be overturned on review.

Agencies can lose perspective and balance in a system in which they have too much discretion that effectively cannot he challenged.

4. **Binding ALJ Decisions Will Foster Our Public Policy of Informal and Alternative Dispute Resolution.** Our administrative procedure act is explicit that agencies and parties should reach informal resolution and settlement of problems whenever possible. (See § 150B-22; and see also § 150- 3.)

Agencies do not have much incentive to make a serious effort to reach settlement informally if they know they have the upper hand all the way through appeal to the Supreme Court. It would be possible that they could just put the ordinary petitioner through so much "process," that is so unlikely to result in reversal, that the petitioner just gives up and quits. I do not mean to suggest that a great number of agencies would do that, but how could we ever know?

To know that a decision-maker will hear the evidence and argument of both the agency and the petitioner, and will render a fair and impartial decision with no mission to pursue – other than to do justice – would increase the agency's incentives to make settlements and would increase the public perception of due process before administrative agencies

Binding ALJ decisions would also give petitioners incentive to make reasonable attempts to settle for the very same reasons that agencies will have that incentive. Moreover, neither party would have reason to suppose that the decision will be changed on judicial review, since a fair and impartial decision-maker will have already heard the case and rendered a decision.

These are some quick thoughts. I appreciate the opportunity to offer these views. I stand ready to assist in any other possible way you would deem appropriate.

Sincerely,

(signature)

Charles E. Daye
Henry Brandis Professor of Law

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James B. Hunt Jr., Governor

H. David Bruton, M.D., Secretary

June 22, 1999

Senator Brad Miller
621 Legislative Office Building
Raleigh, NC 27601-2808

Dear Senator Miller:

I am writing to express my grave concern about House Bill 968, "Amend Contested Case Procedure." The transfer of final decision-making authority from an executive agency to an administrative law judge would seriously undermine this Department's ability to perform its mission and serve the citizens of North Carolina.

The bill strips policy-making and regulatory authority from executive branch agencies charged with implementing the law and delegates it to administrative law judges who lack the appropriate resources and expertise. In our Department, for example, this would mean decisions on day care safety would not be made by a trained consultant with expertise in recognizing hazards, but rather by a lawyer with no particular knowledge of the many ways children have been injured in child care facilities. An unlatched gate or a momentary lapse in supervision may appear insignificant to a judge in a single case, while an expert who has seen the tragic consequences of such inattention in other situations can appropriately gauge the severity of the offense and the necessary corrective action to protect the children.

We have the same concern for other areas of responsibility in this Department. For example, our Division of Facilities Services administers the health care personnel registry and investigates allegations of patient abuse or neglect in nursing homes and adult care facilities. Years of experience in protecting the frail elderly have provided the agency with the ability to recognize patterns of conduct that signal abusive actions. An administrative law judge hearing an occasional isolated case cannot be expected to have the same knowledge.

We also believe strongly in accountability. Currently, final decision-makers in this Department are directly accountable to the Secretary, who in turn is directly accountable to the Governor. H.B. 968 moves final authority away from executive branch officials who can be brought to task by the Governor or General Assembly, and deposits it with appointees of the judicial branch who have no relationship with policy makers. This divergence of responsibility and authority violates sound management principles inside or outside of government.

The bill also poses the likelihood of serious unintended consequences. From this Department's perspective, one of the most significant is that transferring final decision-making authority may violate the single state agency requirement of federal Medicaid law, thus jeopardizing the Medicaid system in North Carolina.

Consistency and perspective are other potential victims of this proposal. Not long ago, we had several Child Support Enforcement cases where different administrative law judges reached directly opposite conclusions on the same purely legal questions. The issue ultimately reached the appellate courts for resolution. Had the agency not had final decision-making authority in the interim, citizens with identical fact situations would have had different results based solely on which ALJ was assigned the case. H.B. 968 would institutionalize this problem.

The absence of precedential value is one example of how placing final decision authority with administrative law judges reduces rational policy making and replaces it with case-by-case adjudication. H.B. 968 removes the agency's ability to interpret and apply its own policies. It destroys the traditional deference given by the judicial system to agencies acting within their areas of authority and expertise. In short, it undercuts the fundamental premises of administrative law and the concept of the separation of powers.

Finally, as a practical matter, we believe that the bill will very likely lead to increased litigation, higher costs of government, and delayed agency action. In this Department, for example, the effect of H.B. 968 may force us to institute a more formal record development and review process before issuing decisions that are appealable to the Office of Administrative Hearings, thus adding one more step in a process that already can be too time-consuming.

The present system provides a neutral third party to develop a full record and afford due process to persons in disputes with an agency. The record and recommendations of the ALJ then are presented to an appropriate agency official, frequently the head of the agency, to conduct a complete review and final determination of the agency's action. This helps to improve the quality of service to the people of North Carolina. I urge you to reject the substitute process created by H.B. 968.

I will be pleased to discuss any of these issues with you or your colleagues at your convenience. Thank you for your consideration.

With best regards,

Sincerely,

H. David Bruton, M.D.

cc: Members, Judiciary II Committee

NCDENR

JAMES B. HUNT JR.
GOVERNOR

BILL HOLMAN
SECRETARY

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

Memorandum

To: Senator Brad Miller
Members of Senate Judiciary II Committee

From: Daniel F. McLawhorn
General Counsel

Re: H.B. 968, Amend Contested Case Procedures

Date: June 1, 2000

Thank you for the opportunity to present comments to the Committee as it considers this bill. H.B. 968 will effect an important change in the way our government sets its policy in the execution of the laws you adopt and I appreciate the careful consideration you will give it.

I leave to others the constitutional questions raised by the bill. The views of the Attorney General's Office are the same I espoused on behalf of the Office in the debates on this issue that first began in 1985. In that session when G.S. Chapter 150B was created, its sponsors heeded that advice and removed the very provision now before you. Subsequent attempts to implement the change have been consistently rejected by the General Assembly.

Equally compelling as the Constitutional questions are two policy questions presented by the bill. Who will the new policy makers in the Office of Administrative Hearings be accountable to? Will the new policy makers have the level of expertise required to handle and decide complex factual issues involving areas such as environmental law and health care law? H.B. 968 will transfer significant policy making decisions from the Governor, his cabinet, the Council of State members, and the duly appointed commissions to Administrative Law Judges (ALJ's). The current decision makers are accountable to the people through the election system and your oversight. They are selected for their expertise in the subject matter of policy raised in their respective cases.

Governmental policy is set in two primary ways at the Executive Branch level: (1) By the adoption of rules interpreting and "filling in the details" of the statutes and (2) Through case decisions interpreting and applying the laws and the rules. The Executive Branch officials making those decisions are accountable to the people through the Governor and through you, the elected members of the General Assembly.

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5/30/2000

Name of Committee Rep. Ken Miller

Date

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Ann Beacam	SBE
Brad Sneeden	DPI
Laura Denvo	DENR
Dan McLanthorn	DENR
Sharon Hirsch	NC Social Services Consortium
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Ronald Penny	OSP
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Preston Howard	MCIC
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Wanda Taylor	"
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Cindy Privette	NCSU
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VISITOR REGISTRATION SHEET

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VISITOR REGISTRATION SHEET

J.11 Committee — June 1, 2000

Name of Committee — Date

Sen. Miller, Chair

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VISITOR REGISTRATION SHEET

9.11 Committee — June 1, 2002
Name of Committee — Date

Sen Miller, Chair

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Myra Mills	NAMI-NC
Sally Cameron	Coalition for Persons Disabled by Mental Illness & DCPA
Vernon Lee	DMH/D.D./SAS
Anita Cox	Consumer - sister lives in a state institution
Nat Mund	CCNC
Victoria Voight	AG - w/ DOL
Conn Wald	DOL
David Light	NC Sierra Club, NC Wildlife Fed

VISITOR REGISTRATION SHEET

All Committee — June 1, 2000
Name of Committee — Date

Sen. Miller

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Ronnie Cordrey	DOI
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LAURA DEVO	DENR
DAN MCLAUGHLIN	DENR
Marc Lodge	DHHS
Annette Eldridge	Gov's Office
Sara Livingston	Governor's Office
Sharon Hurd	NC Social Services Consortium
Preston Howard	MCIC
Steve Woodall	NC Farm Bureau
[illegible]	MCIC
Dick Taylor	NCATA
Bob Stevens	NC Forestry Assoc.

VISITOR REGISTRATION SHEET

J.U. Committee — June, 1 2010
Name of Committee — Date

Sen. Miller, Chair

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EB Hunt	DOR
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April Carson	ACLU - NC
Greg Owens	ACLU
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Darrell Arnold	SEANC
Lynn Wilson	"
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Bill Alexander	NCPBA
Cindy Prevette	NCSU
Charlene Hayes	NCSU
[illegible]	[illegible]
Emily Hawthorne	UNC - Chapel Hill

VISITOR REGISTRATION SHEET

T.11 Committee — June 1, 2000

Name of Committee — Date

Sen. Miller, Chair

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Donna Rosefield	DCR
Ann Berlam	SBE
Betsy Bennett	UNC

SENATE JUDICIARY II COMMITTEE

JUNE 6, 2000

MINUTES

The Senate Judiciary II Committee met on June 6, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Ten members were present, including Senator Brad Miller, who presided.

SB 1347, Drivers Points-No Child Restraint, was explained by Senator Phillips. Senator Robinson moved to amend the bill by changing G.S. 20-137.1. Current law provides that no violation shall have a consequence greater than a $25.00 fine. The amendment would allow the mandate to assess drivers points for failure to restrain children in motor vehicles.

Speaking from the public in support of the bill were: Tom Bennett, Executive Director of the North Carolina Child Fatality Task Force; Paula Wolfe, Covenant With North Carolina's Children; and Jane Pinsky, AAA of the Carolinas.

Senator Moore moved to place the bill in a subcommittee for further study. The motion failed.

Senator Robinson moved to engross the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried. **Unfavorable as to bill, but favorable as to committee substitute.**

SB 1257, Abandoned Infant Protection Act, was explained by Senator Martin. Senator Miller adjourned the meeting and said that SB 1257 would be taken up at the next meeting.

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Wednesday, June 07, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

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

S.B. **1347** Drivers Points-No Child Restraint.

Draft Number:	PCS7779
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Sen. Miller to sign.

SENATE JUDICIARY II COMMITTEE

JUNE 6, 2000

ROOM 1124

SB 1257	Abandoned Infant Protection Act	Sen. Martin
SB 1347	Drivers Points-No Child Restraint	Sen. Phillips
Adjournment		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1257

Short Title: Abandoned Infant Protection Act. (Public)

Sponsors: Senators Martin of Guilford, Carpenter; Albertson, Carter, Clodfelter, Dannelly, Foxx, Kinnaird, Lee, Lucas, Phillips, Plyler, Purcell, Robinson, Warren, Weinstein, and Wellons.

Referred to: Judiciary II.

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO DECRIMINALIZE ABANDONMENT OF AN INFANT UNDER CERTAIN CIRCUMSTANCES AND TO MODIFY SOME PROCEDURES INVOLVING ABANDONED JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. Notwithstanding the previous sentence, when a report alleges abandonment, the director shall immediately initiate an investigation and shall take appropriate steps to assume temporary custody of the juvenile and to secure an order for nonsecure custody of the juvenile. The investigation and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources to ensure that the juvenile is not a missing child. All information

received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department."

Section 2. G.S. 7B-500 reads as rewritten:

"**§ 7B-500. Taking a juvenile into temporary ~~custody.~~ custody; civil and criminal immunity.**

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) A law enforcement officer, a department of social services worker, a health care provider as defined in G.S. 90-21.11 at a hospital or local or district health department, or an emergency medical technician at a fire station shall, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(c) Any adult may, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(d) An individual who takes an infant into temporary custody under subsection (b) or (c) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to the requirements of subsection (b) or (c) of this section so long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

Section 3. G.S. 7B-1111(a) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a

reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 4. G.S. 14-318.2 is amended by adding a new subsection to read:

"(c) A parent who abandons an infant less than 15 days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

Section 5. G.S. 14-318.4 is amended by adding a new subsection to read:

"(c) Abandonment of an infant less than 15 days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant."

Section 6. Article 40 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-322.3. Abandonment of an infant under 15 days of age.**

No parent shall be prosecuted under G.S. 14-322 or G.S. 14-322.1 for abandonment of an infant less than 15 days of age when that parent voluntarily delivers the infant to one of the following individuals and does not express an intent to return for the infant:

(1) A health care provider, as defined under G.S. 90-21.11, at a hospital or at a local or district health department.

(2) A law enforcement officer at a police station or sheriff's department.

(3) A social services worker at a local department of social services.

(4) An emergency medical technician at a fire station.

(5) Any other adult of suitable discretion who willingly accepts the infant."

Section 7. The Department of Health and Human Services, Division of Public Health, shall develop a media campaign to inform the public of the provisions of this act. This media campaign shall contain information on responsible parenting in addition to information about the provisions of the act. This media campaign shall be targeted at adolescents and young adults. This media campaign shall be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school administrators.

Section 8. There is appropriated from the General Fund the sum of one hundred fifty thousand dollars ($150,000) for the 2000-2001 fiscal year to the Department of Health and Human Services, Division of Public Health, to implement the provisions of Section 7 of this act.

Section 9. Sections 1 through 6 of this act become effective December 1, 2000, and apply to acts committed on or after that date. The remainder of this act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1347

Short Title: Drivers Points-No Child Restraint. (Public)

Sponsors: Senator Phillips.

Referred to: Judiciary II.

May 22, 2000

A BILL TO BE ENTITLED

AN ACT TO MANDATE THE ASSESSMENT OF DRIVERS LICENSE POINTS FOR FAILURE TO RESTRAIN A CHILD IN A MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-137.1(d) reads as rewritten:

"(d) ~~No driver license points or insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence.~~ A violation of this section shall have all of the following consequences:

(1) Two drivers license points shall be assessed pursuant to G.S. 20-16.

(2) No insurance points shall be assessed.

(3) The violation shall not constitute negligence per se or contributory negligence per se.

(4) The violation shall not be evidence of negligence or contributory negligence."

Section 2. G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of

the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
Failure to properly restrain a child in a restraint or seat belt	2
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus	8
Rail-highway crossing violation	6
Reckless driving	5
Hit and run, property damage only	5
Following too close	5
Driving on wrong side of road	5
Illegal passing	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failing to yield right-of-way	4
Running through red light	4
No driver's license or license expired more than one year	4
Failure to stop for siren	4
Driving through safety zone	4
No liability insurance	4

Failure to report accident where such report is required 4
Speeding in a school zone in excess of the posted school zone speed limit 4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle 4
All other moving violations 3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any

licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Section 3. This act becomes effective December 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1347
Proposed Committee Substitute S1347-PCS7779-SG

Short Title: Drivers Points-No Child Restraint. (Public)

Sponsors:

Referred to:

May 22, 2000

A BILL TO BE ENTITLED

AN ACT TO MANDATE THE ASSESSMENT OF DRIVERS LICENSE POINTS FOR FAILURE TO RESTRAIN A CHILD IN A MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-137.1 reads as rewritten:

"**§ 20-137.1. Child restraint systems required.**

(a) Every driver who is transporting one or more passengers of less than 16 years of age shall have all such passengers properly secured in a child passenger restraint system or seat belt which meets federal standards applicable at the time of its manufacture.

(a1) A child less than five years of age and less than 40 pounds in weight shall be properly secured in a weight-appropriate child passenger restraint system. In vehicles equipped with an active passenger-side front air bag, if the vehicle has a rear seat, a child less than five years of age and less than 40 pounds in weight shall be properly secured in a rear seat, unless the child restraint system is designed for use with air bags.

(b) The provisions of this section shall not apply: (i) to ambulances or other emergency vehicles; (ii) when the child's personal needs are being attended to; (iii) if all seating positions equipped with child passenger restraint systems or seat belts are occupied; or (iv) to vehicles which are not required by federal law or regulation to be equipped with seat belts.

(c) Any driver found responsible for a violation of this section may be punished by a penalty not to exceed twenty-five dollars ($25.00), even when more than one

child less than 16 years of age was not properly secured in a restraint system. ~~Conviction of an infraction under this section has no consequence other than payment of a penalty.~~ No driver charged under this section for failure to have a child under five years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system.

(d) ~~No driver license points or insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence.~~ A violation of this section shall have all of the following consequences:

(1) Two drivers license points shall be assessed pursuant to G.S. 20-16.

(2) No insurance points shall be assessed.

(3) The violation shall not constitute negligence per se or contributory negligence per se.

(4) The violation shall not be evidence of negligence or contributory negligence."

Section 2. G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3

Speeding in a school zone in excess of the posted school zone speed limit 3
Failure to properly restrain a child in a restraint or seat belt 2
All other moving violations 2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus 8
Rail-highway crossing violation 6
Reckless driving 5
Hit and run, property damage only 5
Following too close 5
Driving on wrong side of road 5
Illegal passing 5
Running through stop sign 4
Speeding in excess of 55 miles per hour 4
Failing to yield right-of-way 4
Running through red light 4
No driver's license or license expired more than one year 4
Failure to stop for siren 4
Driving through safety zone 4
No liability insurance 4
Failure to report accident where such report is required 4
Speeding in a school zone in excess of the posted school zone speed limit 4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle 4
All other moving violations 3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection

during a period of probation shall constitute a violation of the condition of probation."

Section 3. This act becomes effective December 1, 2000.

SENATE BILL 1257: ABANDONED INFANT PROTECTION ACT

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Bill Martin
Date:	June 6, 2000	**Summary by:**	Brenda J. Carter
Version:	1st Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 1257 provides that a parent may not be prosecuted for criminal abandonment of an infant less than 15 days old if the parent voluntarily delivers the child to a health care provider, an officer at a police station or sheriff's department, an EMT at a fire station, or to any other adult of suitable discretion who willingly accepts the infant.***

CURRENT LAW: Under G.S. 14-322, abandonment and failure to support spouse and children is a Class 2 misdemeanor for the 1st offense, a Class 1 misdemeanor for a 2nd or subsequent offense. Under G.S. 14-322.1, abandonment of a child or children for six months is a Class I felony.

BILL ANALYSIS: **Section 1** ***amends the statute that requires the director of the department of social services (DSS) to investigate reports of abuse, neglect, or dependency.*** The bill provides that when a report alleges abandonment, the director is required to immediately initiate an investigation and take appropriate steps to assume temporary custody of the juvenile. The investigation would include a request to law enforcement officials to investigate through the N.C. Center for Missing Persons and other resources to ensure that the juvenile is not a missing child.

Section 2 ***amends the law regarding temporary custody of juveniles*** to require that law officers, DSS workers, health care providers at hospitals or health departments, and medical technicians at fire stations take into temporary custody any infant under 15 days old that is voluntarily delivered by its parent, when the parent does not express an intent to return for the infant. Any other adult may take temporary custody of such infant when its parent voluntarily delivers the infant to the individual, and the parent does not express an intent to return for the infant. In either case, the person who takes the infant into temporary custody is required to do what is necessary to protect the physical health and well-being of the infant, and must immediately notify the DSS. The person may try to obtain information regarding the identity of the parents and any relevant medical history, but the parent is not required to provide the information. An individual who takes an infant into temporary custody under these conditions is immune from any civil or criminal liability that might otherwise be incurred so long as that individual was acting in good faith. The immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

Section 3 ***amends the law regarding the termination of parental rights.*** The bill provides that the court may terminate parental rights upon a finding that the parent has voluntarily abandoned an infant for at least 60 consecutive days immediately prior to the filing of the petition to terminate parental rights.

Section 4 ***amends the misdemeanor child abuse statute*** to provide that a parent who abandons an infant less than 15 days old under specified circumstances will not be prosecuted for acts or omissions related to the care of the infant. (Child abuse is a Class 1 misdemeanor when any parent or caretaker of a child less than 16 years old inflicts physical injury, allows physical injury to be inflicted, or creates or allow a substantial risk of physical injury to the child by other than accidental means.)

Section 5 ***amends the felony child abuse statute*** to provide that abandonment of an infant less than 15 days old under specified circumstances may be treated as a mitigating factor in sentencing for a

conviction of felony child abuse. (Child abuse is a Class E felony when a parent or caretaker of a child less than 16 years old intentionally inflicts any serious physical injury or intentionally commits an assault upon the child that results in any serious physical injury; abuse involving prostitution or sexual acts is also a Class E felony. Child abuse resulting in serious bodily injury (such as permanent disfigurement, coma, or prolonged hospitalization) is a Class C felony.

Section 6 of the bill provides that no parent who voluntarily delivers an infant less than 15 days of age to any of the following shall be prosecuted under G.S. 14-322 (Abandonment and failure to support spouse and children; normally a Class 2 misdemeanor for the 1st offense, Class 1 misdemeanor for a 2nd or subsequent offense) or G.S. 14-322.1 (Abandonment of child or children for six months; normally a Class I felony):

- A health care provider at a hospital or health department; generally those licensed or otherwise registered or certified to engage in the practice of medicine or allied occupations.
- A law enforcement officer at a police station or sheriff's department
- A social services worker at a local DSS
- An emergency medical technician at a fire station
- Any other adult of suitable discretion who willingly accepts the infant

Section 7 ***directs the Department of Health and Human Services to develop a media campaign*** to inform the public of the provisions of the act, targeted at adolescents and young adults. The media campaign is to be developed in consultation with law enforcement officials, local DSSs, medical personnel and school administrators. **Section 8** of the bill ***appropriates $150,000 to the Division of Public Health to fund the campaign.***

The provisions regarding development of the media campaign and its funding are effective July 1, 2000. The statutory changes become effective December 1, 2000 and apply to acts committed on or after that date.

SENATE BILL 1347:
Drivers Points-No Child Restraint

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Phillips
Date:	June 6, 2000	**Summary by:**	Rick Zechini
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1347 mandates the assessment of two drivers license points to any driver who violates the child restraint statute (G.S. 20-137.1).***

CURRENT LAW: G.S. 20-137.1 requires drivers to properly secure passengers of less than 16 years of age by using a child restraint system or seat belt. Children less than five years of age and less than 40 pounds in weight must be secured in a child passenger restraint system. If a vehicle has an active passenger-side air bag, a child less than five years of age and less than 40 pounds in weight must be secured in a child passenger restraint system in a rear seat, if the vehicle has one, unless the child passenger restraint system is designed for use with air bags. All other passengers of less than 16 years of age must wear a seat belt.

Any driver found responsible for a violation of G.S. 20-137.1 may be punished by a penalty not to exceed $25.00, regardless of how many children less than 16 years of age were not properly secured. A driver charged with failure to properly secure a child less than five years of age who acquires a child passenger restraint system prior to his or her trial is not subject to conviction.

The current law does not mandate the assessment of drivers license points or insurance points for a violation of G.S. 20-137.1. G.S. 20-137.1 also states that a violation of the section does not constitute negligence per se or contributory negligence per se, nor is a violation evidence of negligence or contributory negligence.

BILL ANALYSIS: Senate Bill 1347 mandates the assessment of two drivers license points for a violation of G.S. 20-137.1.

BACKGROUND: Under existing law the Division of Motor Vehicles (DMV) may suspend the license of any driver who has accumulated 12 or more drivers license points (points) within a three year period of time. The DMV can also suspend the license of any driver who has accumulated eight or more points in the three year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic violations. The first suspension under the point system is for a period of not more than 60 days, the second is for a period not to exceed six months, and any subsequent suspension is for a period not to exceed one year. The DMV has the discretion to substitute a period of probation not to exceed one year for a suspension. Any violation of probation will result in a suspension for the unexpired remainder of the suspension period. The accumulation of three or more points during a period of probation constitutes a violation of probation.

Whenever a driver accumulates seven or more points, or accumulates as many as four points during the three year period immediately following reinstatement of his or her license after a period of suspension or revocation, the DMV may request the licensee to attend a conference regarding the licensee's driving record. The DMV may also afford any licensee who has accumulated seven or more points, or accumulated as many as four points during the three year period immediately following reinstatement of his or her license after a period of suspension or revocation, an opportunity to attend a driver improvement clinic operated by the DMV and upon successful competition of a course taken at the clinic,

three points will be deducted from the licensee's conviction record. However, only one such deduction of points is allowed within any five year period.

Senate Bill 1347 is a recommendation of the Child Fatality Task Force.

EFFECTIVE DATE: Senate Bill 1347 becomes effective December 1, 2000.

Robert L. Holland
3131 River Road
Franklin, NC 28734

June 5, 2000

Senator Robert C. Carpenter
Senator William Martin
North Carolina General Assembly
517 Legislative Office Building
Raleigh, NC 27601

Dear Senators and Committee Members:

As a detective, I have been involved with many cases that have left a lasting impression on me, but none of them like the morning of February 28, 2000. It was the worst sight I had ever witnessed. No one, let alone a child, should have their final resting place amongst our filth and waste. But there she lay, a newborn baby girl who, only after her mother's arrest, was named Jessica Nicole Fiske. I wish I could tell you how beautiful she was. I wish I could tell you how pretty her brown hair was and how pretty her little face was or how peaceful she looked, even after death, but I can't. In fact, the only good thing about that morning is that Baby Jessica was found. Another fifteen seconds and she would have been buried along with my community's waste. Before Baby Jessica was taken away by ambulance to the hospital, I made her a promise that I know she didn't even hear, but nevertheless, a promise I intended to keep. While standing over the bale of garbage that she was entangled in, I promised her that I would find out who her mother was and that I would do whatever I could to keep this from happening to another baby.

On April 20, 2000, I began a personal campaign to encourage our legislature to find a solution to this type of situation that has happened all over the United States. I started a petition and, to this date, have over 2300 signatures from members of my community including area churches and including letters of support from our city and county officials. This legislation would give a desperate mother an alternative to killing her baby or leaving the child to die and would give an innocent child a chance to live and be loved the way all children should be.

We cannot change what happened to Jessica Nicole Fiske, but I can only imagine that, had this legislation been in effect at the time of this baby's birth, she might be a beautiful 3 1/2 month old baby girl in a loving home with her whole life ahead of her. What we can do is put forth an effort, through this legislation, that may possibly prevent this from happening to the next baby born under desperate circumstances. I believe that the proposed legislation offers the best solution thus far and as one editor quoted, "would be a fitting testimonial to a little girl who died."

Sincerely, Robert Holland

Detective Sgt. Robert L. Holland
Macon County Sheriff's Dept.

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EDITORIAL

SUNDAY JUNE 4, 2000

Holland's honor well-deserved

WRITE A LETTER TO THE EDITOR
Share your opinions with us

Robbie Holland was surprised when he was honored as North Carolina's juvenile law officer of the year. No one else should have been.

Holland, a Macon County Sheriff's Department detective, led the investigation that resulted in murder charges against a 21-year-old Western Carolina University student accused of putting her newborn baby girl in a Macon landfill. But that was not the end of the matter for Holland. He felt that something needed to be done to prevent more such tragedies. Mothers who kill their newborns presumably do so either out of shame or the fear of prosecution if they turn the child over to someone.

Holland is supporting a bill that would allow mothers to give their babies to a responsible adult without being charged with a crime and without having to reveal their names. He has collected petitions with more than 2,300 signatures and has enlisted the support of Macon leaders. Holland's determination grew out of the anguish that followed the mother's arrest.

"When it was all over, with you had to sit down and sleep -- that's when it hit me," he said.

He was so stunned by his award than he could not come up with a speech at the Atlantic Beach ceremonies. He simply dedicated the honor to three people: his father, the baby girl and Wesley Powell, who died in a Franklin day-care center fire last year. Holland still was stunned after he returned to Franklin last week.

"It's like a dream," he said. "I'm going to wake up tomorrow and it will be gone."

No it won't. But, as the honoree knows, the task is not over as long as a baby dies. The legislature can join in Holland's crusade by passing the abandonment bill. That would be a fitting testimonial to a little girl who died and a detective who cares.

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The University of North Carolina
HIGHWAY SAFETY RESEARCH CENTER

To: Tom Bennett, NC Child Fatality Task Force

From: Bill Hall

Date: May 30, 2000

Subject: Estimates of Benefits from Driver License Points for Child Passenger Safety Law Violations

As you have requested, the University of North Carolina Highway Safety Research Center (HSRC) has generated estimates of the potential benefits that might be expected if North Carolina were to assign driver license points for Child Passenger Safety (CPS) Law violations.

The latest restraint use data for North Carolina children less than age sixteen (Fall, 1999 observational data) indicated that 79% of children and youth were restrained by either a child restraint device or seat belt. This rate is similar to the seat belt use rate for North Carolina drivers and right front occupants. It is interesting to note that restraint use rates for children vary greatly by age, even when covered by the NC CPS law. Whereas 93% of the young children (less than age 4) were observed to be restrained, only 72%, of the children ages 4 through 11 were buckled. A slightly smaller percentage, 69%, of the youth ages 12 through 15 were observed to be buckled. These older children were not covered by the CPS law at the time of the survey but were covered by the seat belt law if riding in the front seat.

Based on information currently available, it does not appear that increasing the fine for violations would have any significant impact on restraint use. In contrast to increased fines, assigning demerit points to safety belt and child restraint violations should substantially increase restraint use rates.

As North Carolina restraint use rates have approached and even exceeded 80%, research indicates that the remaining nonusers are different in many ways from belt users: they are more often involved in high risk behaviors such as drinking and driving, are less likely to have health care coverage, and are more likely to be involved in crashes. The rate for over-involvement in crashes by nonusers has been determined by HSRC to be at least 35%. Surveys of nonusers indicate that they would be unlikely to respond to higher fines for seat belt violations. However, they did report that they would be likely to respond to the assignment of demerit points with the increased risk of license suspension. In fact, 60% of the unbelted respondents said that they would <u>always</u> wear their seat belt if points on their driver license were involved. Because of their

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high risk lifestyle and higher crash involvement, increased use of restraints among this population would result in even greater reductions in deaths.

It seems reasonable to assume that seat belt nonusers would be the most likely to fail to restrain children in their cars. The National Highway Traffic Safety Administration (NHTSA) reports that, according to observational surveys, belt usage by the driver correlates with occupant restraint usage by children in the vehicle. Specifically, NHTSA reports that in North Carolina when the driver is belted, 95% of the children in the vehicle are restrained but when the driver is not belted, only 44% of the children are restrained.

To estimate the benefits that might be expected in North Carolina by assigning driver license points for child passenger safety law violations, we have made the same assumptions previously made related to overall seat belt use:

1. Driver license demerit points, in conjunction with a continued enforcement program, would increase restraint use for covered child occupants from 80% to 90%, and
2. The estimate of fatality reductions from increased seat belt use is based on an effectiveness estimate of 45% for seat belts (most of the unrestrained children are of seat belt age) in reducing fatal and serious injuries.

The formula for estimating fatality and serious injury reductions from increased seat belt use is derived from the study "Estimating Fatality Reductions from Increased Safety Belt Use." published in Risk Analysis (Evans, LE, "Estimating Fatality Reductions from Increased Safety Belt Use." Risk Analysis, vol. 7, no.1 , pp 49-57. 1987). Based on this formula, increasing restraint use for children from 80% to 90% would lead to an 8.1% decrease in fatalities and a 9.5% decrease in serious (A-type) injuries.

The table included below summarizes benefits that North Carolina could have had if driver license points had been assigned for child passenger safety law violations during the years 1996 through 1999. As indicated in the table, there has been an average of nearly 58,000 crash-involved occupants per year covered by the North Carolina child passenger safety law. Of these covered occupants, an average of 58 children and youth were killed and 472 received serious injuries (serious injuries are coded as "A" injuries on the NC motor vehicle crash report form and data files). Applying the expected percentage decreases of 8.1% for fatalities and 9.5% for serious injuries, increasing restraint use to 90% should lead to an additional 5 lives and 45 serious injuries prevented per year for children less than sixteen years old.

Cost estimates have previously been developed by Dr. Ted Miller for North Carolina motor vehicle crashes. Dr. Miller estimated that the societal cost, including lost productivity, for each fatality is $829,273 and for each serious (A-type) injury the cost is $43,269. Multiplying the number of deaths and serious injuries that could be prevented by these cost estimates indicates that increasing restraint use for children less than age sixteen from 80% to 90% should lead to an estimated annual cost savings (including lost productivity) of $1,900,000 for fatalities and

$3,900,000 for serious injuries. When only the direct medical and emergency services costs of $16,932 per fatality and $19,502 per serious injury are considered, the corresponding annual cost reduction estimates are $80,000 for fatalities and $900,000 for serious injuries.

It should be noted that children ages twelve through fifteen riding in the back seat were not covered by the NC CPS law until October, 1999. Thus, the estimates presented above are somewhat conservative since they do not include this group of children except for the three months they were covered (October - December, 1999). North Carolina crash data indicates that an average of 8,100 children ages 12 through 15 are involved in crashes as rear seat occupants each year. Increasing restraint use among this group should result in additional decreases of one or two fatalities and ten serious injuries per year.

Expected Benefits to NC Children less than Age 16 from Driver License Points for Violators									
	Involvement and Injuries			Expected Benefits					
						Cost			
	Covered Occupants	Injuries[2]		Reduced Injuries		Including Lost Productivity		Direct Medical and EMS	
Year	Involved[1]	#K	#A	#K	#A	$K	$A	$K	$A
1996	56,416	53	505	4	48	$3,317,092	$2,076,912	$67,728	$936,096
1997	56,916	65	493	5	47	$4,146,365	$2,033,643	$84,660	$916,594
1998	57,811	60	451	5	43	$4,146,365	$1,860,567	$84,660	$838,586
1999	60,215	53	440	4	42	$3,317,092	$1,817,298	$67,728	$819,084
Avg[3]	57,840	58	472	5	45	$3,900,000	$1,900,000	$80,000	$900,000

[1] Covered by the Seat Belt or Child Passenger Safety Law
[2] K = Killed, A = Incapacitating injury
[3] Average per year with cost rounded to nearest $100,000 or $10,000

VISITOR REGISTRATION SHEET

J. #2 Chairman Miller June 6 - 2000
Name of Committee Date

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Joy Barbour	Concerned Biker's Assoc./ABATE of N.C.
Jim Everhart	CONCERNED BIKER'S ASSOC./ABATE OF NC
Warren Pagels WOLF	Concerned Bikers Assoc./ABATE of NC.
Susan Schmidt	NC Justice Center
Paula A. Wolf	Covenant W/NC's Children
Sara R. Allen	"
Amanda Abrams	"
[illegible]	NC-NOW
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Christy Earnhardt	NCNTL
Sara Seigler	Governor's Office

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NAME	FIRM OR AGENCY AND ADDRESS
Lisa Tofil	Carolinas Healthcare System

SENATE JUDICIARY II COMMITTEE

JUNE 13, 2000

MINUTES

The Senate Judiciary II Committee met on June 13, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Eleven members were present, including Senator Miller, who presided.

Brenda Carter, Legislative Research staff, was recognized to explain the proposed committee substitute. She explained the changes as follows: the first change refers to an individual who "accepts" an infant instead of "takes" an infant into temporary custody; any person accepting an infant must report to the Department of Social Services within 72 hours; and the third change makes the media campaign optional and deletes the $150,000 appropriation for the media campaign.

Senator Martin moved to adopt the proposed committee substitute. The motion carried unanimously.

Speaking from the public in favor of the bill were the following: Tom Bennett, NC Child Fatality Task Force; Kay Michaels, Planned Parenthood of Orange and Durham Counties; and Tom Vitaglione, NC Child Advocacy Institute.

Senator Miller announced that SB 1257 would be taken up at the next meeting.

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

SENATE JUDICIARY II COMMITTEE

JUNE 13, 2000

ROOM 1124

SB 1257 Abandoned Infant Protection Act Senator Bill Martin

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1257

Short Title: Abandoned Infant Protection Act. (Public)

Sponsors: Senators Martin of Guilford, Carpenter; Albertson, Carter, Clodfelter, Dannelly, Foxx, Kinnaird, Lee, Lucas, Phillips, Plyler, Purcell, Robinson, Warren, Weinstein, and Wellons.

Referred to: Judiciary II.

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO DECRIMINALIZE ABANDONMENT OF AN INFANT UNDER CERTAIN CIRCUMSTANCES AND TO MODIFY SOME PROCEDURES INVOLVING ABANDONED JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. Notwithstanding the previous sentence, when a report alleges abandonment, the director shall immediately initiate an investigation and shall take appropriate steps to assume temporary custody of the juvenile and to secure an order for nonsecure custody of the juvenile. The investigation and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources to ensure that the juvenile is not a missing child. All information

received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department."

Section 2. G.S. 7B-500 reads as rewritten:

"**§ 7B-500. Taking a juvenile into temporary ~~custody.~~ custody; civil and criminal immunity.**

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) A law enforcement officer, a department of social services worker, a health care provider as defined in G.S. 90-21.11 at a hospital or local or district health department, or an emergency medical technician at a fire station shall, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(c) Any adult may, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(d) An individual who takes an infant into temporary custody under subsection (b) or (c) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to the requirements of subsection (b) or (c) of this section so long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

Section 3. G.S. 7B-1111(a) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a

reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 4. G.S. 14-318.2 is amended by adding a new subsection to read:

"(c) A parent who abandons an infant less than 15 days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

Section 5. G.S. 14-318.4 is amended by adding a new subsection to read:

"(c) Abandonment of an infant less than 15 days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant."

Section 6. Article 40 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-322.3. Abandonment of an infant under 15 days of age.**

No parent shall be prosecuted under G.S. 14-322 or G.S. 14-322.1 for abandonment of an infant less than 15 days of age when that parent voluntarily delivers the infant to one of the following individuals and does not express an intent to return for the infant:

(1) A health care provider, as defined under G.S. 90-21.11, at a hospital or at a local or district health department.

(2) A law enforcement officer at a police station or sheriff's department.

(3) A social services worker at a local department of social services.

(4) An emergency medical technician at a fire station.

(5) Any other adult of suitable discretion who willingly accepts the infant."

Section 7. The Department of Health and Human Services, Division of Public Health, shall develop a media campaign to inform the public of the provisions of this act. This media campaign shall contain information on responsible parenting in addition to information about the provisions of the act. This media campaign shall be targeted at adolescents and young adults. This media campaign shall be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school administrators.

Section 8. There is appropriated from the General Fund the sum of one hundred fifty thousand dollars ($150,000) for the 2000-2001 fiscal year to the Department of Health and Human Services, Division of Public Health, to implement the provisions of Section 7 of this act.

Section 9. Sections 1 through 6 of this act become effective December 1, 2000, and apply to acts committed on or after that date. The remainder of this act becomes effective July 1, 2000.

SENATE BILL 1257:
ABANDONED INFANT PROTECTION ACT

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Bill Martin
Date:	June 13, 2000	**Summary by:**	Brenda J. Carter
Version:	Proposed Committee Sub. S1257-CSRV-001		Committee Co-Counsel

SUMMARY: ***Senate Bill 1257 provides that a parent may not be prosecuted for criminal abandonment of an infant less than 15 days old if the parent voluntarily delivers the child to a health care provider, an officer at a police station or sheriff's department, an EMT at a fire station, or to any other adult of suitable discretion who willingly accepts the infant.***

PROPOSED COMMITTEE SUBSTITUTE: *Differs from the original bill in that it refers to an individual who "accepts" an infant rather than takes an infant "into temporary custody". It also puts a 72 hour limit within which a person must notify DSS that he or she has accepted a child from a parent who does not intend to return. The proposed committee sub deletes the $150,000 appropriation for the media campaign, and makes the media campaign permissive rather than mandatory.*

CURRENT LAW: Under G.S. 14-322, abandonment and failure to support spouse and children is a Class 2 misdemeanor for the 1st offense, a Class 1 misdemeanor for a 2nd or subsequent offense. Under G.S. 14-322.1, abandonment of a child or children for six months is a Class I felony.

BILL ANALYSIS: **Section 1** ***amends the statute that requires the director of the department of social services (DSS) to investigate reports of abuse, neglect, or dependency.*** The bill provides that when a report alleges abandonment, the director is required to immediately initiate an investigation and take appropriate steps to assume temporary custody of the juvenile. The investigation would include a request to law enforcement officials to investigate through the N.C. Center for Missing Persons and other resources to ensure that the juvenile is not a missing child.

Section 2 ***amends the law regarding temporary custody of juveniles*** to require that law officers, DSS workers, health care providers at hospitals or health departments, and medical technicians at fire stations {take into temporary custody} *accept* any infant under 15 days old that is voluntarily delivered by its parent, when the parent does not express an intent to return for the infant. Any other adult may {take temporary custody of} *accept* such infant when its parent voluntarily delivers the infant to the individual, and the parent does not express an intent to return for the infant. In either case, the person who {takes the infant into temporary custody} *accepts the infant* is required to do what is necessary to protect the physical health and well-being of the infant, and must immediately notify the DSS. *(In the case of an individual who accepts the infant, the proposed committee sub requires immediate notification but specifies a 72 hour time limit for private individuals).* The person may try to obtain information regarding the identity of the parents and any relevant medical history, but the parent is not required to provide the information. An individual who {takes an infant into temporary custody} *accepts an infant* under these conditions is immune from any civil or criminal liability that might otherwise be incurred so long as that individual was acting in good faith. The immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

Section 3 ***amends the law regarding the termination of parental rights***. The bill provides that the court may terminate parental rights upon a finding that the parent has voluntarily abandoned an infant for at least 60 consecutive days immediately prior to the filing of the petition to terminate parental rights.

Section 4 ***amends the misdemeanor child abuse statute*** to provide that a parent who abandons an infant less than 15 days old under specified circumstances will not be prosecuted for acts or omissions related to the care of the infant. (Child abuse is a Class 1 misdemeanor when any parent or caretaker of a child less than 16 years old inflicts physical injury, allows physical injury to be inflicted, or creates or allow a substantial risk of physical injury to the child by other than accidental means.)

Section 5 ***amends the felony child abuse statute*** to provide that abandonment of an infant less than 15 days old under specified circumstances may be treated as a mitigating factor in sentencing for a conviction of felony child abuse. (Child abuse is a Class E felony when a parent or caretaker of a child less than 16 years old intentionally inflicts any serious physical injury or intentionally commits an assault upon the child that results in any serious physical injury; abuse involving prostitution or sexual acts is also a Class E felony. Child abuse resulting in serious bodily injury (such as permanent disfigurement, coma, or prolonged hospitalization) is a Class C felony.

Section 6 of the bill provides that no parent who voluntarily delivers an infant less than 15 days of age to any of the following shall be prosecuted under G.S. 14-322 (Abandonment and failure to support spouse and children; normally a Class 2 misdemeanor for the 1st offense, Class 1 misdemeanor for a 2nd or subsequent offense) or G.S. 14-322.1 (Abandonment of child or children for six months; normally a Class I felony):

- A health care provider at a hospital or health department; generally those licensed or otherwise registered or certified to engage in the practice of medicine or allied occupations.
- A law enforcement officer at a police station or sheriff's department
- A social services worker at a local DSS
- An emergency medical technician at a fire station
- Any other adult of suitable discretion who willingly accepts the infant

Section 7 ***authorizes the Department of Health and Human Services to develop a media campaign*** to inform the public of the provisions of the act, targeted at adolescents and young adults. The media campaign is to be developed in consultation with law enforcement officials, local DSSs, medical personnel and school administrators. **Section 8** of the proposed committee sub eliminates the $150,000 appropriation in the original bill and ***makes the campaign and option rather than a directive.***

The provision regarding development of the media campaign is effective July 1, 2000. The statutory changes become effective December 1, 2000 and apply to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1257-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1257
THIS IS A DRAFT 12-JUN-00 14:29:06
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Abandoned Infant Protection Act. (Public)

Sponsors:

Referred to:

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO DECRIMINALIZE ABANDONMENT OF AN INFANT UNDER CERTAIN CIRCUMSTANCES AND TO MODIFY SOME PROCEDURES INVOLVING ABANDONED JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. Notwithstanding the previous sentence, when a report alleges

abandonment, the director shall immediately initiate an investigation and shall take appropriate steps to assume temporary custody of the juvenile and to secure an order for nonsecure custody of the juvenile. The investigation and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources to ensure that the juvenile is not a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department."

Section 2. G.S. 7B-500 reads as rewritten:

"**§ 7B-500. Taking a juvenile into temporary ~~custody.~~ custody; civil and criminal immunity.**

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) A law enforcement officer, a department of social services worker, a health care provider as defined in G.S. 90-21.11 at a hospital or local or district health department, or an emergency medical technician at a fire station shall, without a court order, accept an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who accepts an infant under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who accepts an infant under this subsection may inquire as to the parents' identities and as to

any relevant medical history, but the parent is not required to provide this information.

(c) Any adult may, without a court order, accept an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who accepts an infant under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately, but no later than 72 hours after accepting the infant from the parent, notify the department of social services. An individual who accepts an infant under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(d) An individual who accepts an infant under subsection (b) or (c) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to the requirements of subsection (b) or (c) of this section so long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

Section 3. G.S. 7B-1111(a) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole

reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 4. G.S. 14-318.2 is amended by adding a new subsection to read:

"(c) A parent who abandons an infant less than 15 days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

Section 5. G.S. 14-318.4 is amended by adding a new subsection to read:

"(c) Abandonment of an infant less than 15 days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant."

Section 6. Article 40 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-322.3. Abandonment of an infant under 15 days of age.**

No parent shall be prosecuted under G.S. 14-322 or G.S. 14-322.1 for abandonment of an infant less than 15 days of age when that parent voluntarily delivers the infant to one of the following individuals and does not express an intent to return for the infant:

(1) A health care provider, as defined under G.S. 90-21.11, at a hospital or at a local or district health department.

(2) A law enforcement officer at a police station or sheriff's department.

(3) A social services worker at a local department of social services.

(4) An emergency medical technician at a fire station.

(5) Any other adult of suitable discretion who willingly accepts the infant."

Section 7. The Department of Health and Human Services, Division of Public Health, may develop a media campaign to inform the public of the provisions of this act. If developed, this media campaign shall be targeted at adolescents and young adults and shall contain information on responsible parenting in addition to information about the provisions of the act. Any media campaign undertaken pursuant to this act shall be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school administrators.

Section 8. Sections 1 through 6 of this act become effective December 1, 2000, and apply to acts committed on or after that date. The remainder of this act becomes effective July 1, 2000.

CITIZEN-TIMES.com
EDITORIAL

A GANNETT NEWSPAPER SUNDAY JUNE 4, 2000 STAY DAY

Holland's honor well-deserved

Robbie Holland was surprised when he was honored as North Carolina's juvenile law officer of the year. No one else should have been.

WRITE A LETTER TO THE EDITOR
Share your opinions with us

Holland, a Macon County Sheriff's Department detective, led the investigation that resulted in murder charges against a 21-year-old Western Carolina University student accused of putting her newborn baby girl in a Macon landfill. But that was not the end of the matter for Holland. He felt that something needed to be done to prevent more such tragedies. Mothers who kill their newborns presumably do so either out of shame or the fear of prosecution if they turn the child over to someone.

Holland is supporting a bill that would allow mothers to give their babies to a responsible adult without being charged with a crime and without having to reveal their names. He has collected petitions with more than 2,300 signatures and has enlisted the support of Macon leaders. Holland's determination grew out of the anguish that followed the mother's arrest.

"When it was all over, with you had to sit down and sleep -- that's when it hit me," he said.

He was so stunned by his award than he could not come up with a speech at the Atlantic Beach ceremonies. He simply dedicated the honor to three people: his father, the baby girl and Wesley Powell, who died in a Franklin day-care center fire last year. Holland still was stunned after he returned to Franklin last week.

"It's like a dream," he said. "I'm going to wake up tomorrow and it will be gone."

No it won't. But, as the honoree knows, the task is not over as long as a baby dies. The legislature can join in Holland's crusade by passing the abandonment bill. That would be a fitting testimonial to a little girl who died and a detective who cares.

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(updated April 21, 2000).

Robert L. Holland
3131 River Road
Franklin, NC 28734

June 5, 2000

Senator Robert C. Carpenter
Senator William Martin
North Carolina General Assembly
517 Legislative Office Building
Raleigh, NC 27601

Dear Senators and Committee Members:

As a detective, I have been involved with many cases that have left a lasting impression on me, but none of them like the morning of February 28, 2000. It was the worst sight I had ever witnessed. No one, let alone a child, should have their final resting place amongst our filth and waste. But there she lay, a newborn baby girl who, only after her mother's arrest, was named Jessica Nicole Fiske. I wish I could tell you how beautiful she was. I wish I could tell you how pretty her brown hair was and how pretty her little face was or how peaceful she looked, even after death, but I can't. In fact, the only good thing about that morning is that Baby Jessica was found. Another fifteen seconds and she would have been buried along with my community's waste. Before Baby Jessica was taken away by ambulance to the hospital, I made her a promise that I know she didn't even hear, but nevertheless, a promise I intended to keep. While standing over the bale of garbage that she was entangled in, I promised her that I would find out who her mother was and that I would do whatever I could to keep this from happening to another baby.

On April 20, 2000, I began a personal campaign to encourage our legislature to find a solution to this type of situation that has happened all over the United States. I started a petition and, to this date, have over 2300 signatures from members of my community including area churches and including letters of support from our city and county officials. This legislation would give a desperate mother an alternative to killing her baby or leaving the child to die and would give an innocent child a chance to live and be loved the way all children should be.

We cannot change what happened to Jessica Nicole Fiske, but I can only imagine that, had this legislation been in effect at the time of this baby's birth, she might be a beautiful 3 1/2 month old baby girl in a loving home with her whole life ahead of her. What we can do is put forth an effort, through this legislation, that may possibly prevent this from happening to the next baby born under desperate circumstances. I believe that the proposed legislation offers the best solution thus far and as one editor quoted, "would be a fitting testimonial to a little girl who died."

Sincerely,

Robert Holland

Detective Sgt. Robert L. Holland
Macon County Sheriff's Dept.

In our op

Robbie Holland awarded for taking his work home

Until late last month, good news seemed a bit scarce at the Macon County Sheriff's Office. During the past 12 months, department officers were forced to play important roles in tragic cases. Those cases included a daycare fire that claimed the life of a local two-year-old and the discovery of the body of a newborn baby in the Macon County landfill.

Probing into such tragic events takes its toll on even the most experienced law-enforcement officers, especially when they must perform their duties while juggling questions from reporters assigned to cover those events.

The sheriff's department also had its share of tough days following an investigation of one of its own – a former sheriff's deputy who was arrested on domestic abuse charges. The officer was eventually tried and acquitted. Though he no longer works with the sheriff's office, the case was embarrassing for local officers.

Last month, however, the sheriff's department finally received some good news. Robbie Holland, a Macon County sheriff's detective and juvenile officer, was presented with the L.T. Williams Award, the state's most prestigious award in juvenile law enforcement.

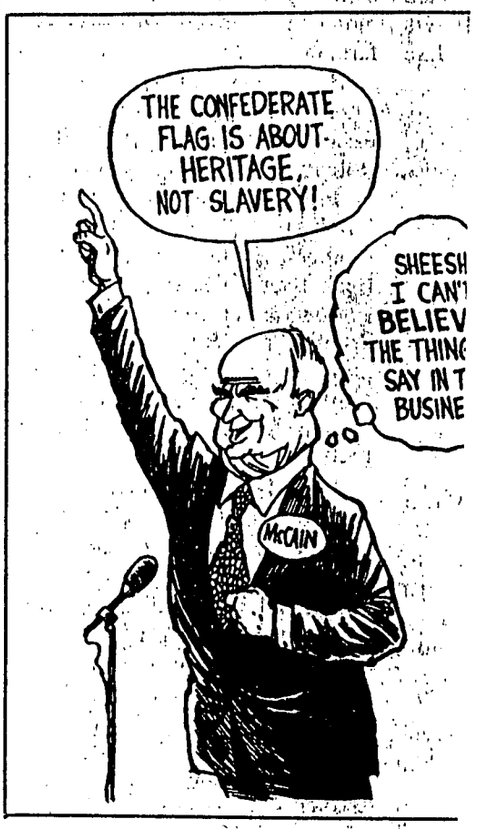
"We give the L.T. Williams Award to someone who really went beyond the call of duty," said David Pendley, a member of the N.C. Juvenile Officers Association, which presented the award to Holland. "Robbie had some pretty high-profile cases, and he just really distinguished himself."

Holland was chosen to receive the award after he was nominated by his coworkers. Their praise of his job performance echoed Pendley's.

"This year has been very mentally and physically draining, considering the cases we've had," said Pat Taylor, captain of investigations with the department. "Through all this, Robbie has exemplified what a law enforcement officer should be."

"It's more of a calling than a job to him," said Bob Scott, the department's executive officer. "He's been a part of every major investigation we've had in years. If something big happens, he always seems to be right there."

We, too, wish to congratulate Holland. We're also glad the Macon County Sheriff's Office received some good news.



Know

County troubled

Macon County a haven for outlaws?

According to Silas McDowell, the early settler and observer to whom I have referred several times in these columns, the first 20 years of the county's existence were troubled by crime.



Barbara McRae
columnist

Writing in February, 1875 for the North Carolina Citizen, McDowell noted that at the land sale of 1820, held in Waynesville, all the best lands in the county — the bottom lands — sold at once. However, a vast reservoir of unsold land remained for quite some time, "and this gave room to a drifting population of low-grade civilization that, for nearly twenty years, stuck like burrs to the skirts of the robes of Macon County's social character."

"The most abiding damage," McDowell claimed, "was the wearing out of nearly all her uplands, which fact accounts for Macon holding more acres of old fields of worn out land than

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VISITOR REGISTRATION SHEET

D#11 — June 13, 2002

Name of Committee — Date

Miller Chair

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Adams	Covenant w/ NC's Children
Kay Michaels	PPOD
Tom Vitaglione	NC CHILD ADVOCACY INST.
JoAnn Lamm	DHHS/DSS
Sharon Hirsh	NC Social Services Consortium
Anne Winn	NCAW
John Rust	NCFPC
MARK H. CREECH	C. A. C.
Greg Owens	ACLU-NC
Jonathan Horowitz	ACLU-NC
Gail Bishop	Sen. Linda Garson
Jamie Bell	Attorney
Scott Mooneyham	AP
Alicia Greenbaum	YAIO
Amy E. Pa[illegible]	Senator Purdue

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
DB	[illegible]
David Knight	NC Sierra Club
Thomas Vance Bennett	NCCFTF

SENATE JUDICIARY II COMMITTEE

JUNE 15, 2000

MINUTES

The Senate Judiciary II Committee met on June 15, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Eleven members were present, including Senator Miller, who presided.

Senator Miller called on Shernese Ransome, from the NC Department of Social Services, who answered questions pertaining to termination of parental rights.

Senator Dalton moved to amend the bill on page 2, line 33. The motion carried unanimously.

Senator Forrester moved to amend the bill on page 5, line 15, changing 60 consecutive days to 180 days. Senator Martin asked that Senator Forrester withdraw his amendment to allow for further study and to amend the bill on the Senate floor, if appropriate. Senator Forrester complied.

Senator Kerr moved to refer the bill to a subcommittee. The motion carried.

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

SENATE JUDICIARY II COMMITTEE

JUNE 15, 2000

ROOM 1124

SB 1257	Abandoned Infant Protection Act	Senator Bill Martin
Adjournment		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1257

Short Title: Abandoned Infant Protection Act. (Public)

Sponsors: Senators Martin of Guilford, Carpenter; Albertson, Carter, Clodfelter, Dannelly, Foxx, Kinnaird, Lee, Lucas, Phillips, Plyler, Purcell, Robinson, Warren, Weinstein, and Wellons.

Referred to: Judiciary II.

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO DECRIMINALIZE ABANDONMENT OF AN INFANT UNDER CERTAIN CIRCUMSTANCES AND TO MODIFY SOME PROCEDURES INVOLVING ABANDONED JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. Notwithstanding the previous sentence, when a report alleges abandonment, the director shall immediately initiate an investigation and shall take appropriate steps to assume temporary custody of the juvenile and to secure an order for nonsecure custody of the juvenile. The investigation and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources to ensure that the juvenile is not a missing child. All information

received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department."

Section 2. G.S. 7B-500 reads as rewritten:

"**§ 7B-500. Taking a juvenile into temporary ~~custody.~~ custody; civil and criminal immunity.**

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) A law enforcement officer, a department of social services worker, a health care provider as defined in G.S. 90-21.11 at a hospital or local or district health department, or an emergency medical technician at a fire station shall, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(c) Any adult may, without a court order, take into temporary custody an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who takes an infant into temporary custody under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who takes an infant into temporary custody under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(d) An individual who takes an infant into temporary custody under subsection (b) or (c) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to the requirements of subsection (b) or (c) of this section so long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

Section 3. G.S. 7B-1111(a) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a

reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 4. G.S. 14-318.2 is amended by adding a new subsection to read:

"(c) A parent who abandons an infant less than 15 days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

Section 5. G.S. 14-318.4 is amended by adding a new subsection to read:

"(c) Abandonment of an infant less than 15 days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant."

Section 6. Article 40 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-322.3. Abandonment of an infant under 15 days of age.**

No parent shall be prosecuted under G.S. 14-322 or G.S. 14-322.1 for abandonment of an infant less than 15 days of age when that parent voluntarily delivers the infant to one of the following individuals and does not express an intent to return for the infant:

(1) A health care provider, as defined under G.S. 90-21.11, at a hospital or at a local or district health department.

(2) A law enforcement officer at a police station or sheriff's department.

(3) A social services worker at a local department of social services.

(4) An emergency medical technician at a fire station.

(5) Any other adult of suitable discretion who willingly accepts the infant."

Section 7. The Department of Health and Human Services, Division of Public Health, shall develop a media campaign to inform the public of the provisions of this act. This media campaign shall contain information on responsible parenting in addition to information about the provisions of the act. This media campaign shall be targeted at adolescents and young adults. This media campaign shall be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school administrators.

Section 8. There is appropriated from the General Fund the sum of one hundred fifty thousand dollars ($150,000) for the 2000-2001 fiscal year to the Department of Health and Human Services, Division of Public Health, to implement the provisions of Section 7 of this act.

Section 9. Sections 1 through 6 of this act become effective December 1, 2000, and apply to acts committed on or after that date. The remainder of this act becomes effective July 1, 2000.

SENATE BILL 1257:
ABANDONED INFANT PROTECTION ACT

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Bill Martin
Date:	June 13, 2000	**Summary by:**	Brenda J. Carter
Version:	Proposed Committee Sub. S1257-CSRV-001		Committee Co-Counsel

SUMMARY: ***Senate Bill 1257 provides that a parent may not be prosecuted for criminal abandonment of an infant less than 15 days old if the parent voluntarily delivers the child to a health care provider, an officer at a police station or sheriff's department, an EMT at a fire station, or to any other adult of suitable discretion who willingly accepts the infant.***

PROPOSED COMMITTEE SUBSTITUTE: *Differs from the original bill in that it refers to an individual who "accepts" an infant rather than takes an infant "into temporary custody". It also puts a 72 hour limit within which a person must notify DSS that he or she has accepted a child from a parent who does not intend to return. The proposed committee sub deletes the $150,000 appropriation for the media campaign, and makes the media campaign permissive rather than mandatory.*

CURRENT LAW: Under G.S. 14-322, abandonment and failure to support spouse and children is a Class 2 misdemeanor for the 1st offense, a Class 1 misdemeanor for a 2nd or subsequent offense. Under G.S. 14-322.1, abandonment of a child or children for six months is a Class I felony.

BILL ANALYSIS: **Section 1** ***amends the statute that requires the director of the department of social services (DSS) to investigate reports of abuse, neglect, or dependency.*** The bill provides that when a report alleges abandonment, the director is required to immediately initiate an investigation and take appropriate steps to assume temporary custody of the juvenile. The investigation would include a request to law enforcement officials to investigate through the N.C. Center for Missing Persons and other resources to ensure that the juvenile is not a missing child.

Section 2 ***amends the law regarding temporary custody of juveniles*** to require that law officers, DSS workers, health care providers at hospitals or health departments, and medical technicians at fire stations {take into temporary custody} *accept* any infant under 15 days old that is voluntarily delivered by its parent, when the parent does not express an intent to return for the infant. Any other adult may {take temporary custody of} *accept* such infant when its parent voluntarily delivers the infant to the individual, and the parent does not express an intent to return for the infant. In either case, the person who {takes the infant into temporary custody} *accepts the infant* is required to do what is necessary to protect the physical health and well-being of the infant, and must immediately notify the DSS. *(In the case of an individual who accepts the infant, the proposed committee sub requires immediate notification but specifies a 72 hour time limit for private individuals).* The person may try to obtain information regarding the identity of the parents and any relevant medical history, but the parent is not required to provide the information. An individual who {takes an infant into temporary custody} *accepts an infant* under these conditions is immune from any civil or criminal liability that might otherwise be incurred so long as that individual was acting in good faith. The immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

Section 3 ***amends the law regarding the termination of parental rights***. The bill provides that the court may terminate parental rights upon a finding that the parent has voluntarily abandoned an infant for at least 60 consecutive days immediately prior to the filing of the petition to terminate parental rights.

Section 4 ***amends the misdemeanor child abuse statute*** to provide that a parent who abandons an infant less than 15 days old under specified circumstances will not be prosecuted for acts or omissions related to the care of the infant. (Child abuse is a Class 1 misdemeanor when any parent or caretaker of a child less than 16 years old inflicts physical injury, allows physical injury to be inflicted, or creates or allow a substantial risk of physical injury to the child by other than accidental means.)

Section 5 ***amends the felony child abuse statute*** to provide that abandonment of an infant less than 15 days old under specified circumstances may be treated as a mitigating factor in sentencing for a conviction of felony child abuse. (Child abuse is a Class E felony when a parent or caretaker of a child less than 16 years old intentionally inflicts any serious physical injury or intentionally commits an assault upon the child that results in any serious physical injury; abuse involving prostitution or sexual acts is also a Class E felony. Child abuse resulting in serious bodily injury (such as permanent disfigurement, coma, or prolonged hospitalization) is a Class C felony.

Section 6 of the bill provides that no parent who voluntarily delivers an infant less than 15 days of age to any of the following shall be prosecuted under G.S. 14-322 (Abandonment and failure to support spouse and children; normally a Class 2 misdemeanor for the 1st offense, Class 1 misdemeanor for a 2nd or subsequent offense) or G.S. 14-322.1 (Abandonment of child or children for six months; normally a Class I felony):

- A health care provider at a hospital or health department; generally those licensed or otherwise registered or certified to engage in the practice of medicine or allied occupations.
- A law enforcement officer at a police station or sheriff's department
- A social services worker at a local DSS
- An emergency medical technician at a fire station
- Any other adult of suitable discretion who willingly accepts the infant

Section 7 ***authorizes the Department of Health and Human Services to develop a media campaign*** to inform the public of the provisions of the act, targeted at adolescents and young adults. The media campaign is to be developed in consultation with law enforcement officials, local DSSs, medical personnel and school administrators. **Section 8** of the proposed committee sub eliminates the $150,000 appropriation in the original bill and ***makes the campaign and option rather than a directive.***

The provision regarding development of the media campaign is effective July 1, 2000. The statutory changes become effective December 1, 2000 and apply to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1257-CSRV-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1257
THIS IS A DRAFT 12-JUN-00 14:29:06
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Abandoned Infant Protection Act. (Public)

Sponsors:

Referred to:

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO DECRIMINALIZE ABANDONMENT OF AN INFANT UNDER CERTAIN CIRCUMSTANCES AND TO MODIFY SOME PROCEDURES INVOLVING ABANDONED JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. Notwithstanding the previous sentence, when a report alleges

abandonment, the director shall immediately initiate an investigation and shall take appropriate steps to assume temporary custody of the juvenile and to secure an order for nonsecure custody of the juvenile. The investigation and evaluation shall include a visit to the place where the juvenile resides. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources to ensure that the juvenile is not a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department."

Section 2. G.S. 7B-500 reads as rewritten:

"**§ 7B-500. Taking a juvenile into temporary ~~custody.~~ custody; civil and criminal immunity.**

(a) Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

(b) A law enforcement officer, a department of social services worker, a health care provider as defined in G.S. 90-21.11 at a hospital or local or district health department, or an emergency medical technician at a fire station shall, without a court order, accept an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who accepts an infant under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately notify the department of social services. An individual who accepts an infant under this subsection may inquire as to the parents' identities and as to

any relevant medical history, but the parent is not required to provide this information.

(c) Any adult may, without a court order, accept an infant under 15 days of age that is voluntarily delivered to the individual by the infant's parent who does not express an intent to return for the infant. An individual who accepts an infant under this subsection shall perform any act necessary to protect the physical health and well-being of the infant and shall immediately, but no later than 72 hours after accepting the infant from the parent, notify the department of social services. An individual who accepts an infant under this subsection may inquire as to the parents' identities and as to any relevant medical history, but the parent is not required to provide this information.

(d) An individual who accepts an infant under subsection (b) or (c) of this section is immune from any civil or criminal liability that might otherwise be incurred or imposed as a result of any omission or action taken pursuant to the requirements of subsection (b) or (c) of this section so long as that individual was acting in good faith. The immunity established by this subsection does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

Section 3. G.S. 7B-1111(a) reads as rewritten:

"(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole

reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition, or the parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 4. G.S. 14-318.2 is amended by adding a new subsection to read:

"(c) A parent who abandons an infant less than 15 days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

Section 5. G.S. 14-318.4 is amended by adding a new subsection to read:

"(c) Abandonment of an infant less than 15 days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant."

Section 6. Article 40 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-322.3. Abandonment of an infant under 15 days of age.**

No parent shall be prosecuted under G.S. 14-322 or G.S. 14-322.1 for abandonment of an infant less than 15 days of age when that parent voluntarily delivers the infant to one of the following individuals and does not express an intent to return for the infant:

(1) A health care provider, as defined under G.S. 90-21.11, at a hospital or at a local or district health department.

(2) A law enforcement officer at a police station or sheriff's department.

(3) A social services worker at a local department of social services.

(4) An emergency medical technician at a fire station.

(5) Any other adult of suitable discretion who willingly accepts the infant."

Section 7. The Department of Health and Human Services, Division of Public Health, may develop a media campaign to inform the public of the provisions of this act. If developed, this media campaign shall be targeted at adolescents and young adults and shall contain information on responsible parenting in addition to information about the provisions of the act. Any media campaign undertaken pursuant to this act shall be developed in consultation with law enforcement officials, local departments of social services, medical personnel, and school administrators.

Section 8. Sections 1 through 6 of this act become effective December 1, 2000, and apply to acts committed on or after that date. The remainder of this act becomes effective July 1, 2000.

VISITOR REGISTRATION SHEET

8 # 11 — June 15, 2002

Name of Committee: Miller Chair — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kerri Egan	YAIO
M Edgerton	YAIO
Joanne Schoen	NC Nurses Association
Kay Michaels	PPOD
Becky Brown	DOL
John Kurtz	NCFPC
Greg Owens	ACLU-NC
Anna White	NCSU
Felicia Mason	NCSU
Bill Alexander	NCPBA
Sharon Hirsd	NC Special Services Consortium

Nan Mumbett Poyner + Spruill

I ♡ Evan McMillan

VISITOR REGISTRATION SHEET

J #2
Name of Committee

June 15, 2000
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Myrna Miller	NASW-NC
Marnese Ransone	DSS
Peg Bowen	NCCDA
Sona Shandilya	NCCADV
DARRELL ARNOLD	SEANC
Alicia Gruenebaum	YAIO
Paula A. Wolf	Covenant w/NC's Children
	NCPBA.
	AP

SENATE JUDICIARY II COMMITTEE

JUNE 20, 2000

MINUTES

The Senate Judiciary II Committee met on June 20, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Nine members were present, including Senator Miller, who presided.

SB 1323, Indigent Defense Services/Funds, was introduced by Senator Ballance, who in turn recognized Judge Ross, with the Administrative Office of the Courts, to give a brief overview of the bill. Judge Ross called on Rick Kane, a staff member with the AOC, to explain specific provisions of the bill.

Speaking to the bill from the public were the following: Dick Taylor, North Carolina Academy of Trial Lawyers, who spoke in support; and Angus Thompson, North Carolina Association of Public Defenders, who endorsed the bill but suggested several changes.

Senator Kerr moved to amend the bill by deleting Section 46. The motion carried unanimously. Senator Kerr moved to engross the amendment into a committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to bill, but favorable as to committee substitute.**

Senator Robinson was recognized to explain SB 1267, Modernize Bail Bond Forfeitures, and subsequently called on Tom Andrews, General Counsel for Administrative Office of the Courts, to further explain the bill.

Colon Willoughby, District Attorney for District 10, spoke of his concerns with the bill.

Senator Miller announced that time had expired and that SB 1267 would be taken up another time. He also named the subcommittee to hear SB 1257, Abandoned Infant Protection Act: Senators Hagan, Chair, Martin, Moore, and Robinson.

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Tuesday, June 20, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

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

S.B. **1323** Indigent Defense Services/Funds.

Draft Number:	PCS8669
Sequential Referral:	Appropriations/Base Budget
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Sen. Miller to sign.

SENATE JUDICIARY II COMMITTEE

JUNE 20, 2000

ROOM 1124

SB 1267	Modernize Bail Bond Forfeitures	Sen. Robinson
SB 1323	Indigent Defense Services/Funds	Sen. Ballance

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1267

Short Title: Modernize Bail Bond Forfeitures. (Public)

Sponsors: Senators Robinson, Odom; Carter, Clodfelter, Harris, Horton, Phillips, Purcell, Warren, and Wellons.

Referred to: Judiciary II.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"**§ 15A-531. Definitions.**

As used in this Article the following definitions apply unless the context clearly requires otherwise:

~~(1) Bail Bond. -- An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt~~

~~proceedings shall not be satisfied in any manner other than the deposit of cash.~~

~~(2) Obligor. -- A principal or a surety on a bail bond.~~

~~(3) Principal. -- A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.~~

~~(4) Surety. -- One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.~~

(1) 'Accommodation bondsman' means a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the defendant's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) 'Address of record' means:

a. For a defendant or an accommodation bondsman, the address entered on the bail bond pursuant to G.S. 15A-544.2, or any later address filed by that person with the clerk of superior court.

b. For an insurance company, the address of the insurance company as it appears on the power of appointment of the company's bail agent registered with the clerk of superior court pursuant to G.S. 58-71-140.

c. For a bail agent, the address shown on the bail agent's license from the Department of Insurance registered with the clerk of superior court pursuant to G.S. 58-71-140.

d. For a professional bondsman, the address shown on that bondsman's license from the Department of Insurance, as registered with the clerk of superior court pursuant to G.S. 58-71-140.

(3) 'Bail agent' means any person who is licensed by the Commissioner as a surety bondsman under Article 71 of Chapter 58 of the General Statutes, is appointed by an insurance company by power of attorney to execute or countersign bail bonds for the

insurance company in connection with judicial proceedings, and receives or is promised consideration for doing so.

(4) 'Bail bond' means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a bail agent acting on behalf of an insurance company shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a bail agent as defined in subdivision (3) of this section shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.

(5) 'Defendant' means a person obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(6) 'Insurance company' means any domestic, foreign, or alien surety company which has qualified under Chapter 58 of the General Statutes generally to transact surety business and specifically to transact bail bond business in this State.

(7) 'Professional bondsman' means any person who is approved and licensed by the Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes, and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(8) 'Surety' means:

a. The insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.

b. The professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.

c. The accommodation bondsman, when a bail bond is "executed by an accommodation bondsman."

Section 2. G.S. 15A-540 reads as rewritten:

"**§ 15A-540. Surrender of a ~~principal~~ defendant by a surety; setting new conditions of release.**

~~(a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to appear or to the sheriff where the defendant was bonded. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of~~

~~which must be filed with the clerk. Upon application by the surety after the surrender of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate him from his bond.~~

~~(b) A principal surrendered by his surety is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.~~

(a) Going Off the Bond Before Breach. -- Before there has been a breach of the conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-71-20. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond.

(b) Surrender After Breach of Condition. -- After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear, or to the sheriff where the defendant was bonded. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. Upon surrender of the defendant the sheriff shall provide a receipt to the surety.

(c) New Conditions of Pretrial Release. -- When a defendant is surrendered by a surety pursuant to subsection (b) of this section, the sheriff shall without unnecessary delay take the defendant before a judicial official, along with a copy of the undertaking received from the surety and a copy of the receipt provided to the surety. The judicial official shall then determine whether the defendant is again entitled to release and, if so, upon what conditions. The judicial official determining conditions of pretrial release pursuant to this subsection shall impose any conditions set by the court in any order for arrest issued for the defendant's failure to appear. If no conditions have been set, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the previous bond, and shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The magistrate shall also indicate on the release order that the defendant was surrendered after failing to appear as required pursuant to a prior release order."

Section 3. G.S. 15A-544 is repealed.

Section 4. The heading for Article 26 of Chapter 15A of the General Statutes reads as rewritten:

"ARTICLE 26.

Part 1. Bail."

Section 5. Article 26 of Chapter 15A of the General Statutes is amended by adding a new Part 2 to read:

"Part 2. Bail Bond Forfeiture.

"§ 15A-544.1. Forfeiture jurisdiction.

By executing a bail bond the defendant and each surety submit to the jurisdiction of the court and irrevocably consent to be bound by any notice given in compliance with this Part. The liability of the defendant and each surety may be enforced as provided in this Part, without the necessity of an independent action.

"**§ 15A-544.2. Identifying information on bond.**

(a) The following information shall be entered on each bail bond executed under Part 1 of this Article:

(1) The name and mailing address of the defendant.

(2) The name and mailing address of any accommodation bondsman executing the bond as surety.

(3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

(b) If a defendant is released upon execution of a bail bond that does not contain all the information required by subsection (a) of this section, the defendant's order of pretrial release may be revoked as provided in G.S. 15A-534(f).

"**§ 15A-544.3. Entry of provisional judgment.**

(a) If a defendant who was released under Part 1 of this Article upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a provisional judgment for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

(b) The provisional judgment shall contain the following information:

(1) The name and address of record of the defendant.

(2) The file number of each case in which the defendant's appearance is secured by the bail bond.

(3) The amount of the bail bond.

(4) The date on which the bail bond was executed.

(5) The name and address of record of each surety on the bail bond.

(6) The name, address of record, license number, and power of appointment number of any bail agent who executed the bail bond on behalf of an insurance company.

(7) The date on which the provisional judgment is entered.

(8) The date on which the provisional judgment will become final pursuant to G.S. 15A-544.6 if not set aside before that date.

(9) The following notice: 'TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A provisional judgment for the amount of the bail bond shown above was entered in favor of the State against the

defendant and each surety named above on the date of provisional judgment shown above. This provisional judgment will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, or (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question. The provisional judgment will not be set aside for any other reason. If this provisional judgment is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the judgment will become final on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full."

"**§ 15A-544.4. Notice of provisional judgment.**

(a) The court shall give notice of the entry of provisional judgment by mailing a copy of the provisional judgment to the defendant and to each surety and bail agent whose name appears on the bail bond.

(b) The notice shall be sent by first-class mail to the defendant and to each surety named on the bond at the surety's address of record.

(c) If the bond was executed by a bail agent on behalf of an insurance company, the court shall also provide a copy of the provisional judgment to the bail agent, but failure to provide notice to the bail agent shall not affect the validity of any notice given to the insurance company.

(d) Notice given pursuant to this section shall be effective when the notice is mailed.

(e) Notice pursuant to this section shall be mailed not later than the thirtieth day after the date on which the provisional judgment is entered. If notice pursuant to this section is not given within the prescribed time, the provisional judgment shall not become final and shall not be enforced or reported to the Department of Insurance.

"**§ 15A-544.5. Setting aside provisional judgment of forfeiture.**

(a) Relief Exclusive. -- There shall be no relief from a provisional judgment except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified

in subsections (c) and (d) of this section. The provisions of subsections (f), (g), (h), and (i) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside -- A provisional judgment shall be set aside for any one of the following reasons, and none other:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question.

(c) Procedure When Failure to Appear Is Stricken. -- If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any provisional judgment of the forfeiture of that bail bond. When an order setting aside a provisional judgment of the forfeiture of the bail bond is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. -- If a provisional judgment is not set aside pursuant to subsection (c) of this section, the only procedure for setting it aside shall be as follows:

(1) At any time before the expiration of 150 days after the date on which notice was given pursuant to G.S. 15A-544.4, the defendant or any surety on a bail bond may make a written motion that the provisional judgment be set aside, stating the reason and attaching the evidence specified in subsection (a) of this section.

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the provisional judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion

is served, the clerk shall enter an order setting aside the provisional judgment.

(5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.

(6) If at the hearing the court allows the motion, the court shall enter an order setting aside the provisional judgment.

(7) If at the hearing the court does not enter an order setting aside the provisional judgment, the provisional judgment shall become a final judgment of forfeiture on the later of:

a. The date of the hearing.

b. The date of final judgment specified in G.S. 15A-544.6.

(e) Only One Motion Per Provisional Judgment. -- No more than one motion to set aside a specific provisional judgment may be considered by the court.

(f) No More Than Two Provisional Judgments May Be Set Aside Per Case. -- In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no provisional judgment of forfeiture of that bond may be set aside for any reason.

(g) No Final Judgment After Provisional Judgment Is Set Aside. -- If a provisional judgment is set aside pursuant to this section, the provisional judgment shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. -- An order on a motion to set aside a provisional judgment shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as the court deems appropriate.

"**§ 15A-544.6. Final judgment of forfeiture.**

A provisional judgment of forfeiture entered pursuant to G.S. 15A-544.3 becomes final judgment of forfeiture without further action by the court and may be enforced pursuant to G.S. 15A-544.7, on the one hundred fiftieth day after notice is given pursuant to G.S. 15A-544.4, if:

(1) No order setting aside the provisional judgment pursuant to G.S. 15A-544.5 is entered on or before that date.

(2) No motion to set aside the provisional judgment is pending on that date.

"**§ 15A-544.7. Docketing and enforcement of final judgment of forfeiture.**

(a) Final Judgment Docketed As Civil Judgment. -- When a provisional judgment has become a final judgment pursuant to this Part, the clerk of superior court, pursuant to G.S. 1-234, shall docket the judgment as a civil judgment against the defendant and against each surety named in the judgment.

(b) Judgment Lien. -- When a final judgment of forfeiture is docketed, the judgment shall become a lien on the real property of the defendant and of each surety named in the judgment, as provided in G.S. 1-234.

(c) Execution; Copy to Commissioner of Insurance. -- After docketing a final judgment pursuant to this section, the clerk shall:

(1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.

(2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a copy of the judgment, showing the date on which the judgment was docketed.

(d) Sureties May Not Execute Bonds in County. -- After a final judgment is docketed as provided in this section, no surety named in the judgment shall become a surety on any bail bond in the county in which the judgment is docketed until the judgment is satisfied in full.

"§ 15A-544.8. Relief from final judgment of forfeiture.

(a) Relief Exclusive. -- There shall be no relief from a final judgment of forfeiture except as provided in this section.

(b) Reasons. -- The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

(1) The person seeking relief was not given notice as provided in G.S. 15A-544.4.

(2) Other extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.

(c) Procedure. -- The procedure for obtaining relief from a final judgment pursuant to this section shall be as follows:

(1) At any time before the expiration of three years after the date on which a judgment of forfeiture became final, the defendant or any surety named in the judgment may make a written motion for relief under this section, stating the reasons and setting forth the evidence in support of each reason.

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the final judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) A hearing on the motion shall be scheduled within a reasonable time in the trial division in which the defendant was bonded to appear.

(4) At the hearing the court may grant the party any relief from the judgment that the court considers appropriate, including the refund of all or a part of any money paid to satisfy the judgment.

(d) Only One Motion. -- No more than one motion by any party for relief under this section may be considered by the court.

(e) Finality of Judgment as to Other Parties Not Affected. -- The finality of a final judgment of forfeiture shall not be affected, as to any party to the judgment, by the filing of a motion by, or the granting of relief to, any other party.

(f) Appeal. -- An order on a motion for relief from a final judgment of forfeiture shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as it considers appropriate."

Section 6. G.S. 58-71-25 reads as rewritten:

"**§ 58-71-25. Procedure for surrender; exoneration of obligors; refund of deposit.**

~~The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.~~

~~Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded.~~

After there has been a breach of the undertaking in a bail bond, the surety may surrender the defendant as provided in G.S. 15A-540."

Section 7. G.S. 24-5(a1) reads as rewritten:

"(a1) In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~entry~~ docketing of judgment until the judgment is satisfied."

Section 8. There is appropriated to the Judicial Department in the Current Operations and Capital Improvements Appropriations Act for the 2000-2001 fiscal year, the sum of two hundred twenty-five thousand dollars ($225,000) to be used for temporary personnel, contract programming and training to implement the provisions of this act.

Section 9. This act becomes effective January 1, 2001, and applies to all bail bonds executed and all forfeiture proceedings initiated on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1323

Short Title: Indigent Defense Services/Funds. (Public)

Sponsors: Senators Ballance; and Odom.

Referred to: Judiciary II.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE INDIGENT DEFENSE STUDY COMMISSION TO ESTABLISH AN OFFICE OF INDIGENT DEFENSE SERVICES.

The General Assembly of North Carolina enacts:

PART I. OFFICE OF INDIGENT DEFENSE SERVICES

Section 1. Subdivision IX of Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 39B.

"Indigent Defense Services Act.

"**§ 7A-498. Title.**

This Article shall be known and may be cited as the 'Indigent Defense Services Act of 2000'.

"**§ 7A-498.1. Purpose.**

Whenever a person is determined to be indigent and entitled to counsel, it is the responsibility of the State under the federal and state constitutions to provide that person with counsel and the other necessary expenses of representation. The purpose of this Article is to:

(1) Enhance oversight of the delivery of counsel and related services provided at State expense;

(2) Improve the quality of representation and ensure the independence of counsel;

(3) Establish uniform policies and procedures for the delivery of services;
(4) Generate reliable statistical information in order to evaluate the services provided and funds expended; and
(5) Deliver services in the most efficient and cost-effective manner without sacrificing quality representation.

"**§ 7A-498.2. Establishment of Office of Indigent Defense Services.**

(a) The Office of Indigent Defense Services, which is administered by the Director of Indigent Defense Services and includes the Commission on Indigent Defense Services, is created within the Judicial Department. As used in this Article, 'Office' means the Office of Indigent Defense Services, 'Director' means the Director of Indigent Defense Services, and 'Commission' means the Commission on Indigent Defense Services.

(b) The Office of Indigent Defense Services shall exercise its prescribed powers independently of the head of the Administrative Office of the Courts. The Office may enter into contracts, own property, and accept funds, grants, and gifts from any public or private source to pay expenses incident to implementing its purposes.

(c) The Director of the Administrative Office of the Courts shall provide general administrative support to the Office of Indigent Defense Services. The term 'general administrative support' includes purchasing, payroll, and similar administrative services.

(d) The budget of the Office of Indigent Defense Services shall be a part of the Judicial Department's budget. The Commission on Indigent Defense Services shall consult with the Director of the Administrative Office of the Courts, who shall assist the Commission in preparing and presenting to the General Assembly the Office's budget, but the Commission shall have the final authority with respect to preparation of the Office's budget and with respect to representation of matters pertaining to the Office before the General Assembly.

(e) The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Office of Indigent Defense Services or use funds appropriated to the Office without the approval of the Commission.

"**§ 7A-498.3. Responsibilities of Office of Indigent Defense Services.**

(a) The Office of Indigent Defense Services shall be responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in the following cases:
(1) Cases in which an indigent person is subject to a deprivation of liberty or other constitutionally protected interest and is entitled by law to legal representation;
(2) Cases in which an indigent person is entitled to legal representation under G.S. 7A-451 and G.S. 7A-451.1; and
(3) Any other cases in which the Office of Indigent Defense Services is designated by statute as responsible for providing legal representation.

(b) The Office of Indigent Defense Services shall develop policies and procedures for determining indigency in cases subject to this Article, and those policies shall be applied uniformly throughout the State. The court shall determine in each case whether a person is indigent and entitled to legal representation; however, the Office may preliminarily assign itself to represent indigent persons subject to final determination by the court.

(c) In all cases subject to this Article, appointment of counsel, determination of compensation, appointment of experts, and use of funds for experts and other services related to legal representation shall be in accordance with rules and procedures adopted by the Office of Indigent Defense Services.

(d) The Office of Indigent Defense Services shall allocate and disburse funds appropriated for legal representation and related services in cases subject to this Article pursuant to rules and procedures established by the Office.

"**§ 7A-498.4. Establishment of Commission on Indigent Defense Services.**

(a) The Commission on Indigent Defense Services is created within the Office of Indigent Defense Services and shall consist of 13 members. To create an effective working group, assure continuity, and achieve staggered terms, the Commission shall be appointed as provided in this section.

(b) The members of the Commission shall be appointed as follows:

(1) The Chief Justice of the North Carolina Supreme Court shall appoint one member, who shall be an active or former member of the North Carolina judiciary.

(2) The Governor shall appoint one member, who shall be a nonattorney.

(3) The General Assembly shall appoint one member upon the recommendation of the President Pro Tempore of the Senate.

(4) The General Assembly shall appoint one member upon the recommendation of the Speaker of the House of Representatives.

(5) The North Carolina Public Defenders Association shall appoint one member.

(6) The North Carolina State Bar shall appoint one member.

(7) The North Carolina Bar Association shall appoint one member.

(8) The North Carolina Academy of Trial Lawyers shall appoint one member.

(9) The North Carolina Association of Black Lawyers shall appoint one member.

(10) The North Carolina Association of Women Lawyers shall appoint one member.

(11) The Commission shall appoint three members, who shall reside in different judicial districts from one another. One appointee shall be a nonattorney, and one appointee may be an active member of the North Carolina judiciary. The initial three members satisfying this subdivision shall be appointed as provided in subsection (k) of this section.

(c) The terms of members appointed pursuant to subsection (b) of this section shall be as follows:

(1) The initial appointments by the Chief Justice, Governor, President Pro Tempore, and the Speaker shall be for four years.

(2) The initial appointments by the Public Defenders Association and State Bar, and one appointment by the Commission, shall be for three years.

(3) The initial appointments by the Bar Association and Trial Academy, and one appointment by the Commission, shall be for two years.

(4) The initial appointments by the Black Lawyers Association and Women Lawyers Association, and one appointment by the Commission, shall be for one year.

At the expiration of these initial terms, appointments shall be for four years and shall be made by the appointing authorities designated in subsection (b) of this section. No person shall serve more than two consecutive four-year terms plus any initial term of less than four years.

(d) Persons appointed to the Commission shall have significant experience in the defense of criminal or other cases subject to this Article or shall have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors or law enforcement officials, or active employees of such persons, may be appointed to or serve on the Commission. No active judicial officials, or active employees of such persons, may be appointed to or serve on the Commission, except as provided in subsection (b) of this section. No active public defenders, active employees of public defenders, or other active employees of the Office of Indigent Defense Services may be appointed to or serve on the Commission, except that notwithstanding this subsection, G.S. 14-234, or any other provision of law, Commission members may include part-time public defenders employed by the Office of Indigent Defense Services and may include persons, or employees of persons or organizations, who provide legal services subject to this Article as contractors or appointed attorneys.

(e) All members of the Commission are entitled to vote on any matters coming before the Commission unless otherwise provided by rules adopted by the Commission concerning voting on matters in which a member has, or appears to have, a financial or other personal interest.

(f) Each member of the Commission shall serve until a successor in office has been appointed. Vacancies shall be filled by appointment by the appointing authority for the unexpired term. Removal of Commission members shall be in accordance with policies and procedures adopted by the Commission.

(g) A quorum for purposes of conducting Commission business shall be a majority of the members of the Commission.

(h) The Commission shall elect a Commission chair from the members of the Commission for a term of two years.

(i) The Director of Indigent Defense Services shall attend all Commission meetings except those relating to removal or reappointment of the Director or allegations of misconduct by the Director. The Director shall not vote on any matter decided by the Commission.

(j) Commission members shall not receive compensation but are entitled to be paid necessary subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6 as applicable.

(k) The Commission shall hold its first meeting no later than September 15, 2000. All appointments to the Commission specified in subdivisions (1) through (10) of subsection (b) of this section shall be made by the appointing authorities by September 1, 2000. The appointee of the Chief Justice shall convene the first meeting. No later than 30 days after its first meeting, the Commission shall make the appointments specified in subdivision (11) of subsection (b) of this section and shall elect its chair.

"**§ 7A-498.5. Responsibilities of Commission.**

(a) The Commission shall have as its principal purpose the development and improvement of programs by which the Office of Indigent Defense Services provides legal representation to indigent persons.

(b) The Commission shall appoint the Director of the Office of Indigent Defense Services, who shall be chosen on the basis of training, experience, and other qualifications. The Commission shall consult with the Chief Justice and Director of the Administrative Office of the Courts in selecting a Director, but shall have final authority in making the appointment.

(c) The Commission shall develop standards governing the provision of services under this Article. The standards shall include:

(1) Standards for maintaining and operating regional and district public defender offices and appellate defender offices, including requirements regarding qualifications, training, and size of the legal and supporting staff;

(2) Standards prescribing minimum experience, training, and other qualifications for appointed counsel;

(3) Standards for public defender and appointed counsel caseloads;

(4) Standards for the performance of public defenders and appointed counsel;

(5) Standards for the independent, competent, and efficient representation of clients whose cases present conflicts of interest, in both the trial and appellate courts;

(6) Standards for providing and compensating experts and others who provide services related to legal representation;

(7) Standards for qualifications and performance in capital cases; and

(8) Standards for determining indigency and for assessing and collecting the costs of legal representation and related services.

(d) The Commission shall determine the methods for delivering legal services to indigent persons eligible for legal representation under this Article and shall establish

in each district or combination of districts a system of appointed counsel, contract counsel, part-time public defenders, public defender offices, appellate defender services, and other methods for delivering counsel services, or any combination of these services.

(e) In determining the method of services to be provided in a particular district, the Director shall consult with the district bar as defined in G.S. 84-19 and the judges of the district or districts under consideration. The Commission shall adopt procedures ensuring that affected local bars have the opportunity to be significantly involved in determining the method or methods for delivering services in their districts.

(f) The Commission shall establish policies and procedures with respect to the distribution of funds appropriated under this Article, including rates of compensation for appointed counsel, schedules of allowable expenses, appointment and compensation of expert witnesses, and procedures for applying for and receiving compensation.

(g) The Commission shall approve and recommend to the General Assembly a budget for the Office of Indigent Defense Services.

(h) The Commission shall adopt such other rules and procedures as it deems necessary for the conduct of business by the Commission and the Office of Indigent Defense Services.

"**§ 7A-498.6. Director of Indigent Defense Services.**

(a) The Director of Indigent Defense Services shall be appointed by the Commission for a term of four years. The Director may be removed during this term in the discretion of the Commission by a vote of two-thirds of all of the Commission members. The Director shall be an attorney licensed and eligible to practice in the courts of this State at the time of appointment and at all times during service as the Director.

(b) The Director shall:

(1) Prepare and submit to the Commission a proposed budget for the Office of Indigent Defense Services, an annual report containing pertinent data on the operations, costs, and needs of the Office, and such other information as the Commission may require;

(2) Assist the Commission in developing rules and standards for the delivery of services under this Article;

(3) Administer and coordinate the operations of the Office and supervise compliance with standards adopted by the Commission;

(4) Subject to policies and procedures established by the Commission, hire such professional, technical, and support personnel as deemed reasonably necessary for the efficient operation of the Office of Indigent Defense Services;

(5) Keep and maintain proper financial records for use in calculating the costs of the operations of the Office of Indigent Defense Services;

(6) Apply for and accept on behalf of the Office of Indigent Defense Services any funds that may become available from government grants, private gifts, donations, or bequests from any source;

(7) Coordinate the services of the Office of Indigent Defense Services with any federal, county, or private programs established to provide assistance to indigent persons in cases subject to this Article and consult with professional bodies concerning improving the administration of indigent services;

(8) Conduct training programs for attorneys and others involved in the legal representation of persons subject to this Article; and

(9) Perform other duties as the Commission may assign.

"**§ 7A-498.7. Public Defender Offices.**

(a) The Commission may establish and operate regional and district public defender offices as it deems necessary to administer the provisions of this Article. In districts in which the Commission has determined to provide services through public defender offices, the Commission shall appoint regional and district public defenders as necessary to administer such offices.

(b) For each new term, and to fill any vacancy, public defenders shall be appointed by the Commission from a list of not less than two and not more than three persons nominated by written ballot of the attorneys licensed to practice law in North Carolina and resident in the district or districts within the public defender's jurisdiction; however, if the Commission determines that exceptional circumstances exist in a specific instance, the Commission may appoint a person as public defender who has not been so nominated. Public defenders shall be chosen by the Commission on the basis of training, experience, and other qualifications. Balloting shall be conducted pursuant to rules promulgated by the Commission.

(c) A public defender shall be an attorney licensed to practice law in North Carolina and shall devote full time to the duties of the office. In lieu of merit and other increment raises paid to regular State employees, a public defender 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, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. 'Service' means service as a public defender, appellate defender, assistant public or appellate defender, assistant district attorney, justice or judge of the General Court of Justice, or clerk of superior court.

(d) Subject to standards adopted by the Commission, the day-to-day operation and administration of public defender offices shall be the responsibility of the public defender in charge of the office. The public defender shall keep appropriate records and make periodic reports, as requested, to the Director of the Office of Indigent Defense Services on matters related to the operation of the office.

(e) The Office of Indigent Defense Services shall procure office equipment and supplies for the public defender, and provide secretarial and library support from State funds appropriated to the public defender's office for this purpose.

(f) Each public defender is entitled to assistant public defenders, investigators, and other staff, full-time or part-time, as may be authorized by the Commission. Assistants, investigators, and other staff are appointed by the public defender and serve at the pleasure of the public defender. Average and minimum compensation of assistants shall be as provided in the biennial Current Operations Appropriations Act. The actual salaries of assistants shall be set by the public defender in charge of the office, subject to approval by the Commission. The Commission shall fix the compensation of investigators. Assistants and investigators shall perform such duties as may be assigned by the public defender.

(g) In lieu of merit and other increment raises paid to regular State employees, an assistant public defender 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, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. 'Service' means service as a public defender, appellate defender, assistant public or appellate defender, assistant district attorney, justice or judge of the General Court of Justice, or clerk of superior court.

(h) The term of office of public defenders appointed under this section is four years. The Commission may suspend or remove a public defender from office for cause during the term of appointment. If the Director of the Office of Indigent Defense Services believes that cause exists for suspension or removal of a public defender, the Director may recommend such action to the Commission. Within 10 days of the recommendation, the public defender may request a hearing before a panel of three Commission members appointed by the chair of the Commission. If the public defender requests a hearing, the panel shall make a written report to the full Commission following the hearing. If the panel recommends that the public defender be suspended or removed from office, the Commission shall vote on whether to uphold, reject, or modify the panel's recommendation and, if two-thirds of all of the Commission members so find, the Commission may suspend or remove the public defender from office. If the public defender does not request a hearing, the Commission may vote on the recommendation without a hearing and may suspend or remove a public defender by a two-thirds vote of all of the Commission members. If the Commission suspends or removes a public defender, the public defender may obtain judicial review by filing a petition within 30 days of the decision with the Superior Court of Wake County. Review of the Commission's decision shall be heard on the record and not as a de novo review or trial de novo. The Commission shall adopt rules implementing this subsection."

PART II. AMENDMENTS TO CHAPTER 7A OF THE GENERAL STATUTES

Section 2. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

(1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of five dollars ($5.00), to be remitted to the county wherein the arrest was made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.

(2) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in the district court, including cases before a magistrate, and the sum of thirty dollars ($30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public ~~defenders,~~ defenders and other personnel of the Office of Indigent Defense Services, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

(3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents ($7.25), to be remitted to the State Treasurer.

Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents ($5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents ($1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar ($1.00) of this sum shall be administered as is provided in Article 12F of Chapter 143 of the General Statutes.

(3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75¢) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.

(4) For support of the General Court of Justice, the sum of sixty-one dollars ($61.00) in the district court, including cases before a magistrate, and the sum of sixty-eight dollars ($68.00) in the superior court, to be remitted to the State Treasurer.

(5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars ($50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee."

Section 3. G.S. 7A-314(d) reads as rewritten:

"(d) An expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section. Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent Defense Services."

Section 4. G.S. 7A-344 is repealed.

Section 5. G.S. 7A-450(a) reads as rewritten:

"(a) An indigent person is a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding enumerated in this Subchapter. An interpreter is a necessary expense as defined in ~~Chapter 8A~~ Chapter 8B of the General Statutes for a deaf person who is entitled to counsel under this subsection."

Section 6. G.S. 7A-451 reads as rewritten:

"**§ 7A-451. Scope of entitlement.**

(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;

(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;

(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars ($500.00) or more, or has been sentenced to a term of imprisonment;

(4) A hearing for revocation of probation;

(5) A hearing in which extradition to another state is sought;

(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.

(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;

(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;

(10) A proceeding for sterilization under Chapter 35, Article 7 (Sterilization of Persons Mentally Ill and Mentally Retarded) of the General Statutes; and

(11) A proceeding for the provision of protective services according to ~~Chapter 108, Article 4,~~ Chapter 108A, Article 6 of the General Statutes;

(12) In the case of a juvenile alleged to be neglected under Chapter 7A, Article 23 of the General Statutes;

(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;

(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;

(15) An action brought pursuant to Article 24B of Chapter 7A of the General Statutes to terminate an indigent person's parental rights.

(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90

of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(b) In each of the actions and proceedings enumerated in subsection (a) of this section, entitlement to the services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process. Entitlement continues through any critical stage of the action or proceeding, including, if applicable:

(1) An in-custody interrogation;

(2) A pretrial identification procedure which occurs after formal charges have been preferred and at which the presence of the indigent is required;

(3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;

(4) A probable cause hearing;

(5) Trial and sentencing; and

(6) Review of any judgment or decree pursuant to G.S. 7A-27, 7A-30(1), 7A-30(2), and Subchapter XIV of Chapter 15A of the General Statutes.

(c) In any capital case, an indigent defendant who is under a sentence of death may apply to the superior court of the district where the defendant was indicted for the appointment of counsel to represent the defendant in preparing, filing, and litigating a motion for appropriate relief. The application for the appointment of such postconviction counsel may be made prior to completion of review on direct appeal and shall be made no later than 10 days from the latest of the following:

(1) The mandate has been issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

(2) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina; or

(3) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina, but subsequently left the defendant's death sentence undisturbed.

If there is not a criminal or mixed session of superior court scheduled for that district, the application must be made no later than 10 days from the beginning of the next criminal or mixed session of superior court in the district. Upon application, supported by the defendant's affidavit, the superior court shall enter an order appointing ~~two counsel~~ the Office of Indigent Defense Services if the court finds that the defendant is indigent and desires ~~counsel.~~ counsel, and the Office of Defense Services shall appoint two counsel to represent the defendant. The defendant does not have a right to be present at the time of appointment of counsel, and the appointment need not be made in open court. If the defendant was previously

adjudicated an indigent for purposes of trial or direct appeal, the defendant shall be presumed indigent for purposes of this subsection.

(d) The appointment of counsel as provided in subsection (c) of this section and the procedure for compensation shall comply with ~~the Rules and Regulations Relating to the Appointment of Counsel for Indigent Defendants pursuant to G.S. 7A-459. The court may appoint counsel recruited by the Appellate Defender pursuant to G.S. 7A-486.3(5).~~ rules adopted by the Office of Indigent Defense Services.

(e) No counsel appointed pursuant to subsection (c) of this section shall have previously represented the defendant at trial or on direct appeal in the case for which the appointment is made unless the defendant expressly requests continued representation and understandingly waives future allegations of ineffective assistance of counsel."

Section 7. G.S. 7A-452 reads as rewritten:

"**§ 7A-452. Source of counsel; fees; appellate records.**

(a) ~~Counsel for an indigent person shall be assigned by the court.~~ Upon the court's determination that a person is indigent and entitled to counsel under this Article, counsel shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services. In the courts of those counties ~~which have a public defender,~~ designated by the Office of Indigent Defense Services, however, the ~~public defender may tentatively assign himself or an assistant public defender~~ designee of the Office of Indigent Defense Services may tentatively assign himself or another person to represent an indigent person, subject to subsequent ~~approval~~ determination of entitlement to counsel by the court.

(b) Fees of assigned counsel and salaries and other operating expenses of the offices of the public defenders shall be borne by the State.

(c) (1) The clerk of superior court is authorized to make a determination of indigency and ~~to appoint counsel,~~ entitlement to counsel, as authorized by this Article. The word "court," as it is used in this Article and in any rules pursuant to this Article, includes the clerk of superior court.

(2) A judge of superior or district court having authority to ~~appoint~~ determine entitlement to counsel in a particular case may give directions to the clerk with regard to the ~~appointment of~~ determination of entitlement to counsel in that case; may, if he finds it appropriate, change or modify the ~~appointment of counsel when counsel has been appointed~~ determination made by the clerk; and may set aside a finding of waiver of counsel made by the clerk.

(d) Unless a public defender or assistant public defender is appointed to serve, ~~the trial judge appointing~~ standby counsel appointed under G.S. 15A-1243 shall ~~award~~ receive reasonable compensation to be paid by the State."

Section 8. G.S. 7A-453 reads as rewritten:

"**§ 7A-453. Duty of custodian of a possibly indigent person; determination of indigency.**

(a) In counties ~~which have a public defender,~~ designated by the Office of Indigent Defense Services, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the ~~public defender.~~ designee of the Office of Indigent Defense Services. The ~~public defender~~ designee of the Office of Indigent Defense Services shall make a preliminary determination as to the person's entitlement to his services, and proceed accordingly. The court shall make the final determination.

(b) In counties ~~which do not have a public defender,~~ that have not been designated by the Office of Indigent Defense Services, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the clerk of superior court.

(c) In any county, if a defendant, upon being taken into custody, states that he is indigent and desires counsel, the authority having custody shall immediately inform the ~~defender~~ designee of the Office of Indigent Defense Services or the clerk of superior court, as the case may be, who shall take action as provided in this Article.

(d) The duties imposed by this section upon authorities having custody of persons who may be indigent are in addition to the duties imposed upon arresting officers under G.S. 15-47."

Section 9. G.S. 7A-454 reads as rewritten:

"**§ 7A-454. Supporting services.**

~~The court, in its discretion, may approve a fee for the service of an expert witness who testifies for an indigent person, and shall approve reimbursement for the necessary expenses of counsel. Fees and expenses accrued under this section shall be paid by the State.~~ Fees for the services of an expert witness for an indigent person and other necessary expenses of counsel shall be paid by the State in accordance with rules adopted by the Office of Indigent Defense Services."

Section 10. G.S. 7A-455 reads as rewritten:

"**§ 7A-455. Partial indigency; liens; acquittals.**

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for him by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, he shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall ~~fix the money value of services rendered by assigned counsel, the public defender, or the appellate defender, and such sum plus any sums allowed by the court for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, shall be entered as~~ direct that a judgment be entered in the office of the clerk of superior ~~court, and~~ court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that

may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the ~~judgment; provided, that counsel fees ordered paid to the clerk on behalf of the appointed counsel pursuant to G.S. 15A-1343(c) may be paid directly to the counsel.~~ judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. ~~In fixing the~~ The money value of services rendered by the public defender and the appellate ~~defender, the court shall consider~~ defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. ~~The value of the services shall be fixed by a~~ A district court judge shall direct entry of judgment for actions or proceedings finally determined in the district court and ~~by~~ a superior court judge shall direct entry of judgment for actions or proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceedings petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this

section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

Section 11. G.S. 7A-457(a) reads as rewritten:

"(a) An indigent person who has been informed of his right to be represented by counsel at any in-court proceeding, may, in writing, waive the right to in-court representation by ~~counsel,~~ counsel in accordance with rules adopted by the Office of Indigent Defense Services. Any waiver of counsel shall be effective only if the court finds of record that at the time of waiver the indigent person acted with full awareness of his rights and of the consequences of the waiver. In making such a finding, the court shall consider, among other things, such matters as the person's age, education, familiarity with the English language, mental condition, and the complexity of the crime charged."

Section 12. G.S. 7A-458 reads as rewritten:

"**§ 7A-458. Counsel fees.**

~~In districts which do not have a public defender, the court shall fix the~~ The fee to which an attorney who represents an indigent person is ~~entitled.~~ entitled shall be fixed in accordance with rules adopted by the Office of Indigent Defense Services. ~~In doing so, the court shall allow a fee~~ Fees shall be based on the factors normally considered in fixing attorneys' fees, such as the nature of the case, and the time, effort and responsibility involved. ~~Fees shall be fixed by the district court judge who hears the case for actions or proceedings finally determined in the district court and by the superior court judge who hears the case for actions or proceedings originating in, heard on appeal in, or appealed from the superior court.~~ Even if the trial, appeal, hearing or other proceeding is never held, preparation therefor is nevertheless compensable and, in capital cases and other extraordinary cases pending in superior court, ~~the presiding judge may allow~~ a fee for services rendered and payment for expenses incurred may be allowed pending final determination of the case."

Section 13. G.S. 7A-459, 7A-465, 7A-466, 7A-467, 7A-469, 7A-470, 7A-471, 7A-486, 7A-486.1, 7A-486.2, 7A-486.3, 7A-486.4, 7A-486.5, 7A-486.6, and 7A-486.7 are repealed.

PART III. AMENDMENTS TO MISCELLANEOUS OTHER STATUTES

Section 14. G.S. 1-311 reads as rewritten:

"**§ 1-311. Against the person.**

If the action is one in which the defendant might have been arrested, an execution against the person of the judgment debtor may be issued to any county within the State, after the return of an execution against his property wholly or partly unsatisfied. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as provided in the Article Arrest and Bail, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by law, whether such statement of facts is necessary to the cause of action or not. Provided, that where the facts are found by a jury, the verdict shall contain a finding of facts establishing the right to execution against the person;

and where jury trial is waived and the court finds the facts, the court shall find facts establishing the right to execution against the person. Such findings of fact shall include a finding that the defendant either (i) is about to flee the jurisdiction to avoid paying his creditors, (ii) has concealed or diverted assets in fraud of his creditors, or (iii) will do so unless immediately detained. If defendant appears at the hearing on the debt and the judge has reason to believe that the defendant is indigent, he shall inform the defendant that if he is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and provisional release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer. If defendant appears at the hearing on the debt and the judge provisionally concludes he is indigent, counsel should be appointed ~~immediately.~~ immediately pursuant to rules adopted by the Office of Indigent Defense Services."

Section 15. G.S. 1-413 reads as rewritten:

"**§ 1-413. Issuance and form of order.**

The order may be made to accompany the summons, or to issue at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a place and time therein mentioned to the clerk of the court in which the action is brought. Notice of the return must be served on the plaintiff or his attorney as prescribed by law for the service of other notices. The order shall include a statement that if the person arrested is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and preliminary release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 16. G.S. 7B-602 reads as rewritten:

"**§ 7B-602. Parent's right to counsel.**

In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. ~~In no case may the court appoint a county attorney, prosecutor, or public defender.~~"

Section 17. G.S. 7B-603 reads as rewritten:

"**§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 ~~or G.S. 7B-602 pursuant to any other provision of the Juvenile Code~~ shall be paid a reasonable fee fixed by the court ~~in the same manner as fees for attorneys appointed in cases of indigency~~ or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(c) The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21."

Section 18. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the ~~Administrative Office of the Courts.~~ Office of Indigent Defense Services. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1111(6); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the ~~Administrative Office of the Courts~~ Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

Section 19. G.S. 7B-1109(b) reads as rewritten:

"(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, ~~the court shall appoint~~ counsel shall be appointed to represent ~~them.~~ them in accordance with rules

adopted by the Office of Indigent Defense Services. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination petition. In the event that the parents do not desire counsel and are present at the hearing, the court shall examine each parent and make findings of fact sufficient to show that the waivers were knowing and voluntary. This examination shall be reported as provided in G.S. 7A-198."

Section 20. G.S. 7B-1808(b) reads as rewritten:

"(b) At the first appearance, the court shall:

(1) Inform the juvenile of the allegations set forth in the petition;

(2) Determine whether the juvenile has retained counsel or has been assigned counsel ~~and, if the juvenile is not represented by counsel, appoint counsel for the juvenile;~~ counsel;

(3) If applicable, inform the juvenile of the date of the probable cause hearing, which shall be within 15 days of the first appearance; and

(4) Inform the parent, guardian, or custodian that the parent, guardian, or custodian is required to attend all hearings scheduled in the matter and may be held in contempt of court for failure to attend any scheduled hearing.

If the juvenile is not represented by counsel, counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Services."

Section 21. G.S. 7B-1906(c) reads as rewritten:

"(c) The court shall determine whether a juvenile who is alleged to be delinquent has retained counsel or has been assigned counsel; ~~and,~~ if the juvenile is not represented by counsel, ~~appoint~~ counsel for the ~~juvenile.~~ juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

Section 22. G.S. 7B-2000(a) reads as rewritten:

"(a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. ~~The court shall appoint counsel for the juvenile,~~ Counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined."

Section 23. G.S. 7B-2002 reads as rewritten:

"**§ 7B-2002. Payment of court-appointed attorney.**

An attorney appointed pursuant to G.S. 7B-2000 or pursuant to any other provision of this Subchapter shall be paid a reasonable fee ~~fixed by the court in the same manner as fees for attorneys appointed in cases of indigency through the Administrative Office of the Courts.~~ in accordance with rules adopted by the Office of Indigent Defense Services. The court may require payment of the attorneys' fees from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. A person who does not comply with the court's order of payment may be found in civil contempt as provided in G.S. 5A-21."

Section 24. G.S. 7B-2704 reads as rewritten:

"**§ 7B-2704. Payment of support or other expenses; assignment of insurance coverage.**

At the dispositional hearing or a subsequent hearing, if the court finds that the parent is able to do so, the court may order the parent to:

(1) Pay a reasonable sum that will cover in whole or in part the support of the juvenile. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4;

(2) Pay a fee for probation supervision or residential facility costs;

(3) Assign private insurance coverage to cover medical costs while the juvenile is in secure detention, training school, or other out-of-home placement; and

(4) Pay ~~court-appointed~~ appointed attorneys' fees.

All money paid by a parent pursuant to this section shall be paid into the office of the clerk of superior court.

If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof."

Section 25. G.S. 7B-2804(a) reads as rewritten:

"(a) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of the parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner, and the basis of entitlement to the juvenile's custody, the circumstances of the running away, the juvenile's location if known at the time application is made, and any other facts that may tend to show that the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Any further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interests of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of the juvenile. The requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away

without the consent of a parent, guardian, person, or agency entitled to legal custody, and that it is in the best interests and for the protection of the juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when the juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon the order shall be delivered over to the officer whom the court has appointed to receive the juvenile unless the juvenile first is taken before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may ~~appoint~~ determine that counsel or guardian ad litem for the ~~juvenile.~~ juvenile should be appointed. If the court finds that the requisition is in order, the court shall deliver the juvenile over to the officer appointed to receive the juvenile by the court demanding the juvenile. The court, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person, or agency entitled to legal custody, the juvenile may be taken into custody without a requisition and brought before a judge of the appropriate court who may ~~appoint~~ determine that counsel or guardian ad litem for the juvenile should be appointed and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the juvenile's own protection and welfare, for such a time not exceeding 90 days as will enable the return of the juvenile to another state party to this Compact pursuant to a requisition for return from a court of that state. In cases in which the court determines that counsel or guardian ad litem should be provided for the juvenile, appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found, any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the juvenile is suspected of having committed within the state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority

and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this Compact, without interference. Upon return of the juvenile to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state."

Section 26. G.S. 7B-2805 reads as rewritten:

"**§ 7B-2805. Return of escapees and absconders.**

(a) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody a delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of the delinquent juvenile. The requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of probation or parole or of the juvenile's escape from an institution or agency vested with legal custody or supervision, and the location of the delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects the delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Any further affidavits and documents as may be deemed proper may be submitted with the requisition. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of the law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the person to take into custody and detain such delinquent juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon the order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile has appointed to receive the juvenile, unless the juvenile is first taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the return, and who may ~~appoint~~ determine that counsel or guardian ad litem for the ~~juvenile.~~ juvenile should be appointed. If the judge of the court finds that the requisition is in order, the judge shall deliver the delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with legal custody or supervision in any state party to this Compact, the person may be taken into custody in any other state party to this Compact without a

requisition. But in that event, the juvenile shall be taken forthwith before a judge of the appropriate court, who may ~~appoint~~ determine that counsel or guardian ad litem for the person should be appointed and who shall determine after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a length of time, not exceeding 90 days, as will enable detention of the juvenile under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent who has either absconded while on probation or parole or escaped from an institution or agency vested with legal custody or supervision, there is pending in the state wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the juvenile is suspected of having committed a criminal offense or an act of juvenile delinquency within the state, the juvenile shall not be returned without the consent of the state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport the delinquent juvenile through any and all states party to this Compact, without interference. Upon return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to any further proceedings appropriate under the laws of that state.

(b) The state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of transportation costs of the return.

(c) If the court determines that counsel or guardian ad litem should be provided under this section, appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 27. G.S. 15-11.1(b) reads as rewritten:

"(b) In the case of unknown or unapprehended defendants or of defendants willfully absent from the jurisdiction, the court shall ~~have discretion to appoint a guardian ad litem, who shall be a licensed attorney,~~ determine whether an attorney should be appointed as guardian ad litem to represent and protect the interest of such unknown or absent defendants. Appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services. The judicial findings concerning identification or value that are made at such hearing whereby property is returned to the lawful owner or a person, firm, or corporation entitled to possession, may be admissible into evidence at the trial. After final judgment all property lawfully seized by or otherwise coming into the possession of law-enforcement authorities shall be disposed of as the court or magistrate in its discretion orders, and may be forfeited and either sold or destroyed in accordance with due process of law."

Section 28. G.S. 15A-279(d) reads as rewritten:

"(d) Any such person is entitled to have counsel present and must be advised prior to being subjected to any nontestimonial identification procedures of his right to have counsel present during any nontestimonial identification procedure and to the appointment of counsel if he cannot afford to retain counsel. Appointment of

counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. No statement made during nontestimonial identification procedures by the subject of the procedures shall be admissible in any criminal proceeding against him, unless his counsel was present at the time the statement was made."

Section 29. G.S. 15A-803(d) reads as rewritten:

"(d) Procedure. -- A material witness order may be obtained upon motion supported by affidavit showing cause for its issuance. The witness must be given reasonable notice, opportunity to be heard and present evidence, and the right of representation by counsel at a hearing on the motion. Counsel for a material witness may be appointed and compensated in the same manner as counsel for an indigent defendant. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. The order must be based on findings of fact supporting its issuance."

Section 30. G.S. 15A-1243 reads as rewritten:

"**§ 15A-1243. Standby counsel for defendant representing himself.**

When a defendant has elected to proceed without the assistance of counsel, the trial judge in his discretion may ~~appoint~~ determine that standby counsel should be appointed to assist the defendant when called upon and to bring to the judge's attention matters favorable to the defendant upon which the judge should rule upon his own motion. Appointment and compensation of standby counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 31. G.S. 15A-1343(e) reads as rewritten:

"(e) Costs of Court and Appointed Counsel. -- Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and costs for appointed counsel or public defender in the case in which he was convicted. The cost of appointed counsel or public defender services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount ~~due~~ of those costs to be repaid and the method of payment."

Section 32. G.S. 23-30.1 reads as rewritten:

"**§ 23-30.1. Provisional release.**

Every person who has filed a petition under the provisions of G.S. 23-30 shall be brought before a judge within 72 hours after filing the petition and shall be provisionally released from imprisonment unless a hearing shall be held and the creditor shall establish that the prisoner has fraudulently concealed assets. If, at the time he is brought before a judge, the prisoner makes a showing of indigency, ~~the judge shall appoint~~ counsel shall be appointed for ~~him.~~ the prisoner in accordance with rules adopted by the Office of Indigent Defense Services. A provisional release under this section shall not constitute a discharge of the debtor, and the creditor may oppose the discharge by suggesting fraud even if he has unsuccessfully attempted to oppose the provisional release on the basis of fraudulent concealment. The debtor may be provisionally released even though actual service upon the creditor has not

been accomplished if 72 hours has passed since the debtor delivered the notice to the sheriff for service upon the creditor."

Section 33. G.S. 35A-1107 reads as rewritten:

"**§ 35A-1107. Right to counsel or guardian ad litem.**

The respondent is entitled to be represented by counsel of his own choice or by ~~court-appointed~~ an appointed guardian ad litem. Upon filing of the ~~petition, the clerk shall appoint as guardian ad litem an attorney who shall~~ petition, an attorney shall be appointed as guardian ad litem to represent the respondent unless the respondent retains his own counsel, in which event ~~the clerk may discharge~~ the guardian ad ~~litem.~~ litem may be discharged. Appointment and discharge of an appointed guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 34. G.S. 35A-1130(c) reads as rewritten:

"(c) At the hearing on the motion, the ward shall be entitled to be represented by counsel or guardian ad litem, and ~~the clerk shall appoint~~ a guardian ad litem shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services if the ward is indigent and not represented by counsel. Upon motion of any party or the clerk's own motion, the clerk may order a multidisciplinary evaluation. The ward has a right, upon request by him, his counsel, or his guardian ad litem to trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury on his own motion. Provided, if there is a jury in a proceeding for restoration to competency, it shall be a jury of six persons selected in accordance with the provisions of Chapter 9 of the General Statutes."

Section 35. G.S. 90-21.8(c) reads as rewritten:

"(c) The minor may participate in proceedings in the court on her own behalf or through a guardian ad litem. The court shall advise her that she has a right to ~~court~~ appointed ~~counsel~~ counsel, and ~~shall provide her with~~ counsel shall be provided upon her ~~request.~~ request in accordance with rules adopted by the Office of Indigent Defense Services."

Section 36. G.S. 108A-105(b) reads as rewritten:

"(b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then ~~the court shall appoint~~ a guardian ad litem shall be appointed pursuant to G.S. 1A-1, ~~Rule 17.~~ Rule 17, and rules adopted by the Office of Indigent Defense Services. If the person is indigent, the cost of representation shall be borne by the State."

Section 37. G.S. 122C-224.1(a) reads as rewritten:

"(a) Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, ~~the clerk of superior court, under direction of the district court judge,~~ an attorney shall ~~appoint an attorney~~ be appointed for the ~~minor.~~ minor in accordance with rules adopted by

the Office of Indigent Defense Services. When a minor has been admitted to a State facility for the mentally ill, the attorney appointed shall be the attorney employed in accordance with G.S. 122C-270(a) through (c). All minors shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any minor an affidavit of indigency. The attorney shall be paid a reasonable fee ~~fixed by the court in the same manner as fees for attorneys appointed in cases of indigency.~~ in accordance with rules adopted by the Office of Indigent Defense Services. The judge may require payment of the attorney's fee from a person other than the minor as provided in G.S. 7A-450.1 through G.S. 7A-450.4."

Section 38. G.S. 122C-267(d) reads as rewritten:

"(d) At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 39. G.S. 122C-268(d) reads as rewritten:

"(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed ~~by the court.~~ in accordance with rules adopted by the Office of Indigent Defense Services."

Section 40. G.S. 122C-268.1(d) reads as rewritten:

"(d) The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed ~~by the court.~~ in accordance with rules adopted by the Office of Indigent Defense Services."

Section 41. G.S. 122C-269(b) reads as rewritten:

"(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. The ~~requesting clerk shall appoint as~~ counsel for indigent respondents the counsel provided for in ~~G.S. 122C-268(d).~~ G.S. 122C-268(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

Section 42. G.S. 122C-270 reads as rewritten:

"**§ 122C-270. Attorneys to represent the respondent and the State.**

(a) ~~The senior regular resident superior court judge of~~ In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is ~~located~~ located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill. ~~This~~ These special counsel shall serve at the

pleasure of the ~~appointing judge,~~ Commission, may not privately practice law, and shall receive annual compensation within the salary range for assistant ~~district attorneys~~ public defenders as fixed by the ~~Administrative Officer of the Courts.~~ Office of Indigent Defense Services. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The ~~Administrative Office of the Courts~~ Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned ~~by a district judge of the district.~~ in accordance with rules adopted by the Office of Indigent Defense Services. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the ~~Administrative Officer of the Courts,~~ Director of the Office of Indigent Defense Services, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, ~~a district court judge shall appoint~~ counsel for indigent respondents ~~from members of the bar of the county in accordance with G.S. 122C-268(d).~~ shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for his representation until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself to the facility.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321."

Section 43. G.S. 122C-286(d) reads as rewritten:

"(d) The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S. 7A-450, ~~the court shall appoint~~ counsel shall be appointed to represent ~~him.~~ the respondent in accordance with rules adopted by the Office of Indigent Defense Services."

Section 44. G.S. 122C-286.1(b) reads as rewritten:

"(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-284. The ~~requesting clerk shall appoint as counsel for indigent respondents the~~ counsel provided for in ~~G.S. 122C-286(d).~~ G.S. 122C-286(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

Section 45. G.S. 148-62.1 reads as rewritten:

"**§ 148-62.1. Entitlement of indigent parolee and post-release supervisee to counsel, in discretion of Post-Release Supervision and Parole Commission.**

Any parolee or post-release supervisee who is an indigent under the terms of G.S. 7A-450(a) may be determined entitled, in the discretion of the Post-Release Supervision and Parole Commission, to the services of counsel at State expense at a parole revocation hearing at which either:

(1) The parolee or post-release supervisee claims not to have committed the alleged violation of the parole or post-release supervision conditions; or

(2) The parolee or post-release supervisee claims there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, even if the violation is a matter of public record or is uncontested, and that the reasons are complex or otherwise difficult to develop or present; or

(3) The parolee or post-release supervisee is incapable of speaking effectively for himself;

and where the Commission feels, on a case by case basis, that such appointment in accordance with either (1), (2) or (3) above is necessary for fundamental fairness.

If the parolee or post-release supervisee is determined to be indigent and entitled to services of counsel, counsel shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

PART IV. APPROPRIATION, TRANSITION, AND EFFECTIVE DATES

Section 46. There is appropriated from the General Fund to the Indigent Persons' Attorney Fund the sum of five hundred thirty-five thousand six hundred forty-four dollars ($535,644) for the 2000-2001 fiscal year, to be allocated to the Judicial Department for the operations and expenses of the Commission on Indigent Defense Services and its staff.

Section 47. The Director of the Administrative Office of the Courts shall assist the chair of the Commission on Indigent Defense Services in retaining the Commission's initial Director of Indigent Defense Services. The Director of the Administrative Office of the Courts shall recruit and interview prospective candidates and shall submit at least three names to the full Commission for its consideration. The Commission may hire its initial Director of Indigent Defense Services from that list or may request that the chair of the Commission and Director of the Administrative Office of the Courts submit additional names.

Section 48. The Commission on Indigent Defense Services shall report on or before May 1, 2001, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety regarding (i) a plan for the orderly transfer of budget and related authority from the Administrative Office of the Courts to the Commission on Indigent Defense Services, effective July 1, 2001; (ii) the rules, standards, and other regulations developed by the Commission for the delivery of indigent defense services; and (iii) other matters for implementation of the provisions of this act.

Section 49. Effective when this act becomes law, the Commission on Indigent Defense Services shall be responsible for appointing public defenders and the appellate defender to any new term or for filling any vacancy. To that end, G.S. 7A-498.7(b), enacted in Section 1 of this act, and the repeals of G.S. 7A-466(d) and (e) and G.S. 7A-486.2(a) and (b), as provided in Section 13 of this act, are effective when they become law. Persons holding the position of public defender or appellate defender on the date this act becomes law are entitled to serve the remainder of their terms, and the Commission on Indigent Defense Services may not take any action to shorten their terms unless those persons are removed pursuant to the applicable statutes on removal. After July 1, 2001, public defender offices and the appellate defender's office shall automatically continue in operation unless otherwise determined by the Commission on Indigent Defense Services. The Commission shall adopt standards for the operation of the appellate defender's office after July 1, 2001, including standards on salary and longevity pay consistent with G.S. 7A-498.7, enacted in Section 1 of this act.

Section 50. Except as otherwise provided in this Part, this act becomes effective July 1, 2001. G.S. 7A-498, 7A-498.1, 7A-498.2, 7A-498.4, 7A-498.5, and 7A-498.6, as enacted in Section 1 of this act, are effective when they become law; however, except as otherwise provided in this Part, no rules, standards, or other regulations issued by the Commission on Indigent Defense Services, and no decisions regarding the actual delivery of services shall take effect prior to July 1, 2001, and all authority over the expenditure of funds shall remain with the Director of the Administrative Office of the Courts prior to that date. The Commission shall be responsible for the expenditure of funds for all cases pending on or after July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1323
Proposed Committee Substitute S1323-PCS8669-SG

Short Title: Indigent Defense Services/Funds. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE INDIGENT DEFENSE STUDY COMMISSION TO ESTABLISH AN OFFICE OF INDIGENT DEFENSE SERVICES.

The General Assembly of North Carolina enacts:

PART I. OFFICE OF INDIGENT DEFENSE SERVICES

Section 1. Subdivision IX of Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 39B.

"Indigent Defense Services Act.

"**§ 7A-498. Title.**

This Article shall be known and may be cited as the 'Indigent Defense Services Act of 2000'.

"**§ 7A-498.1. Purpose.**

Whenever a person is determined to be indigent and entitled to counsel, it is the responsibility of the State under the federal and state constitutions to provide that person with counsel and the other necessary expenses of representation. The purpose of this Article is to:

(1) Enhance oversight of the delivery of counsel and related services provided at State expense;

(2) Improve the quality of representation and ensure the independence of counsel;
(3) Establish uniform policies and procedures for the delivery of services;
(4) Generate reliable statistical information in order to evaluate the services provided and funds expended; and
(5) Deliver services in the most efficient and cost-effective manner without sacrificing quality representation.

"§ 7A-498.2. Establishment of Office of Indigent Defense Services.

(a) The Office of Indigent Defense Services, which is administered by the Director of Indigent Defense Services and includes the Commission on Indigent Defense Services, is created within the Judicial Department. As used in this Article, 'Office' means the Office of Indigent Defense Services, 'Director' means the Director of Indigent Defense Services, and 'Commission' means the Commission on Indigent Defense Services.

(b) The Office of Indigent Defense Services shall exercise its prescribed powers independently of the head of the Administrative Office of the Courts. The Office may enter into contracts, own property, and accept funds, grants, and gifts from any public or private source to pay expenses incident to implementing its purposes.

(c) The Director of the Administrative Office of the Courts shall provide general administrative support to the Office of Indigent Defense Services. The term 'general administrative support' includes purchasing, payroll, and similar administrative services.

(d) The budget of the Office of Indigent Defense Services shall be a part of the Judicial Department's budget. The Commission on Indigent Defense Services shall consult with the Director of the Administrative Office of the Courts, who shall assist the Commission in preparing and presenting to the General Assembly the Office's budget, but the Commission shall have the final authority with respect to preparation of the Office's budget and with respect to representation of matters pertaining to the Office before the General Assembly.

(e) The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Office of Indigent Defense Services or use funds appropriated to the Office without the approval of the Commission.

"§ 7A-498.3. Responsibilities of Office of Indigent Defense Services.

(a) The Office of Indigent Defense Services shall be responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in the following cases:
(1) Cases in which an indigent person is subject to a deprivation of liberty or other constitutionally protected interest and is entitled by law to legal representation;
(2) Cases in which an indigent person is entitled to legal representation under G.S. 7A-451 and G.S. 7A-451.1; and

(3) Any other cases in which the Office of Indigent Defense Services is designated by statute as responsible for providing legal representation.

(b) The Office of Indigent Defense Services shall develop policies and procedures for determining indigency in cases subject to this Article, and those policies shall be applied uniformly throughout the State. The court shall determine in each case whether a person is indigent and entitled to legal representation; however, the Office may preliminarily assign itself to represent indigent persons subject to final determination by the court.

(c) In all cases subject to this Article, appointment of counsel, determination of compensation, appointment of experts, and use of funds for experts and other services related to legal representation shall be in accordance with rules and procedures adopted by the Office of Indigent Defense Services.

(d) The Office of Indigent Defense Services shall allocate and disburse funds appropriated for legal representation and related services in cases subject to this Article pursuant to rules and procedures established by the Office.

"§ 7A-498.4. Establishment of Commission on Indigent Defense Services.

(a) The Commission on Indigent Defense Services is created within the Office of Indigent Defense Services and shall consist of 13 members. To create an effective working group, assure continuity, and achieve staggered terms, the Commission shall be appointed as provided in this section.

(b) The members of the Commission shall be appointed as follows:

(1) The Chief Justice of the North Carolina Supreme Court shall appoint one member, who shall be an active or former member of the North Carolina judiciary.

(2) The Governor shall appoint one member, who shall be a nonattorney.

(3) The General Assembly shall appoint one member upon the recommendation of the President Pro Tempore of the Senate.

(4) The General Assembly shall appoint one member upon the recommendation of the Speaker of the House of Representatives.

(5) The North Carolina Public Defenders Association shall appoint one member.

(6) The North Carolina State Bar shall appoint one member.

(7) The North Carolina Bar Association shall appoint one member.

(8) The North Carolina Academy of Trial Lawyers shall appoint one member.

(9) The North Carolina Association of Black Lawyers shall appoint one member.

(10) The North Carolina Association of Women Lawyers shall appoint one member.

(11) The Commission shall appoint three members, who shall reside in different judicial districts from one another. One appointee shall be a nonattorney, and one appointee may be an active member of

the North Carolina judiciary. The initial three members satisfying this subdivision shall be appointed as provided in subsection (k) of this section.

(c) The terms of members appointed pursuant to subsection (b) of this section shall be as follows:

(1) The initial appointments by the Chief Justice, Governor, President Pro Tempore, and the Speaker shall be for four years.

(2) The initial appointments by the Public Defenders Association and State Bar, and one appointment by the Commission, shall be for three years.

(3) The initial appointments by the Bar Association and Trial Academy, and one appointment by the Commission, shall be for two years.

(4) The initial appointments by the Black Lawyers Association and Women Lawyers Association, and one appointment by the Commission, shall be for one year.

At the expiration of these initial terms, appointments shall be for four years and shall be made by the appointing authorities designated in subsection (b) of this section. No person shall serve more than two consecutive four-year terms plus any initial term of less than four years.

(d) Persons appointed to the Commission shall have significant experience in the defense of criminal or other cases subject to this Article or shall have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors or law enforcement officials, or active employees of such persons, may be appointed to or serve on the Commission. No active judicial officials, or active employees of such persons, may be appointed to or serve on the Commission, except as provided in subsection (b) of this section. No active public defenders, active employees of public defenders, or other active employees of the Office of Indigent Defense Services may be appointed to or serve on the Commission, except that notwithstanding this subsection, G.S. 14-234, or any other provision of law, Commission members may include part-time public defenders employed by the Office of Indigent Defense Services and may include persons, or employees of persons or organizations, who provide legal services subject to this Article as contractors or appointed attorneys.

(e) All members of the Commission are entitled to vote on any matters coming before the Commission unless otherwise provided by rules adopted by the Commission concerning voting on matters in which a member has, or appears to have, a financial or other personal interest.

(f) Each member of the Commission shall serve until a successor in office has been appointed. Vacancies shall be filled by appointment by the appointing authority for the unexpired term. Removal of Commission members shall be in accordance with policies and procedures adopted by the Commission.

(g) A quorum for purposes of conducting Commission business shall be a majority of the members of the Commission.

(h) The Commission shall elect a Commission chair from the members of the Commission for a term of two years.

(i) The Director of Indigent Defense Services shall attend all Commission meetings except those relating to removal or reappointment of the Director or allegations of misconduct by the Director. The Director shall not vote on any matter decided by the Commission.

(j) Commission members shall not receive compensation but are entitled to be paid necessary subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6 as applicable.

(k) The Commission shall hold its first meeting no later than September 15, 2000. All appointments to the Commission specified in subdivisions (1) through (10) of subsection (b) of this section shall be made by the appointing authorities by September 1, 2000. The appointee of the Chief Justice shall convene the first meeting. No later than 30 days after its first meeting, the Commission shall make the appointments specified in subdivision (11) of subsection (b) of this section and shall elect its chair.

"**§ 7A-498.5. Responsibilities of Commission.**

(a) The Commission shall have as its principal purpose the development and improvement of programs by which the Office of Indigent Defense Services provides legal representation to indigent persons.

(b) The Commission shall appoint the Director of the Office of Indigent Defense Services, who shall be chosen on the basis of training, experience, and other qualifications. The Commission shall consult with the Chief Justice and Director of the Administrative Office of the Courts in selecting a Director, but shall have final authority in making the appointment.

(c) The Commission shall develop standards governing the provision of services under this Article. The standards shall include:

(1) Standards for maintaining and operating regional and district public defender offices and appellate defender offices, including requirements regarding qualifications, training, and size of the legal and supporting staff;

(2) Standards prescribing minimum experience, training, and other qualifications for appointed counsel;

(3) Standards for public defender and appointed counsel caseloads;

(4) Standards for the performance of public defenders and appointed counsel;

(5) Standards for the independent, competent, and efficient representation of clients whose cases present conflicts of interest, in both the trial and appellate courts;

(6) Standards for providing and compensating experts and others who provide services related to legal representation;

(7) Standards fo qualifications and performance in capital cases; and

(8) Standards for determining indigency and for assessing and collecting the costs of legal representation and related services.

(d) The Commission shall determine the methods for delivering legal services to indigent persons eligible for legal representation under this Article and shall establish in each district or combination of districts a system of appointed counsel, contract counsel, part-time public defenders, public defender offices, appellate defender services, and other methods for delivering counsel services, or any combination of these services.

(e) In determining the method of services to be provided in a particular district, the Director shall consult with the district bar as defined in G.S. 84-19 and the judges of the district or districts under consideration. The Commission shall adopt procedures ensuring that affected local bars have the opportunity to be significantly involved in determining the method or methods for delivering services in their districts.

(f) The Commission shall establish policies and procedures with respect to the distribution of funds appropriated under this Article, including rates of compensation for appointed counsel, schedules of allowable expenses, appointment and compensation of expert witnesses, and procedures for applying for and receiving compensation.

(g) The Commission shall approve and recommend to the General Assembly a budget for the Office of Indigent Defense Services.

(h) The Commission shall adopt such other rules and procedures as it deems necessary for the conduct of business by the Commission and the Office of Indigent Defense Services.

"**§ 7A-498.6. Director of Indigent Defense Services.**

(a) The Director of Indigent Defense Services shall be appointed by the Commission for a term of four years. The Director may be removed during this term in the discretion of the Commission by a vote of two-thirds of all of the Commission members. The Director shall be an attorney licensed and eligible to practice in the courts of this State at the time of appointment and at all times during service as the Director.

(b) The Director shall:

(1) Prepare and submit to the Commission a proposed budget for the Office of Indigent Defense Services, an annual report containing pertinent data on the operations, costs, and needs of the Office, and such other information as the Commission may require;

(2) Assist the Commission in developing rules and standards for the delivery of services under this Article;

(3) Administer and coordinate the operations of the Office and supervise compliance with standards adopted by the Commission;

(4) Subject to policies and procedures established by the Commission, hire such professional, technical, and support personnel as deemed reasonably necessary for the efficient operation of the Office of Indigent Defense Services;

(5) Keep and maintain proper financial records for use in calculating the costs of the operations of the Office of Indigent Defense Services;

(6) Apply for and accept on behalf of the Office of Indigent Defense Services any funds that may become available from government grants, private gifts, donations, or bequests from any source;

(7) Coordinate the services of the Office of Indigent Defense Services with any federal, county, or private programs established to provide assistance to indigent persons in cases subject to this Article and consult with professional bodies concerning improving the administration of indigent services;

(8) Conduct training programs for attorneys and others involved in the legal representation of persons subject to this Article; and

(9) Perform other duties as the Commission may assign.

"**§ 7A-498.7. Public Defender Offices.**

(a) The Commission may establish and operate regional and district public defender offices as it deems necessary to administer the provisions of this Article. In districts in which the Commission has determined to provide services through public defender offices, the Commission shall appoint regional and district public defenders as necessary to administer such offices.

(b) For each new term, and to fill any vacancy, public defenders shall be appointed by the Commission from a list of not less than two and not more than three persons nominated by written ballot of the attorneys licensed to practice law in North Carolina and resident in the district or districts within the public defender's jurisdiction; however, if the Commission determines that exceptional circumstances exist in a specific instance, the Commission may appoint a person as public defender who has not been so nominated. Public defenders shall be chosen by the Commission on the basis of training, experience, and other qualifications. Balloting shall be conducted pursuant to rules promulgated by the Commission.

(c) A public defender shall be an attorney licensed to practice law in North Carolina and shall devote full time to the duties of the office. In lieu of merit and other increment raises paid to regular State employees, a public defender 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, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. 'Service' means service as a public defender, appellate defender, assistant public or appellate defender, assistant district attorney, justice or judge of the General Court of Justice, or clerk of superior court.

(d) Subject to standards adopted by the Commission, the day-to-day operation and administration of public defender offices shall be the responsibility of the public defender in charge of the office. The public defender shall keep appropriate records

and make periodic reports, as requested, to the Director of the Office of Indigent Defense Services on matters related to the operation of the office.

(e) The Office of Indigent Defense Services shall procure office equipment and supplies for the public defender, and provide secretarial and library support from State funds appropriated to the public defender's office for this purpose.

(f) Each public defender is entitled to assistant public defenders, investigators, and other staff, full-time or part-time, as may be authorized by the Commission. Assistants, investigators, and other staff are appointed by the public defender and serve at the pleasure of the public defender. Average and minimum compensation of assistants shall be as provided in the biennial Current Operations Appropriations Act. The actual salaries of assistants shall be set by the public defender in charge of the office, subject to approval by the Commission. The Commission shall fix the compensation of investigators. Assistants and investigators shall perform such duties as may be assigned by the public defender.

(g) In lieu of merit and other increment raises paid to regular State employees, an assistant public defender 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, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. 'Service' means service as a public defender, appellate defender, assistant public or appellate defender, assistant district attorney, justice or judge of the General Court of Justice, or clerk of superior court.

(h) The term of office of public defenders appointed under this section is four years. The Commission may suspend or remove a public defender from office for cause during the term of appointment. If the Director of the Office of Indigent Defense Services believes that cause exists for suspension or removal of a public defender, the Director may recommend such action to the Commission. Within 10 days of the recommendation, the public defender may request a hearing before a panel of three Commission members appointed by the chair of the Commission. If the public defender requests a hearing, the panel shall make a written report to the full Commission following the hearing. If the panel recommends that the public defender be suspended or removed from office, the Commission shall vote on whether to uphold, reject, or modify the panel's recommendation and, if two-thirds of all of the Commission members so find, the Commission may suspend or remove the public defender from office. If the public defender does not request a hearing, the Commission may vote on the recommendation without a hearing and may suspend or remove a public defender by a two-thirds vote of all of the Commission members. If the Commission suspends or removes a public defender, the public defender may obtain judicial review by filing a petition within 30 days of the decision with the Superior Court of Wake County. Review of the Commission's decision shall be heard on the record and not as a de novo review or trial de novo. The Commission shall adopt rules implementing this subsection."

PART II. AMENDMENTS TO CHAPTER 7A OF THE GENERAL STATUTES

Section 2. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

(1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of five dollars ($5.00), to be remitted to the county wherein the arrest was made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.

(2) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in the district court, including cases before a magistrate, and the sum of thirty dollars ($30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public ~~defenders,~~ defenders and other personnel of the Office of Indigent Defense Services, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

(3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents ($7.25), to be remitted to the State Treasurer. Fifty cents (50¢) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents ($5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents ($1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar ($1.00) of this sum shall be administered as is provided in Article 12F of Chapter 143 of the General Statutes.

(3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75¢) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.

(4) For support of the General Court of Justice, the sum of sixty-one dollars ($61.00) in the district court, including cases before a magistrate, and the sum of sixty-eight dollars ($68.00) in the superior court, to be remitted to the State Treasurer.

(5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars ($15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars ($50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee."

Section 3. G.S. 7A-314(d) reads as rewritten:

"(d) An expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section. Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent Defense Services."

Section 4. G.S. 7A-344 is repealed.

Section 5. G.S. 7A-450(a) reads as rewritten:

"(a) An indigent person is a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an

action or proceeding enumerated in this Subchapter. An interpreter is a necessary expense as defined in ~~Chapter 8A~~ Chapter 8B of the General Statutes for a deaf person who is entitled to counsel under this subsection."

Section 6. G.S. 7A-451 reads as rewritten:

"**§ 7A-451. Scope of entitlement.**

(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;

(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;

(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars ($500.00) or more, or has been sentenced to a term of imprisonment;

(4) A hearing for revocation of probation;

(5) A hearing in which extradition to another state is sought;

(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.

(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;

(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;

(10) A proceeding for sterilization under Chapter 35, Article 7 (Sterilization of Persons Mentally Ill and Mentally Retarded) of the General Statutes; and

(11) A proceeding for the provision of protective services according to ~~Chapter 108, Article 4,~~ Chapter 108A, Article 6 of the General Statutes;

(12) In the case of a juvenile alleged to be neglected under Chapter 7A, Article 23 of the General Statutes;

(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;

(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;

(15) An action brought pursuant to Article 24B of Chapter 7A of the General Statutes to terminate an indigent person's parental rights.

(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(b) In each of the actions and proceedings enumerated in subsection (a) of this section, entitlement to the services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process. Entitlement continues through any critical stage of the action or proceeding, including, if applicable:

(1) An in-custody interrogation;

(2) A pretrial identification procedure which occurs after formal charges have been preferred and at which the presence of the indigent is required;

(3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;

(4) A probable cause hearing;

(5) Trial and sentencing; and

(6) Review of any judgment or decree pursuant to G.S. 7A-27, 7A-30(1), 7A-30(2), and Subchapter XIV of Chapter 15A of the General Statutes.

(c) In any capital case, an indigent defendant who is under a sentence of death may apply to the superior court of the district where the defendant was indicted for the appointment of counsel to represent the defendant in preparing, filing, and litigating a motion for appropriate relief. The application for the appointment of such postconviction counsel may be made prior to completion of review on direct appeal and shall be made no later than 10 days from the latest of the following:

(1) The mandate has been issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

(2) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina; or

(3) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina, but subsequently left the defendant's death sentence undisturbed.

If there is not a criminal or mixed session of superior court scheduled for that district, the application must be made no later than 10 days from the beginning of the next criminal or mixed session of superior court in the district. Upon application, supported by the defendant's affidavit, the superior court shall enter an order appointing ~~two counsel~~ the Office of Indigent Defense Services if the court finds that the defendant is indigent and desires ~~counsel.~~ counsel, and the Office of Defense Services shall appoint two counsel to represent the defendant. The defendant does

not have a right to be present at the time of appointment of counsel, and the appointment need not be made in open court. If the defendant was previously adjudicated an indigent for purposes of trial or direct appeal, the defendant shall be presumed indigent for purposes of this subsection.

(d) The appointment of counsel as provided in subsection (c) of this section and the procedure for compensation shall comply with ~~the Rules and Regulations Relating to the Appointment of Counsel for Indigent Defendants pursuant to G.S. 7A-459. The court may appoint counsel recruited by the Appellate Defender pursuant to G.S. 7A-486.3(5).~~ rules adopted by the Office of Indigent Defense Services.

(e) No counsel appointed pursuant to subsection (c) of this section shall have previously represented the defendant at trial or on direct appeal in the case for which the appointment is made unless the defendant expressly requests continued representation and understandingly waives future allegations of ineffective assistance of counsel."

Section 7. G.S. 7A-452 reads as rewritten:

"**§ 7A-452. Source of counsel; fees; appellate records.**

(a) ~~Counsel for an indigent person shall be assigned by the court.~~ Upon the court's determination that a person is indigent and entitled to counsel under this Article, counsel shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services. In the courts of those counties ~~which have a public defender,~~ designated by the Office of Indigent Defense Services, however, the ~~public defender may tentatively assign himself or an assistant public defender~~ designee of the Office of Indigent Defense Services may tentatively assign himself or another person to represent an indigent person, subject to subsequent ~~approval~~ determination of entitlement to counsel by the court.

(b) Fees of assigned counsel and salaries and other operating expenses of the offices of the public defenders shall be borne by the State.

(c) (1) The clerk of superior court is authorized to make a determination of indigency and ~~to appoint counsel,~~ entitlement to counsel, as authorized by this Article. The word "court," as it is used in this Article and in any rules pursuant to this Article, includes the clerk of superior court.

(2) A judge of superior or district court having authority to ~~appoint~~ determine entitlement to counsel in a particular case may give directions to the clerk with regard to the ~~appointment of~~ determination of entitlement to counsel in that case; may, if he finds it appropriate, change or modify the ~~appointment of counsel when counsel has been appointed~~ determination made by the clerk; and may set aside a finding of waiver of counsel made by the clerk.

(d) Unless a public defender or assistant public defender is appointed to serve, ~~the trial judge appointing~~ standby counsel appointed under G.S. 15A-1243 shall ~~award~~ receive reasonable compensation to be paid by the State."

Section 8. G.S. 7A-453 reads as rewritten:

"**§ 7A-453. Duty of custodian of a possibly indigent person; determination of indigency.**

(a) In counties ~~which have a public defender,~~ designated by the Office of Indigent Defense Services, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the ~~public defender.~~ designee of the Office of Indigent Defense Services. The ~~public defender~~ designee of the Office of Indigent Defense Services shall make a preliminary determination as to the person's entitlement to his services, and proceed accordingly. The court shall make the final determination.

(b) In counties ~~which do not have a public defender,~~ that have not been designated by the Office of Indigent Defense Services, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the clerk of superior court.

(c) In any county, if a defendant, upon being taken into custody, states that he is indigent and desires counsel, the authority having custody shall immediately inform the ~~defender~~ designee of the Office of Indigent Defense Services or the clerk of superior court, as the case may be, who shall take action as provided in this Article.

(d) The duties imposed by this section upon authorities having custody of persons who may be indigent are in addition to the duties imposed upon arresting officers under G.S. 15-47."

Section 9. G.S. 7A-454 reads as rewritten:

"**§ 7A-454. Supporting services.**

~~The court, in its discretion, may approve a fee for the service of an expert witness who testifies for an indigent person, and shall approve reimbursement for the necessary expenses of counsel. Fees and expenses accrued under this section shall be paid by the State.~~ Fees for the services of an expert witness for an indigent person and other necessary expenses of counsel shall be paid by the State in accordance with rules adopted by the Office of Indigent Defense Services."

Section 10. G.S. 7A-455 reads as rewritten:

"**§ 7A-455. Partial indigency; liens; acquittals.**

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for him by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, he shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall ~~fix the money value of services rendered by assigned counsel, the public defender, or the appellate defender, and such sum plus any sums allowed by the court for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, shall be entered as~~ direct that a judgment be entered in the office of the clerk of superior ~~court, and~~ court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary

expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the ~~judgment; provided, that counsel fees ordered paid to the clerk on behalf of the appointed counsel pursuant to G.S. 15A-1343(c) may be paid directly to the counsel.~~ judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. ~~In fixing the~~ The money value of services rendered by the public defender and the appellate ~~defender, the court shall consider~~ defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. ~~The value of the services shall be fixed by a~~ A district court judge shall direct entry of judgment for actions or proceedings finally determined in the district court and ~~by~~ a superior court judge shall direct entry of judgment for actions or proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceedings petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent

Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor."

Section 11. G.S. 7A-457(a) reads as rewritten:

"(a) An indigent person who has been informed of his right to be represented by counsel at any in-court proceeding, may, in writing, waive the right to in-court representation by ~~counsel,~~ counsel in accordance with rules adopted by the Office of Indigent Defense Services. Any waiver of counsel shall be effective only if the court finds of record that at the time of waiver the indigent person acted with full awareness of his rights and of the consequences of the waiver. In making such a finding, the court shall consider, among other things, such matters as the person's age, education, familiarity with the English language, mental condition, and the complexity of the crime charged."

Section 12. G.S. 7A-458 reads as rewritten:

"**§ 7A-458. Counsel fees.**

~~In districts which do not have a public defender, the court shall fix the~~ The fee to which an attorney who represents an indigent person is ~~entitled.~~ entitled shall be fixed in accordance with rules adopted by the Office of Indigent Defense Services. ~~In doing so, the court shall allow a fee~~ Fees shall be based on the factors normally considered in fixing attorneys' fees, such as the nature of the case, and the time, effort and responsibility involved. ~~Fees shall be fixed by the district court judge who hears the case for actions or proceedings finally determined in the district court and by the superior court judge who hears the case for actions or proceedings originating in, heard on appeal in, or appealed from the superior court.~~ Even if the trial, appeal, hearing or other proceeding is never held, preparation therefor is nevertheless compensable and, in capital cases and other extraordinary cases pending in superior court, ~~the presiding judge may allow~~ a fee for services rendered and payment for expenses incurred may be allowed pending final determination of the case."

Section 13. G.S. 7A-459, 7A-465, 7A-466, 7A-467, 7A-469, 7A-470, 7A-471, 7A-486, 7A-486.1, 7A-486.2, 7A-486.3, 7A-486.4, 7A-486.5, 7A-486.6, and 7A-486.7 are repealed.

PART III. AMENDMENTS TO MISCELLANEOUS OTHER STATUTES

Section 14. G.S. 1-311 reads as rewritten:

"**§ 1-311. Against the person.**

If the action is one in which the defendant might have been arrested, an execution against the person of the judgment debtor may be issued to any county within the State, after the return of an execution against his property wholly or partly unsatisfied. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as provided in the Article Arrest and Bail, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by law, whether such statement of facts is necessary to the cause of action or not. Provided, that where the facts are found by a jury, the verdict

shall contain a finding of facts establishing the right to execution against the person; and where jury trial is waived and the court finds the facts, the court shall find facts establishing the right to execution against the person. Such findings of fact shall include a finding that the defendant either (i) is about to flee the jurisdiction to avoid paying his creditors, (ii) has concealed or diverted assets in fraud of his creditors, or (iii) will do so unless immediately detained. If defendant appears at the hearing on the debt and the judge has reason to believe that the defendant is indigent, he shall inform the defendant that if he is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and provisional release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer. If defendant appears at the hearing on the debt and the judge provisionally concludes he is indigent, counsel should be appointed ~~immediately.~~ immediately pursuant to rules adopted by the Office of Indigent Defense Services."

Section 15. G.S. 1-413 reads as rewritten:

"**§ 1-413. Issuance and form of order.**

The order may be made to accompany the summons, or to issue at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a place and time therein mentioned to the clerk of the court in which the action is brought. Notice of the return must be served on the plaintiff or his attorney as prescribed by law for the service of other notices. The order shall include a statement that if the person arrested is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and preliminary release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 16. G.S. 7B-602 reads as rewritten:

"**§ 7B-602. Parent's right to counsel.**

In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. ~~In no case may the court appoint a county attorney, prosecutor, or public defender.~~"

Section 17. G.S. 7B-603 reads as rewritten:

"**§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 ~~or G.S. 7B-602 pursuant to any other provision of the Juvenile Code~~ shall be paid a reasonable fee fixed by the court ~~in the same manner as fees for attorneys appointed~~

~~in cases of indigency~~ or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(c) The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21."

Section 18. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the ~~Administrative Office of the Courts.~~ Office of Indigent Defense Services. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1111(6); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the ~~Administrative Office of the Courts~~ Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

Section 19. G.S. 7B-1109(b) reads as rewritten:

"(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined

in G.S. 7A-450(a) and are unable to obtain counsel to represent them, ~~the court shall appoint~~ counsel shall be appointed to represent ~~them.~~ them in accordance with rules adopted by the Office of Indigent Defense Services. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination petition. In the event that the parents do not desire counsel and are present at the hearing, the court shall examine each parent and make findings of fact sufficient to show that the waivers were knowing and voluntary. This examination shall be reported as provided in G.S. 7A-198."

Section 20. G.S. 7B-1808(b) reads as rewritten:

"(b) At the first appearance, the court shall:

(1) Inform the juvenile of the allegations set forth in the petition;

(2) Determine whether the juvenile has retained counsel or has been assigned counsel ~~and, if the juvenile is not represented by counsel, appoint counsel for the juvenile;~~ counsel;

(3) If applicable, inform the juvenile of the date of the probable cause hearing, which shall be within 15 days of the first appearance; and

(4) Inform the parent, guardian, or custodian that the parent, guardian, or custodian is required to attend all hearings scheduled in the matter and may be held in contempt of court for failure to attend any scheduled hearing.

If the juvenile is not represented by counsel, counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Services."

Section 21. G.S. 7B-1906(c) reads as rewritten:

"(c) The court shall determine whether a juvenile who is alleged to be delinquent has retained counsel or has been assigned counsel; ~~and,~~ if the juvenile is not represented by counsel, ~~appoint~~ counsel for the ~~juvenile.~~ juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

Section 22. G.S. 7B-2000(a) reads as rewritten:

"(a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. ~~The court shall appoint counsel for the juvenile,~~ Counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined."

Section 23. G.S. 7B-2002 reads as rewritten:

"**§ 7B-2002. Payment of court-appointed attorney.**

An attorney appointed pursuant to G.S. 7B-2000 or pursuant to any other provision of this Subchapter shall be paid a reasonable fee ~~fixed by the court in the same manner as fees for attorneys appointed in cases of indigency through the Administrative Office of the Courts.~~ in accordance with rules adopted by the Office of Indigent Defense Services. The court may require payment of the attorneys' fees from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. A person who does not comply with the court's order of payment may be found in civil contempt as provided in G.S. 5A-21."

Section 24. G.S. 7B-2704 reads as rewritten:

"**§ 7B-2704. Payment of support or other expenses; assignment of insurance coverage.**

At the dispositional hearing or a subsequent hearing, if the court finds that the parent is able to do so, the court may order the parent to:

(1) Pay a reasonable sum that will cover in whole or in part the support of the juvenile. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4;

(2) Pay a fee for probation supervision or residential facility costs;

(3) Assign private insurance coverage to cover medical costs while the juvenile is in secure detention, training school, or other out-of-home placement; and

(4) Pay ~~court-appointed~~ appointed attorneys' fees.

All money paid by a parent pursuant to this section shall be paid into the office of the clerk of superior court.

If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof."

Section 25. G.S. 7B-2804(a) reads as rewritten:

"(a) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of the parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner, and the basis of entitlement to the juvenile's custody, the circumstances of the running away, the juvenile's location if known at the time application is made, and any other facts that may tend to show that the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Any further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interests of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written

requisition for the return of the juvenile. The requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to legal custody, and that it is in the best interests and for the protection of the juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when the juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon the order shall be delivered over to the officer whom the court has appointed to receive the juvenile unless the juvenile first is taken before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may ~~appoint~~ determine that counsel or guardian ad litem for the ~~juvenile.~~ juvenile should be appointed. If the court finds that the requisition is in order, the court shall deliver the juvenile over to the officer appointed to receive the juvenile by the court demanding the juvenile. The court, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person, or agency entitled to legal custody, the juvenile may be taken into custody without a requisition and brought before a judge of the appropriate court who may ~~appoint~~ determine that counsel or guardian ad litem for the juvenile should be appointed and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the juvenile's own protection and welfare, for such a time not exceeding 90 days as will enable the return of the juvenile to another state party to this Compact pursuant to a requisition for return from a court of that state. In cases in which the court determines that counsel or guardian ad litem should be provided for the juvenile, appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found, any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the juvenile is suspected of having committed within the state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the state until discharged from prosecution or other form of proceeding, imprisonment,

detention, or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this Compact, without interference. Upon return of the juvenile to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state."

Section 26. G.S. 7B-2805 reads as rewritten:

"**§ 7B-2805. Return of escapees and absconders.**

(a) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody a delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of the delinquent juvenile. The requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of probation or parole or of the juvenile's escape from an institution or agency vested with legal custody or supervision, and the location of the delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects the delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Any further affidavits and documents as may be deemed proper may be submitted with the requisition. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of the law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the person to take into custody and detain such delinquent juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon the order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile has appointed to receive the juvenile, unless the juvenile is first taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the return, and who may ~~appoint~~ determine that counsel or guardian ad litem for the ~~juvenile.~~ juvenile should be appointed. If the judge of the court finds that the requisition is in order, the judge shall deliver the delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency

vested with legal custody or supervision in any state party to this Compact, the person may be taken into custody in any other state party to this Compact without a requisition. But in that event, the juvenile shall be taken forthwith before a judge of the appropriate court, who may ~~appoint~~ determine that counsel or guardian ad litem for the person should be appointed and who shall determine after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a length of time, not exceeding 90 days, as will enable detention of the juvenile under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent who has either absconded while on probation or parole or escaped from an institution or agency vested with legal custody or supervision, there is pending in the state wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the juvenile is suspected of having committed a criminal offense or an act of juvenile delinquency within the state, the juvenile shall not be returned without the consent of the state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport the delinquent juvenile through any and all states party to this Compact, without interference. Upon return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to any further proceedings appropriate under the laws of that state.

(b) The state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of transportation costs of the return.

(c) If the court determines that counsel or guardian ad litem should be provided under this section, appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 27. G.S. 15-11.1(b) reads as rewritten:

"(b) In the case of unknown or unapprehended defendants or of defendants willfully absent from the jurisdiction, the court shall ~~have discretion to appoint a guardian ad litem, who shall be a licensed attorney,~~ determine whether an attorney should be appointed as guardian ad litem to represent and protect the interest of such unknown or absent defendants. Appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services. The judicial findings concerning identification or value that are made at such hearing whereby property is returned to the lawful owner or a person, firm, or corporation entitled to possession, may be admissible into evidence at the trial. After final judgment all property lawfully seized by or otherwise coming into the possession of law-enforcement authorities shall be disposed of as the court or magistrate in its discretion orders, and may be forfeited and either sold or destroyed in accordance with due process of law."

Section 28. G.S. 15A-279(d) reads as rewritten:

"(d) Any such person is entitled to have counsel present and must be advised prior to being subjected to any nontestimonial identification procedures of his right to have

counsel present during any nontestimonial identification procedure and to the appointment of counsel if he cannot afford to retain counsel. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. No statement made during nontestimonial identification procedures by the subject of the procedures shall be admissible in any criminal proceeding against him, unless his counsel was present at the time the statement was made."

Section 29. G.S. 15A-803(d) reads as rewritten:

"(d) Procedure. -- A material witness order may be obtained upon motion supported by affidavit showing cause for its issuance. The witness must be given reasonable notice, opportunity to be heard and present evidence, and the right of representation by counsel at a hearing on the motion. Counsel for a material witness may be appointed and compensated in the same manner as counsel for an indigent defendant. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. The order must be based on findings of fact supporting its issuance."

Section 30. G.S. 15A-1243 reads as rewritten:

"**§ 15A-1243. Standby counsel for defendant representing himself.**

When a defendant has elected to proceed without the assistance of counsel, the trial judge in his discretion may ~~appoint~~ determine that standby counsel should be appointed to assist the defendant when called upon and to bring to the judge's attention matters favorable to the defendant upon which the judge should rule upon his own motion. Appointment and compensation of standby counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 31. G.S. 15A-1343(e) reads as rewritten:

"(e) Costs of Court and Appointed Counsel. -- Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and costs for appointed counsel or public defender in the case in which he was convicted. The cost of appointed counsel or public defender services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount ~~due~~ of those costs to be repaid and the method of payment."

Section 32. G.S. 23-30.1 reads as rewritten:

"**§ 23-30.1. Provisional release.**

Every person who has filed a petition under the provisions of G.S. 23-30 shall be brought before a judge within 72 hours after filing the petition and shall be provisionally released from imprisonment unless a hearing shall be held and the creditor shall establish that the prisoner has fraudulently concealed assets. If, at the time he is brought before a judge, the prisoner makes a showing of indigency, ~~the judge shall appoint~~ counsel shall be appointed for ~~him.~~ the prisoner in accordance with rules adopted by the Office of Indigent Defense Services. A provisional release under this section shall not constitute a discharge of the debtor, and the creditor may oppose the discharge by suggesting fraud even if he has unsuccessfully attempted to oppose the provisional release on the basis of fraudulent concealment. The debtor

may be provisionally released even though actual service upon the creditor has not been accomplished if 72 hours has passed since the debtor delivered the notice to the sheriff for service upon the creditor."

Section 33. G.S. 35A-1107 reads as rewritten:

"**§ 35A-1107. Right to counsel or guardian ad litem.**

The respondent is entitled to be represented by counsel of his own choice or by ~~court-appointed~~ an appointed guardian ad litem. Upon filing of the ~~petition, the clerk shall appoint as guardian ad litem an attorney who shall~~ petition, an attorney shall be appointed as guardian ad litem to represent the respondent unless the respondent retains his own counsel, in which event ~~the clerk may discharge~~ the guardian ad ~~litem.~~ litem may be discharged. Appointment and discharge of an appointed guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 34. G.S. 35A-1130(c) reads as rewritten:

"(c) At the hearing on the motion, the ward shall be entitled to be represented by counsel or guardian ad litem, and ~~the clerk shall appoint~~ a guardian ad litem shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services if the ward is indigent and not represented by counsel. Upon motion of any party or the clerk's own motion, the clerk may order a multidisciplinary evaluation. The ward has a right, upon request by him, his counsel, or his guardian ad litem to trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury on his own motion. Provided, if there is a jury in a proceeding for restoration to competency, it shall be a jury of six persons selected in accordance with the provisions of Chapter 9 of the General Statutes."

Section 35. G.S. 90-21.8(c) reads as rewritten:

"(c) The minor may participate in proceedings in the court on her own behalf or through a guardian ad litem. The court shall advise her that she has a right to ~~court~~ appointed ~~counsel~~ counsel, and ~~shall provide her with~~ counsel shall be provided upon her ~~request.~~ request in accordance with rules adopted by the Office of Indigent Defense Services."

Section 36. G.S. 108A-105(b) reads as rewritten:

"(b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then ~~the court shall appoint~~ a guardian ad litem shall be appointed pursuant to G.S. 1A-1, ~~Rule 17.~~ Rule 17, and rules adopted by the Office of Indigent Defense Services. If the person is indigent, the cost of representation shall be borne by the State."

Section 37. G.S. 122C-224.1(a) reads as rewritten:

"(a) Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, ~~the clerk of superior court, under direction of the district court judge,~~ an attorney shall ~~appoint~~

~~an attorney~~ be appointed for the ~~minor.~~ minor in accordance with rules adopted by the Office of Indigent Defense Services. When a minor has been admitted to a State facility for the mentally ill, the attorney appointed shall be the attorney employed in accordance with G.S. 122C-270(a) through (c). All minors shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any minor an affidavit of indigency. The attorney shall be paid a reasonable fee ~~fixed by the court in the same manner as fees for attorneys appointed in cases of indigency.~~ in accordance with rules adopted by the Office of Indigent Defense Services. The judge may require payment of the attorney's fee from a person other than the minor as provided in G.S. 7A-450.1 through G.S. 7A-450.4."

Section 38. G.S. 122C-267(d) reads as rewritten:

"(d) At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services."

Section 39. G.S. 122C-268(d) reads as rewritten:

"(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed ~~by the court.~~ in accordance with rules adopted by the Office of Indigent Defense Services."

Section 40. G.S. 122C-268.1(d) reads as rewritten:

"(d) The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed ~~by the court.~~ in accordance with rules adopted by the Office of Indigent Defense Services."

Section 41. G.S. 122C-269(b) reads as rewritten:

"(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. The ~~requesting clerk shall appoint as~~ counsel for indigent respondents the counsel provided for in ~~G.S. 122C-268(d).~~ G.S. 122C-268(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

Section 42. G.S. 122C-270 reads as rewritten:

"**§ 122C-270. Attorneys to represent the respondent and the State.**

(a) ~~The senior regular resident superior court judge of~~ In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is ~~located~~ located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent

respondents who are mentally ill. ~~This~~ These special counsel shall serve at the pleasure of the ~~appointing judge,~~ Commission, may not privately practice law, and shall receive annual compensation within the salary range for assistant ~~district attorneys~~ public defenders as fixed by the ~~Administrative Officer of the Courts.~~ Office of Indigent Defense Services. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. The ~~Administrative Office of the Courts~~ Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned ~~by a district judge of the district.~~ in accordance with rules adopted by the Office of Indigent Defense Services. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the ~~Administrative Officer of the Courts,~~ Director of the Office of Indigent Defense Services, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, ~~a district court judge shall appoint~~ counsel for indigent respondents ~~from members of the bar of the county in accordance with G.S. 122C-268(d).~~ shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(e) Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for his representation until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself to the facility.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the

University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321."

Section 43. G.S. 122C-286(d) reads as rewritten:

"(d) The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S. 7A-450, ~~the court shall appoint~~ counsel shall be appointed to represent ~~him.~~ the respondent in accordance with rules adopted by the Office of Indigent Defense Services."

Section 44. G.S. 122C-286.1(b) reads as rewritten:

"(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-284. The ~~requesting clerk shall appoint as counsel for indigent respondents the~~ counsel provided for in ~~G.S. 122C-286(d).~~ G.S. 122C-286(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

Section 45. G.S. 148-62.1 reads as rewritten:

"**§ 148-62.1. Entitlement of indigent parolee and post-release supervisee to counsel, in discretion of Post-Release Supervision and Parole Commission.**

Any parolee or post-release supervisee who is an indigent under the terms of G.S. 7A-450(a) may be determined entitled, in the discretion of the Post-Release Supervision and Parole Commission, to the services of counsel at State expense at a parole revocation hearing at which either:

(1) The parolee or post-release supervisee claims not to have committed the alleged violation of the parole or post-release supervision conditions; or

(2) The parolee or post-release supervisee claims there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, even if the violation is a matter of public record or is uncontested, and that the reasons are complex or otherwise difficult to develop or present; or

(3) The parolee or post-release supervisee is incapable of speaking effectively for himself;

and where the Commission feels, on a case by case basis, that such appointment in accordance with either (1), (2) or (3) above is necessary for fundamental fairness.

If the parolee or post-release supervisee is determined to be indigent and entitled to services of counsel, counsel shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

PART IV. TRANSITION AND EFFECTIVE DATES

Section 46. The Director of the Administrative Office of the Courts shall assist the chair of the Commission on Indigent Defense Services in retaining the Commission's initial Director of Indigent Defense Services. The Director of the

Administrative Office of the Courts shall recruit and interview prospective candidates and shall submit at least three names to the full Commission for its consideration. The Commission may hire its initial Director of Indigent Defense Services from that list or may request that the chair of the Commission and Director of the Administrative Office of the Courts submit additional names.

Section 47. The Commission on Indigent Defense Services shall report on or before May 1, 2001, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety regarding (i) a plan for the orderly transfer of budget and related authority from the Administrative Office of the Courts to the Commission on Indigent Defense Services, effective July 1, 2001; (ii) the rules, standards, and other regulations developed by the Commission for the delivery of indigent defense services; and (iii) other matters for implementation of the provisions of this act.

Section 48. Effective when this act becomes law, the Commission on Indigent Defense Services shall be responsible for appointing public defenders and the appellate defender to any new term or for filling any vacancy. To that end, G.S. 7A-498.7(b), enacted in Section 1 of this act, and the repeals of G.S. 7A-466(d) and (e) and G.S. 7A-486.2(a) and (b), as provided in Section 13 of this act, are effective when they become law. Persons holding the position of public defender or appellate defender on the date this act becomes law are entitled to serve the remainder of their terms, and the Commission on Indigent Defense Services may not take any action to shorten their terms unless those persons are removed pursuant to the applicable statutes on removal. After July 1, 2001, public defender offices and the appellate defender's office shall automatically continue in operation unless otherwise determined by the Commission on Indigent Defense Services. The Commission shall adopt standards for the operation of the appellate defender's office after July 1, 2001, including standards on salary and longevity pay consistent with G.S. 7A-498.7, enacted in Section 1 of this act.

Section 49. Except as otherwise provided in this Part, this act becomes effective July 1, 2001. G.S. 7A-498, 7A-498.1, 7A-498.2, 7A-498.4, 7A-498.5, and 7A-498.6, as enacted in Section 1 of this act, are effective when they become law; however, except as otherwise provided in this Part, no rules, standards, or other regulations issued by the Commission on Indigent Defense Services, and no decisions regarding the actual delivery of services shall take effect prior to July 1, 2001, and all authority over the expenditure of funds shall remain with the Director of the Administrative Office of the Courts prior to that date. The Commission shall be responsible for the expenditure of funds for all cases pending on or after July 1, 2001.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1590 (= Senate Bill 1323)

SHORT TITLE: Implement Recommendations of the Indigent Fund Study Commission

SPONSOR(S): Rep. Hackney (Senator Ballance)

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES	-	--	----	--	---
EXPENDITURES	$585,124	$590,371	$602,065	$613,819	$648,525
POSITIONS:	7	6	6	6	6

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts

EFFECTIVE DATE: Establishment of Commission and Office of Indigent Defense Services is effective when Bill is enacted. Implementation of rules and powers of the Commission are effective July 1, 2001. AOC maintains responsibility for indigent defense until July 1, 2001.

NOTE: HB 1590 proposes to fund these 7 positions from the Indigent Defense Fund, currently in AOC. However, since the Fund is projected to have a shortfall already in 2000-2001, this analysis assumes additional General Fund appropriation will be necessary to cover this additional program. If not, the shortfall in the Indigent Fund will be greater by the above amounts. In past years, shortfalls in the Indigent Fund have been covered by AOC lapsed salaries.

BILL SUMMARY: Adds Art. 39B to GS Chapter 7A entitled Indigent Defense Services Act of 2000. Establishes Office of Indigent Defense Services as an independent Office placed

administratively within the Judicial Department. The Office will be responsible for establishing, supervising, and maintaining a system for providing legal representation to indigent persons entitled by law to legal representation, replacing the current system of Indigent Person's Attorney Fee Fund, Capital Case Program, Public Defender Program, and Special Counsel to the Mentally Ill within the AOC. Creates a 13 member Commission (appointments by the General Assembly, Governor, Chief Justice, and several constituent organizations) on Indigent Defense Services. Office and Commission are required to develop rules, policies and procedures for determining indigency, appointment of counsel, determination of compensation, and appointment of experts as well as the best method for delivering services. Commission must consult with local bar and judges of district and adopt procedures to significantly involve local bars. Authorizes Commission to establish and operate regional and district public defender offices. Commission must appoint public defender from list of 2 to 3 persons nominated by attorneys residing in the area. Modifies definition of years of service for Public Defenders and Assistant Public Defenders, for purposes of calculating longevity. Sets out procedure for suspension or removal of public defender by 2/3 of the Commission for cause. Appropriates $535,644 from General Fund for fiscal year 2000-2001 to Indigent Persons' Attorney Fund for staff and operational expenses. Makes conforming amendments to various sections of the General Statutes that reference indigent defense.

ASSUMPTIONS AND METHODOLOGY: The Fiscal Impact of HB 1590 has 4 aspects:

1) Cost of Operating the new Office of Indigent Services:
The Office of Indigent Services would require staff and certain operational expenses. During deliberations of the Study Committee, a staffing plan was developed that includes 7 staff—an Executive Director (base salary of $97,000), Associate Director (base salary of $80,000), Chief Financial Officer ($65,000), Information Systems Manager ($65,000), Research Analyst ($55,000) and Administrative Assistant ($38,809) and a Secretary ($27,491). The total recurring cost for these positions, including associated operating costs, is $556,726. Operating Costs for the Commission itself (meeting costs) and rent add $72,610 for a total $629,336. The first year also involves $95,176 in nonrecurring equipment costs.

Fiscal Research believes that these staff functions are appropriate and that these salary estimates are reasonable, relative to others in the Judicial Branch. Both the Executive and Associate Director will almost certainly be attorneys. The Executive Director will in effect supervise Public Defenders so that salary is set slightly higher than the base salary of a Public Defender. The Associate Director's salary is between the Executive Director's and the other professional staff and is set slightly below the Assistant Director of the AOC. The Information Systems Manager and Chief Financial Officer's positions are projected to be the same and are comparable to a high level position within AOC's Court Management Information Systems Division. Because current information systems do not effectively track costs per case and other key information, the Information Systems Manager will need to be able to design and maintain a new system as well as implement links with the existing AOC system. The Financial Officer is expected to be a Certified Public Accountant. The Research Analyst is comparable to a research/statistical analyst in AOC administration. The Administrative Assistant is comparable

to an Admin Assist II in a Public Defender's office and the Secretary's salary is comparable to an AOC Secretary II.
Because the Commission will not be appointed until later in the summer, the positions can be phased in; these costs assume the Executive Director position is effective October 1 and the remaining positions November 1. This lowers the operating costs in 2000-2001.
The 1999 budget funded a permanent Administrative Assistant at AOC to help manage the Indigent Fund. The $59,253 in the Continuation Budget for this position is subtracted from the cost of the 7 positions above at the point AOC no longer has responsibility for the Indigent Fund (July 1, 2001).

For 2001-2002 and later years, salaries are assumed to increase an average of 3.7%/year and other expenses to increase an average of 2.52%/year, based on FRD inflation rate estimates.

AOC would continue to provide certain administrative services to the Office such as processing the checks to attorneys and payroll for public defenders' offices. We assume this is a continuation of existing work and would not pose any new costs for AOC. However, the Office may in the future need funds for contractual services in areas where the AOC workload becomes significant, particularly in the information systems or financial services areas.

Based on these assumptions, the operating costs of the Office of Indigent Services would be as follows:

2000-2001	2001-2002	2002-2003	2003-2004	2004-2005
$535,644	$588,191	$606,616	$626,719	$649,139

2) Cost of Modifying the definition of Years of Service for purposes of calculating longevity for Public Defenders and Assistant Public Defenders:

The AOC identified 14 individuals whose longevity pay would be affected by the change in definition. Under current law, years of service for a Public Defender is years spent as a Public Defender, Assistant Public Defender, Judge or Clerk of Courts. This Bill adds years worked as a District Attorney or Assistant DA. Currently, years of service for an Assistant Public Defender are defined only as years in that current job. This bill defines years of service to include work in a DA of Appellate Defender's office or as a Judge of Clerk of Court.

Longevity pay grants a 4.8% increase after 5 years of service, 9.6% after 10 years, 14.4% after 15 and 19.6% after 20. For the 14 individuals whose longevity calculation will change, the cost each year will be as follows, relative to what they were already scheduled to receive in longevity:

2000-2001	2001-2002	2002-2003	2003-2004	2004-2005

$49,480	$2,180	($4,551)	($12,900)	($614)

Adding these costs to the salary costs above gives the totals in the box on page 1.

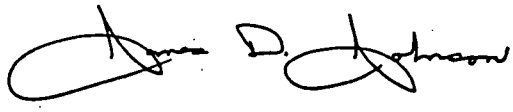
3) Impact on Budgeting Requirements for Indigent Defense Costs
In recent years, the Continuation Budget amount for Indigent Defense Costs has not fully covered the year's expenses. In 1998-99, AOC used $4.3 Million of lapsed salary to cover the shortfall; $3.9 Million in 1997-8. In 1999-2000, a shortfall of $1.6 Million is anticipated. AOC generates about $9 Million in lapsed salary per year and most years (this year the exception because of Hurricane Floyd) has been able to find the funds to cover this. The Office of Indigent Services, however, will not have access to that level of lapsed salary. (About $800,000 in lapsed is projected to be generated by Public Defenders this year). This will mean budgeted amounts will have to be higher than they have historically been. However, since this is more a case of budget process than requirements, this fiscal note does not include any estimate of this impact.

4) Impact on the Cost of Indigent Defense in the long term. Much of the impetus for HB 1590 was the realization that there was little if any management of the $65 Million paid each year for indigent defense and the belief that better management would result in some cost savings. The extent of these savings and the speed with which they may be realized is difficult to predict. Because these issues were discussed extensively during the Study Committee deliberations, they are not addressed in this fiscal note.

TECHNICAL CONSIDERATIONS: none

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Elisa Wolper

APPROVED BY: James D. Johnson



DATE: May 24, 2000

SENATE BILL 1267:
Modernize Bail Bond Forfeitures

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Robinson
Date:	June 20, 2000	**Summary by:**	Al Andrews
Version:	1st Edition		Research Dvision

SUMMARY: This bill seeks to modernize and clarify existing bail bond forfeiture statutes. This bill seeks to establish clear procedures for the entry and finalization of forfeiture judgments. It provides for notice to both bail agents and insurance companies who serve as sureties on bail bonds. It also provides a three year statute of limtations on motions seeking relief from final judgments of forfeiture.

BILL ANALYSIS: Section 1. substantially amends the current definitions section in G.S. §15A-531. This section adds definitions for the terms "accommodation bondsman," "address of record," "bail agent," "defendant," "insurance company," and "professional bondsman." The definitions for "accommodation bondsman" and "professional bondsman" were taken verbatim from the definitions found in the Insurance chapter, G.S. §58-71-1. This section deletes the definition for "obligor" and rewrites the definition for "surety." This section also deletes the term "principal" and substitutes the term "defendant." In the statutes affected by the bill, wherever the term "principal" is found, it is substituted with the term "defendant."

Section 2. changes the section name and rewrites G.S. §15A-540. This section sets forth the procedures to be followed when a bondsman surrenders a defendant before or after a breach of bail bond conditions. This section also sets forth new conditions of pretrial release when a bondsman surrenders a defendant after the defendant has breached a condition of bail by failing to appear. This section allows the judicial official (usually a magistrate) to double the previous bond and to impose restrictions on the defendant's travel, associations, conduct or residence. This section also directs the magistrate to indicate on the release order that the defendant was surrendered after failing to appear as required by a previous release order.

Section 3. repeals G.S. §15A-544 which currently contains bail bond forfeiture procedures.

Section 4. indicates that General Statutes, Chapter 15A, Article 26 (Bail), is amended by dividing the article into two parts. This section identifies Part 1 as covering Bail.

Section 5. adds Part 2 which covers Bail Bond Forfeitures and creates several new statute sections that provide reworked bail bond forfeiture procedures. These new sections are intended to clarify and simplify current statutory language.

New §15A-544.1 makes both the defendant and each surety bound to the jurisdiction of the court without the necessity of any independent action. New §15A-544.2 lists the required identifying information to be placed on a bail bond and identifies what will occur if the information is incomplete. New §15A-544.3 provides that a provisional judgment will be entered against the defendant and the bondsman if the defendant fails to appear before a court as required by the bail bond. Provisional judgment is a new term being used to identify the initial judgment of bail forfeiture. This section further

lists all the information that must be contained in the notice of the provisional judgment. New §15A-544.4 provides the mailing procedures to be followed for giving notice of a provisional judgment to the defendant and each surety and bail agent whose name appears on a bail bond. In particular, if the bond was executed by a bail agent on behalf of an insurance company, notice of the provisional judgment will be provided to both the insurance company and the bail agent.

New §15A-544.5 sets forth the reasons for which a provisional judgment shall be set aside. A provisional judgment may be set aside if (1) the defendant's failure to appear (FTA) has been set aside by the court and any order for arrest (OFA) issued for that failure to appear has been recalled; or (2) all charges for which the defendant was bonded to appear have been finally disposed of by the court other than by the State's taking dismissal with leave; or (3) the defendant has been surrendered by a surety on the bail bond; or (4) the defendant has been served with an OFA for the FTA on the criminal charge. This section provides the procedures to follow when a OFA based on a FTA is stricken and the procedures for filing motions and holding hearings on whether to set aside a provisional judgment. In cases where the surety or bail agent had notice or actual knowledge, prior to executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no provisional judgment may be set aside. Finally, this section sets forth the rules for appealing an order on a motion to set aside a provisional judgment.

New §15A-544.6 provides the rules for when a provisional judgment of forfeiture becomes a final judgment. New §15A-544.7 sets forth when a final judgment may be docketed as a civil judgment and become a lien against the real property of the defendant and each surety named in the judgment. New §15A-544.7 further provides the rules for execution of a final forfeiture judgment. Until the final judgment is satisfied, sureties may not continue issuing bonds in the county in which the judgment is docketed.

New §15A-544.8 sets forth the reasons relief from a final judgment of forfeiture may be had. These include the lack of proper notice to necessary parties or other extraordinary circumstances. This section sets a three year statue of limitations for a defendant or surety to seek relief from a final judgment of forfeiture. It further provides the rules for motions and appeals.

Section 6. amends and simplifies G.S. §58-71-25 from the Insurance chapter, which governs the procedure for a surety to surrender a defendant, by adopting the process found in the rewritten G.S. §15A-540.

Section 7. amends G.S. §24-5(a1), which covers interest on judgments, by making the interest calculation be based on the date of judgment docketing rather than the date of judgment entry.

Section 8. requests a special appropriation of $225,000 to the Judicial Department to be used for temporary personnel, contract programming and training to implement the bill's provisions.

Section 9. sets the bill's effective date as January 1, 2001.

BACKGROUND: North Carolina's bail bond laws have been the subject of a great deal of focus both within and outside the General Assembly for a number of years. Though changes were made during the 1995 Session and suggested during later sessions, many parties still desired further modifications to these laws. During the interim, the Legislative Research Commission's Committee on Bail Bond Laws met three times, received a great deal of information, and heard the testimony of many interested parties. A working group was organized to come together and suggest language for a bill to modernize bail bond forfeiture laws. While there is not unanimous agreement by all parties as to exactly how to amend existing bail bond laws, this bill represents the product of that interested parties working group.

SENATE BILL 1323:
Indigent Defense Services/Funds

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Frank Ballance
Date:	June 20, 2000	**Summary by:**	Rick Zechini
Version:	First Edition		Committee Counsel

SUMMARY: *Senate Bill 1323 establishes the Office of Indigent Defense Services within the Judicial Department to enhance the oversight of the delivery of counsel and related services to indigent citizens of the State and to improve the quality of representation and ensure the independence of counsel. The Office of Indigent Defense Services is administered by the Director of Indigent Defense Services and includes the Commission on Indigent Defense Services. Senate Bill 1323 also appropriates from the General Fund to the Indigent Persons' Attorney Fund the sum of $535,644 for the 2000-2001 fiscal year, to be allocated to the Judicial Department for the operations and expenses of the Commission on Indigent Defense Services. Senate Bill 1323 was recommended by the Indigent Defense Study Commission.*

CURRENT LAW AND BACKGROUND: Legal representation for indigents in North Carolina is provided by a combination of three methods: private assigned counsel, under which private lawyers are appointed and compensated on a case-by-case basis; public defender, under which full-time attorneys are hired as State employees to provide representation in a given geographical area; and contracts for legal services pursuant to which a specific attorney or firm contracts to provide representation in certain types of cases at a hourly rate or per case rate.

The General Assembly determines whether and where to establish public defender offices. Currently there are 11 public defender offices covering 13 counties. Public defenders are appointed by the senior resident superior court judge of the district from nominees submitted by the local bar. The Administrative Office of the Court's (AOC) contractual authority is limited to juvenile and civil cases, such as mental health commitments and contempt, and is used on a very limited basis. The bulk of representation is provided by private assigned counsel.

The Appellate Defender Office handles cases on appeal statewide. The appellate defender is appointed by the Chief Justice.

The salaries of public defenders and the appellate defender are set by the General Assembly in the appropriations bills. Historically, the salaries and benefits of public defenders have been the same as for district attorneys, with the exception of retirement. District attorneys are on the judicial retirement system, while public defenders are on the retirement system for regular State employees.

There are no statewide uniform standards for determinations of indigency, appointment, qualifications, compensation or performance of counsel, public defender operations, contractual arrangements, or other matters. Attorneys' fees, as well as expenses of representation and allowance of any expert assistance, are determined by the presiding judge.

BILL ANALYSIS: Part I of Senate Bill 1323 amends Subdivision IX of Chapter 7A of the General Statutes by adding a new Article entitled the "Indigent Services Act." This new Article establishes the Office of Indigent Defense Services in the Judicial Department. The Office of Indigent Defense Services is responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in cases in which an indigent person is entitled to representation. The Office of

Indigent Defense Services is required to develop policies and procedures for determining indigency in cases subject to the Indigent Defense Services Act and these policies shall be applied uniformly throughout the State. Although the Director of AOC is required to provide general administrative support to the Office of Indigent Defense Services, the Office of Indigent Defense Services shall exercise its prescribed powers independently of the Director of AOC.

Senate Bill 1323 also establishes the Commission on Indigent Defense Services (Commission) within the Office of Indigent Defense Services. The Commission shall consist of 13 appointees who are required to have significant experience in the defense of criminal or other cases subject to Indigent Services Act or shall have demonstrated a strong commitment to quality representation in indigent defense matters. The Commission shall appoint the Director of the Office of Indigent Defense Services, who shall be chosen on the basis of training, experience, and other qualifications, and shall develop standards governing the provision of services under the Indigent Services Act.

The Commission shall determine the methods for delivering legal services to indigent persons eligible for legal representation and shall establish in each district or combination of districts a system of appointed counsel, contract counsel, part-time public defenders, public defenders officers, appellate defender services, and other methods for delivering counsel services. The Commission is required to establish policies and procedures with respect to the distribution of funds appropriated under the Indigent Services Act, including rates of compensation for appointed counsel, schedules of allowable expenses, appointment and compensation of expert witnesses, and procedures for applying for and receiving compensation. The Commission may establish and operate regional and district public defender offices and may appoint regional and district public defenders as necessary to administer such offices. The Commission is also required to approve and recommend to the General Assembly a budget for the Office of Indigent Defense Services.

The Director of Indigent Defense Services, who is appointed by the Commission, serves a four-year term and must be an attorney licensed and eligible to practice in the courts of North Carolina.

Parts III and IV of the bill make conforming changes.

Part IV of the bill appropriates from the General Fund to the Indigent Persons' Attorney Fund the sum of $535,644 for the 2000-2001 fiscal year, to be allocated to the Judicial Department for the operations and expenses of the Commission. The Commission is required to report on or before May 1, 2001, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety regarding: a plan for the orderly transfer of budget and related authority from the AOC to the Commission effective July 1, 2001; the rules, standards, and other regulations developed by the Commission for the delivery of indigent defense services; and other matters for implementation of the bill.

VISITOR REGISTRATION SHEET

#11 Name of Committee Miller Chair June 20, 2000 Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dolly Whiteside	AOC
Angus Thompson II	NC. Assoc of Public Defenders
Rob Hubbitz	ACC
Robert Hamsley	ACLU-NC
Fred Mohn	N.C. Dept. of Ins.
John Brim	N.C. Dept. of Ins.
Becky Mercer	Albers Company
Mary F. Forrester	Concerned Women for America — N.C.
Vicki McCoy	CWA
Anne Winn	NCAHEC
John Kennedy	Clerks of Superior Court
Gwynn Stoker	Financial Services
Shawn McKinney	NC Dept. of Ins.
Lad Rubbra	CSR
Robin	NCAOC
Paul Pulley	NCAL

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Margaret Westbrook	NCBA
Benita Jones	Intern - Sen. Ballance
ERICA GARNER	Intern-Sen. Ballance
Melody Hairston	Intern- Sen. Ballance
Jim Carr	Clerk of Superior Court, Durham, NC
Tom Andrews	AOC
Jim Drennan	Institute of Government
[illegible]	ACLU
[illegible]	NCSSA/AOTS PRO
Colon Willoughby	DA: 10th District
Bill Aycock	NCPBA

SENATE JUDICIARY II COMMITTEE

JUNE 22, 2000

MINUTES

The Senate Judiciary II Committee met on June 22, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present. Senator Hagan presided.

Senator Robinson was recognized to explain HB 1267, Modernize Bail Bond Forfeitures. He, in turn, introduced Tom Andrews, General Counsel with the Administrative Office of the Courts, who provided a summary of the major changes from the current law as embodied in HB 1267.

Senator Odom moved to displace HB 1267 until the next meeting. The motion carried.

Senator Moore moved to adjourn. The motion carried.

Senator Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

SENATE JUDICIARY II COMMITTEE

JUNE 22, 2000

ROOM 1124

SB 1267	Modernize Bail Bond Forfeitures	Sen. Robinson
SB 1530	Personal Privacy Protection Act	Sen. Dalton
Adjournment		

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1267

Short Title: Modernize Bail Bond Forfeitures. (Public)

Sponsors: Senators Robinson, Odom; Carter, Clodfelter, Harris, Horton, Phillips, Purcell, Warren, and Wellons.

Referred to: Judiciary II.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"**§ 15A-531. Definitions.**

As used in this Article the following definitions apply unless the context clearly requires otherwise:

~~(1) Bail Bond. -- An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt~~

~~proceedings shall not be satisfied in any manner other than the deposit of cash.~~

~~(2) Obligor. -- A principal or a surety on a bail bond.~~

~~(3) Principal. -- A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.~~

~~(4) Surety. -- One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.~~

(1) 'Accommodation bondsman' means a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the defendant's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) 'Address of record' means:

a. For a defendant or an accommodation bondsman, the address entered on the bail bond pursuant to G.S. 15A-544.2, or any later address filed by that person with the clerk of superior court.

b. For an insurance company, the address of the insurance company as it appears on the power of appointment of the company's bail agent registered with the clerk of superior court pursuant to G.S. 58-71-140.

c. For a bail agent, the address shown on the bail agent's license from the Department of Insurance registered with the clerk of superior court pursuant to G.S. 58-71-140.

d. For a professional bondsman, the address shown on that bondsman's license from the Department of Insurance, as registered with the clerk of superior court pursuant to G.S. 58-71-140.

(3) 'Bail agent' means any person who is licensed by the Commissioner as a surety bondsman under Article 71 of Chapter 58 of the General Statutes, is appointed by an insurance company by power of attorney to execute or countersign bail bonds for the

insurance company in connection with judicial proceedings, and receives or is promised consideration for doing so.

(4) 'Bail bond' means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a bail agent acting on behalf of an insurance company shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a bail agent as defined in subdivision (3) of this section shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.

(5) 'Defendant' means a person obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(6) 'Insurance company' means any domestic, foreign, or alien surety company which has qualified under Chapter 58 of the General Statutes generally to transact surety business and specifically to transact bail bond business in this State.

(7) 'Professional bondsman' means any person who is approved and licensed by the Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes, and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(8) 'Surety' means:

a. The insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.

b. The professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.

c. The accommodation bondsman, when a bail bond is "executed by an accommodation bondsman."

Section 2. G.S. 15A-540 reads as rewritten:

"**§ 15A-540. Surrender of a ~~principal~~ defendant by a surety; setting new conditions of release.**

~~(a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to appear or to the sheriff where the defendant was bonded. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of~~

~~which must be filed with the clerk. Upon application by the surety after the surrender of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate him from his bond.~~

~~(b) A principal surrendered by his surety is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.~~

(a) Going Off the Bond Before Breach. -- Before there has been a breach of the conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-71-20. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond.

(b) Surrender After Breach of Condition. -- After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear, or to the sheriff where the defendant was bonded. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. Upon surrender of the defendant the sheriff shall provide a receipt to the surety.

(c) New Conditions of Pretrial Release. -- When a defendant is surrendered by a surety pursuant to subsection (b) of this section, the sheriff shall without unnecessary delay take the defendant before a judicial official, along with a copy of the undertaking received from the surety and a copy of the receipt provided to the surety. The judicial official shall then determine whether the defendant is again entitled to release and, if so, upon what conditions. The judicial official determining conditions of pretrial release pursuant to this subsection shall impose any conditions set by the court in any order for arrest issued for the defendant's failure to appear. If no conditions have been set, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the previous bond, and shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The magistrate shall also indicate on the release order that the defendant was surrendered after failing to appear as required pursuant to a prior release order."

Section 3. G.S. 15A-544 is repealed.

Section 4. The heading for Article 26 of Chapter 15A of the General Statutes reads as rewritten:

"ARTICLE 26.

Part 1. Bail."

Section 5. Article 26 of Chapter 15A of the General Statutes is amended by adding a new Part 2 to read:

"Part 2. Bail Bond Forfeiture.

"§ 15A-544.1. Forfeiture jurisdiction.

By executing a bail bond the defendant and each surety submit to the jurisdiction of the court and irrevocably consent to be bound by any notice given in compliance with this Part. The liability of the defendant and each surety may be enforced as provided in this Part, without the necessity of an independent action.

"**§ 15A-544.2. Identifying information on bond.**

(a) The following information shall be entered on each bail bond executed under Part 1 of this Article:

(1) The name and mailing address of the defendant.

(2) The name and mailing address of any accommodation bondsman executing the bond as surety.

(3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

(b) If a defendant is released upon execution of a bail bond that does not contain all the information required by subsection (a) of this section, the defendant's order of pretrial release may be revoked as provided in G.S. 15A-534(f).

"**§ 15A-544.3. Entry of provisional judgment.**

(a) If a defendant who was released under Part 1 of this Article upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a provisional judgment for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

(b) The provisional judgment shall contain the following information:

(1) The name and address of record of the defendant.

(2) The file number of each case in which the defendant's appearance is secured by the bail bond.

(3) The amount of the bail bond.

(4) The date on which the bail bond was executed.

(5) The name and address of record of each surety on the bail bond.

(6) The name, address of record, license number, and power of appointment number of any bail agent who executed the bail bond on behalf of an insurance company.

(7) The date on which the provisional judgment is entered.

(8) The date on which the provisional judgment will become final pursuant to G.S. 15A-544.6 if not set aside before that date.

(9) The following notice: 'TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A provisional judgment for the amount of the bail bond shown above was entered in favor of the State against the

defendant and each surety named above on the date of provisional judgment shown above. This provisional judgment will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, or (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question. The provisional judgment will not be set aside for any other reason. If this provisional judgment is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the judgment will become final on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full."

"**§ 15A-544.4. Notice of provisional judgment.**

(a) The court shall give notice of the entry of provisional judgment by mailing a copy of the provisional judgment to the defendant and to each surety and bail agent whose name appears on the bail bond.

(b) The notice shall be sent by first-class mail to the defendant and to each surety named on the bond at the surety's address of record.

(c) If the bond was executed by a bail agent on behalf of an insurance company, the court shall also provide a copy of the provisional judgment to the bail agent, but failure to provide notice to the bail agent shall not affect the validity of any notice given to the insurance company.

(d) Notice given pursuant to this section shall be effective when the notice is mailed.

(e) Notice pursuant to this section shall be mailed not later than the thirtieth day after the date on which the provisional judgment is entered. If notice pursuant to this section is not given within the prescribed time, the provisional judgment shall not become final and shall not be enforced or reported to the Department of Insurance.

"**§ 15A-544.5. Setting aside provisional judgment of forfeiture.**

(a) Relief Exclusive. -- There shall be no relief from a provisional judgment except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified

in subsections (c) and (d) of this section. The provisions of subsections (f), (g), (h), and (i) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside -- A provisional judgment shall be set aside for any one of the following reasons, and none other:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question.

(c) Procedure When Failure to Appear Is Stricken. -- If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any provisional judgment of the forfeiture of that bail bond. When an order setting aside a provisional judgment of the forfeiture of the bail bond is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. -- If a provisional judgment is not set aside pursuant to subsection (c) of this section, the only procedure for setting it aside shall be as follows:

(1) At any time before the expiration of 150 days after the date on which notice was given pursuant to G.S. 15A-544.4, the defendant or any surety on a bail bond may make a written motion that the provisional judgment be set aside, stating the reason and attaching the evidence specified in subsection (a) of this section.

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the provisional judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion

is served, the clerk shall enter an order setting aside the provisional judgment.

(5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.

(6) If at the hearing the court allows the motion, the court shall enter an order setting aside the provisional judgment.

(7) If at the hearing the court does not enter an order setting aside the provisional judgment, the provisional judgment shall become a final judgment of forfeiture on the later of:

a. The date of the hearing.

b. The date of final judgment specified in G.S. 15A-544.6.

(e) Only One Motion Per Provisional Judgment. -- No more than one motion to set aside a specific provisional judgment may be considered by the court.

(f) No More Than Two Provisional Judgments May Be Set Aside Per Case. -- In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no provisional judgment of forfeiture of that bond may be set aside for any reason.

(g) No Final Judgment After Provisional Judgment Is Set Aside. -- If a provisional judgment is set aside pursuant to this section, the provisional judgment shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. -- An order on a motion to set aside a provisional judgment shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as the court deems appropriate.

"**§ 15A-544.6. Final judgment of forfeiture.**

A provisional judgment of forfeiture entered pursuant to G.S. 15A-544.3 becomes final judgment of forfeiture without further action by the court and may be enforced pursuant to G.S. 15A-544.7, on the one hundred fiftieth day after notice is given pursuant to G.S. 15A-544.4, if:

(1) No order setting aside the provisional judgment pursuant to G.S. 15A-544.5 is entered on or before that date.

(2) No motion to set aside the provisional judgment is pending on that date.

"**§ 15A-544.7. Docketing and enforcement of final judgment of forfeiture.**

(a) Final Judgment Docketed As Civil Judgment. -- When a provisional judgment has become a final judgment pursuant to this Part, the clerk of superior court, pursuant to G.S. 1-234, shall docket the judgment as a civil judgment against the defendant and against each surety named in the judgment.

(b) Judgment Lien. -- When a final judgment of forfeiture is docketed, the judgment shall become a lien on the real property of the defendant and of each surety named in the judgment, as provided in G.S. 1-234.

(c) Execution; Copy to Commissioner of Insurance. -- After docketing a final judgment pursuant to this section, the clerk shall:

(1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.

(2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a copy of the judgment, showing the date on which the judgment was docketed.

(d) Sureties May Not Execute Bonds in County. -- After a final judgment is docketed as provided in this section, no surety named in the judgment shall become a surety on any bail bond in the county in which the judgment is docketed until the judgment is satisfied in full.

"§ 15A-544.8. Relief from final judgment of forfeiture.

(a) Relief Exclusive. -- There shall be no relief from a final judgment of forfeiture except as provided in this section.

(b) Reasons. -- The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

(1) The person seeking relief was not given notice as provided in G.S. 15A-544.4.

(2) Other extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.

(c) Procedure. -- The procedure for obtaining relief from a final judgment pursuant to this section shall be as follows:

(1) At any time before the expiration of three years after the date on which a judgment of forfeiture became final, the defendant or any surety named in the judgment may make a written motion for relief under this section, stating the reasons and setting forth the evidence in support of each reason.

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the final judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) A hearing on the motion shall be scheduled within a reasonable time in the trial division in which the defendant was bonded to appear.

(4) At the hearing the court may grant the party any relief from the judgment that the court considers appropriate, including the refund of all or a part of any money paid to satisfy the judgment.

(d) Only One Motion. -- No more than one motion by any party for relief under this section may be considered by the court.

(e) Finality of Judgment as to Other Parties Not Affected. -- The finality of a final judgment of forfeiture shall not be affected, as to any party to the judgment, by the filing of a motion by, or the granting of relief to, any other party.

(f) Appeal. -- An order on a motion for relief from a final judgment of forfeiture shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as it considers appropriate."

Section 6. G.S. 58-71-25 reads as rewritten:

"**§ 58-71-25. Procedure for surrender; exoneration of obligors; refund of deposit.**

~~The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.~~

~~Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded.~~

After there has been a breach of the undertaking in a bail bond, the surety may surrender the defendant as provided in G.S. 15A-540."

Section 7. G.S. 24-5(a1) reads as rewritten:

"(a1) In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~entry~~ docketing of judgment until the judgment is satisfied."

Section 8. There is appropriated to the Judicial Department in the Current Operations and Capital Improvements Appropriations Act for the 2000-2001 fiscal year, the sum of two hundred twenty-five thousand dollars ($225,000) to be used for temporary personnel, contract programming and training to implement the provisions of this act.

Section 9. This act becomes effective January 1, 2001, and applies to all bail bonds executed and all forfeiture proceedings initiated on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1530

Short Title: Personal Privacy Protection Act. (Public)

Sponsors: Senator Dalton.

Referred to: Rules and Operations of the Senate.

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA PERSONAL PRIVACY PROTECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. This act may be cited as the North Carolina Personal Privacy Protection Act.

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

SENATE BILL 1267:
Modernize Bail Bond Forfeitures

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Robinson
Date:	June 20, 2000	**Summary by:**	Al Andrews
Version:	1st Edition		Research Dvision

SUMMARY: This bill seeks to modernize and clarify existing bail bond forfeiture statutes. This bill seeks to establish clear procedures for the entry and finalization of forfeiture judgments. It provides for notice to both bail agents and insurance companies who serve as sureties on bail bonds. It also provides a three year statute of limtations on motions seeking relief from final judgments of forfeiture.

BILL ANALYSIS: Section 1. substantially amends the current definitions section in G.S. §15A-531. This section adds definitions for the terms "accommodation bondsman," "address of record," "bail agent," "defendant," "insurance company," and "professional bondsman." The definitions for "accommodation bondsman" and "professional bondsman" were taken verbatim from the definitions found in the Insurance chapter, G.S. §58-71-1. This section deletes the definition for "obligor" and rewrites the definition for "surety." This section also deletes the term "principal" and substitutes the term "defendant." In the statutes affected by the bill, wherever the term "principal" is found, it is substituted with the term "defendant."

Section 2. changes the section name and rewrites G.S. §15A-540. This section sets forth the procedures to be followed when a bondsman surrenders a defendant before or after a breach of bail bond conditions. This section also sets forth new conditions of pretrial release when a bondsman surrenders a defendant after the defendant has breached a condition of bail by failing to appear. This section allows the judicial official (usually a magistrate) to double the previous bond and to impose restrictions on the defendant's travel, associations, conduct or residence. This section also directs the magistrate to indicate on the release order that the defendant was surrendered after failing to appear as required by a previous release order.

Section 3. repeals G.S. §15A-544 which currently contains bail bond forfeiture procedures.

Section 4. indicates that General Statutes, Chapter 15A, Article 26 (Bail), is amended by dividing the article into two parts. This section identifies Part 1 as covering Bail.

Section 5. adds Part 2 which covers Bail Bond Forfeitures and creates several new statute sections that provide reworked bail bond forfeiture procedures. These new sections are intended to clarify and simplify current statutory language.

New §15A-544.1 makes both the defendant and each surety bound to the jurisdiction of the court without the necessity of any independent action. New §15A-544.2 lists the required identifying information to be placed on a bail bond and identifies what will occur if the information is incomplete. New §15A-544.3 provides that a provisional judgment will be entered against the defendant and the bondsman if the defendant fails to appear before a court as required by the bail bond. Provisional judgment is a new term being used to identify the initial judgment of bail forfeiture. This section further

BACKGROUND: North Carolina's bail bond laws have been the subject of a great deal of focus both within and outside the General Assembly for a number of years. Though changes were made during the 1995 Session and suggested during later sessions, many parties still desired further modifications to these laws. During the interim, the Legislative Research Commission's Committee on Bail Bond Laws met three times, received a great deal of information, and heard the testimony of many interested parties. A working group was organized to come together and suggest language for a bill to modernize bail bond forfeiture laws. While there is not unanimous agreement by all parties as to exactly how to amend existing bail bond laws, this bill represents the product of that interested parties working group.

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Colon Willoughby	10th Dist DA.
Peg Dorin	Conference of DAs
John Kennedy	Assoc of Clerks of Superior Court
[illegible]	[illegible]
[illegible]	NC FOP PAC
[illegible] Bocciui	NCBST
Mark Webber	Office of the Governor
Austin Chestnut	NCAA - Research Division
Paul Stock	NC Bankers Assn.
Steve Woodson	NC Farm Bureau
Bill Scoggin	Kennedy Covington
Ann Edmondson	NCRMA
Nicole Palya	NRA
[illegible] Ellen	NCRMA
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

J - H
Name of Committee

6-22-00
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
MARION SMITH	NCSA
Peyton Mayhew	
STEVE KEENE	NC Medical Society
[signature]	Moore & Van Allen
HUGH TILSON	NCHA
Joy Mayo	Womble Carlyle
Pam Wescott	Sprint
[signature]	[signature]
Ted Teague	Smith Anderson
Pat Harris	N.C. Press Association
Robert Hensley	ACLU-NC
Eddie Caldwell	HMCC&C, P.A.
Leanne Nunn	NCSBA
Becky Nero	Albers' Company
[signature]	[signature]
[signature]	NCDS - NCPTA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Barry Smith	Freedom Newspapers
Greg Retsinas	NYTRNG
Scott Mooneyham	AP
John Bason + crew	UNC-TV
ERICA GARNER	Senate Intern
Benita Jones	Senate Intern

SENATE JUDICIARY II COMMITTEE

JUNE 27, 2000

MINUTES

The Senate Judiciary II Committee met on June 27, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Nine members were present, including Senator Miller, who presided.

HB 1501, Service in DMV Lien Cases, was explained by Representative Sutton. Senator Horton moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

HB 1596, APA Technical Changes, was explained by Rick Zechini, Legislative Research staff. Senator Moore moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Representative Hackney was recognized to explain HB 1499, Interlock/Open Container Changes. Senator Ballance moved to amend the bill on page 14, by deleting lines 11 and 12. After considerable discussion, Senator Ballance withdrew his amendment.

Senator Horton moved to amend the bill on page 3, changing lines 7 and 8 to read: "while there is an alcoholic beverage in the passenger area other than the unopened manufacturers original container."

Senator Miller announced that discussion of Senator Horton's amendment would continue at the next meeting.

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Tuesday, June 27, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1501** Service in DMV Lien Cases.
Sequential Referral: None
Recommended Referral: None

H.B. **1596** APA Technical Changes.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: Sen. Miller to sign.

SENATE JUDICIARY II COMMITTEE

JUNE 27, 2000

ROOM 1124

SB 1267	Modernize Bail Bond Forfeitures	Sen. Robinson
HB 1499	Interlock/Open Container Changes	Rep. Crawford
HB 1501	Service in DMV Lien Cases	Rep. Sutton
HB 1596	APA Technical Changes	Rep. Redwine

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

SENATE BILL 1267

Short Title: Modernize Bail Bond Forfeitures. (Public)

Sponsors: Senators Robinson, Odom; Carter, Clodfelter, Harris, Horton, Phillips, Purcell, Warren, and Wellons.

Referred to: Judiciary II.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"**§ 15A-531. Definitions.**

As used in this Article the following definitions apply unless the context clearly requires otherwise:

~~(1) Bail Bond. -- An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt~~

~~proceedings shall not be satisfied in any manner other than the deposit of cash.~~

~~(2) Obligor. — A principal or a surety on a bail bond.~~

~~(3) Principal. — A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.~~

~~(4) Surety. — One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.~~

(1) 'Accommodation bondsman' means a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the defendant's liability to the surety by reason of a breach in the conditions of said bail bond.

(2) 'Address of record' means:

a. For a defendant or an accommodation bondsman, the address entered on the bail bond pursuant to G.S. 15A-544.2, or any later address filed by that person with the clerk of superior court.

b. For an insurance company, the address of the insurance company as it appears on the power of appointment of the company's bail agent registered with the clerk of superior court pursuant to G.S. 58-71-140.

c. For a bail agent, the address shown on the bail agent's license from the Department of Insurance registered with the clerk of superior court pursuant to G.S. 58-71-140.

d. For a professional bondsman, the address shown on that bondsman's license from the Department of Insurance, as registered with the clerk of superior court pursuant to G.S. 58-71-140.

(3) 'Bail agent' means any person who is licensed by the Commissioner as a surety bondsman under Article 71 of Chapter 58 of the General Statutes, is appointed by an insurance company by power of attorney to execute or countersign bail bonds for the

insurance company in connection with judicial proceedings, and receives or is promised consideration for doing so.

(4) 'Bail bond' means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a bail agent acting on behalf of an insurance company shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a bail agent as defined in subdivision (3) of this section shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.

(5) 'Defendant' means a person obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(6) 'Insurance company' means any domestic, foreign, or alien surety company which has qualified under Chapter 58 of the General Statutes generally to transact surety business and specifically to transact bail bond business in this State.

(7) 'Professional bondsman' means any person who is approved and licensed by the Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes, and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(8) 'Surety' means:

a. The insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.

b. The professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.

c. The accommodation bondsman, when a bail bond is "executed by an accommodation bondsman."

Section 2. G.S. 15A-540 reads as rewritten:

"**§ 15A-540. Surrender of a ~~principal~~ defendant by a surety; setting new conditions of release.**

~~(a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to appear or to the sheriff where the defendant was bonded. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of~~

~~which must be filed with the clerk. Upon application by the surety after the surrender of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate him from his bond.~~

~~(b) A principal surrendered by his surety is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.~~

(a) Going Off the Bond Before Breach. -- Before there has been a breach of the conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-71-20. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond.

(b) Surrender After Breach of Condition. -- After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear, or to the sheriff where the defendant was bonded. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. Upon surrender of the defendant the sheriff shall provide a receipt to the surety.

(c) New Conditions of Pretrial Release. -- When a defendant is surrendered by a surety pursuant to subsection (b) of this section, the sheriff shall without unnecessary delay take the defendant before a judicial official, along with a copy of the undertaking received from the surety and a copy of the receipt provided to the surety. The judicial official shall then determine whether the defendant is again entitled to release and, if so, upon what conditions. The judicial official determining conditions of pretrial release pursuant to this subsection shall impose any conditions set by the court in any order for arrest issued for the defendant's failure to appear. If no conditions have been set, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the previous bond, and shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The magistrate shall also indicate on the release order that the defendant was surrendered after failing to appear as required pursuant to a prior release order."

Section 3. G.S. 15A-544 is repealed.

Section 4. The heading for Article 26 of Chapter 15A of the General Statutes reads as rewritten:

"ARTICLE 26.

Part 1. Bail."

Section 5. Article 26 of Chapter 15A of the General Statutes is amended by adding a new Part 2 to read:

"Part 2. Bail Bond Forfeiture.

"§ 15A-544.1. Forfeiture jurisdiction.

By executing a bail bond the defendant and each surety submit to the jurisdiction of the court and irrevocably consent to be bound by any notice given in compliance with this Part. The liability of the defendant and each surety may be enforced as provided in this Part, without the necessity of an independent action.

"**§ 15A-544.2. Identifying information on bond.**

(a) The following information shall be entered on each bail bond executed under Part 1 of this Article:

(1) The name and mailing address of the defendant.

(2) The name and mailing address of any accommodation bondsman executing the bond as surety.

(3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

(b) If a defendant is released upon execution of a bail bond that does not contain all the information required by subsection (a) of this section, the defendant's order of pretrial release may be revoked as provided in G.S. 15A-534(f).

"**§ 15A-544.3. Entry of provisional judgment.**

(a) If a defendant who was released under Part 1 of this Article upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a provisional judgment for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

(b) The provisional judgment shall contain the following information:

(1) The name and address of record of the defendant.

(2) The file number of each case in which the defendant's appearance is secured by the bail bond.

(3) The amount of the bail bond.

(4) The date on which the bail bond was executed.

(5) The name and address of record of each surety on the bail bond.

(6) The name, address of record, license number, and power of appointment number of any bail agent who executed the bail bond on behalf of an insurance company.

(7) The date on which the provisional judgment is entered.

(8) The date on which the provisional judgment will become final pursuant to G.S. 15A-544.6 if not set aside before that date.

(9) The following notice: 'TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A provisional judgment for the amount of the bail bond shown above was entered in favor of the State against the

defendant and each surety named above on the date of provisional judgment shown above. This provisional judgment will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, or (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question. The provisional judgment will not be set aside for any other reason. If this provisional judgment is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the judgment will become final on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full."

"**§ 15A-544.4. Notice of provisional judgment.**

(a) The court shall give notice of the entry of provisional judgment by mailing a copy of the provisional judgment to the defendant and to each surety and bail agent whose name appears on the bail bond.

(b) The notice shall be sent by first-class mail to the defendant and to each surety named on the bond at the surety's address of record.

(c) If the bond was executed by a bail agent on behalf of an insurance company, the court shall also provide a copy of the provisional judgment to the bail agent, but failure to provide notice to the bail agent shall not affect the validity of any notice given to the insurance company.

(d) Notice given pursuant to this section shall be effective when the notice is mailed.

(e) Notice pursuant to this section shall be mailed not later than the thirtieth day after the date on which the provisional judgment is entered. If notice pursuant to this section is not given within the prescribed time, the provisional judgment shall not become final and shall not be enforced or reported to the Department of Insurance.

"**§ 15A-544.5. Setting aside provisional judgment of forfeiture.**

(a) Relief Exclusive. -- There shall be no relief from a provisional judgment except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified

in subsections (c) and (d) of this section. The provisions of subsections (f), (g), (h), and (i) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside -- A provisional judgment shall be set aside for any one of the following reasons, and none other:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question.

(c) Procedure When Failure to Appear Is Stricken. -- If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any provisional judgment of the forfeiture of that bail bond. When an order setting aside a provisional judgment of the forfeiture of the bail bond is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. -- If a provisional judgment is not set aside pursuant to subsection (c) of this section, the only procedure for setting it aside shall be as follows:

(1) At any time before the expiration of 150 days after the date on which notice was given pursuant to G.S. 15A-544.4, the defendant or any surety on a bail bond may make a written motion that the provisional judgment be set aside, stating the reason and attaching the evidence specified in subsection (a) of this section.

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the provisional judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion

is served, the clerk shall enter an order setting aside the provisional judgment.

(5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.

(6) If at the hearing the court allows the motion, the court shall enter an order setting aside the provisional judgment.

(7) If at the hearing the court does not enter an order setting aside the provisional judgment, the provisional judgment shall become a final judgment of forfeiture on the later of:

a. The date of the hearing.

b. The date of final judgment specified in G.S. 15A-544.6.

(e) Only One Motion Per Provisional Judgment. -- No more than one motion to set aside a specific provisional judgment may be considered by the court.

(f) No More Than Two Provisional Judgments May Be Set Aside Per Case. -- In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no provisional judgment of forfeiture of that bond may be set aside for any reason.

(g) No Final Judgment After Provisional Judgment Is Set Aside. -- If a provisional judgment is set aside pursuant to this section, the provisional judgment shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. -- An order on a motion to set aside a provisional judgment shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as the court deems appropriate.

"**§ 15A-544.6. Final judgment of forfeiture.**

A provisional judgment of forfeiture entered pursuant to G.S. 15A-544.3 becomes final judgment of forfeiture without further action by the court and may be enforced pursuant to G.S. 15A-544.7, on the one hundred fiftieth day after notice is given pursuant to G.S. 15A-544.4, if:

(1) No order setting aside the provisional judgment pursuant to G.S. 15A-544.5 is entered on or before that date.

(2) No motion to set aside the provisional judgment is pending on that date.

"**§ 15A-544.7. Docketing and enforcement of final judgment of forfeiture.**

(a) Final Judgment Docketed As Civil Judgment. -- When a provisional judgment has become a final judgment pursuant to this Part, the clerk of superior court, pursuant to G.S. 1-234, shall docket the judgment as a civil judgment against the defendant and against each surety named in the judgment.

(b) Judgment Lien. -- When a final judgment of forfeiture is docketed, the judgment shall become a lien on the real property of the defendant and of each surety named in the judgment, as provided in G.S. 1-234.

(c) Execution; Copy to Commissioner of Insurance. -- After docketing a final judgment pursuant to this section, the clerk shall:

(1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.

(2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a copy of the judgment, showing the date on which the judgment was docketed.

(d) Sureties May Not Execute Bonds in County. -- After a final judgment is docketed as provided in this section, no surety named in the judgment shall become a surety on any bail bond in the county in which the judgment is docketed until the judgment is satisfied in full.

"**§ 15A-544.8. Relief from final judgment of forfeiture.**

(a) Relief Exclusive. -- There shall be no relief from a final judgment of forfeiture except as provided in this section.

(b) Reasons. -- The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

(1) The person seeking relief was not given notice as provided in G.S. 15A-544.4.

(2) Other extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.

(c) Procedure. -- The procedure for obtaining relief from a final judgment pursuant to this section shall be as follows:

(1) At any time before the expiration of three years after the date on which a judgment of forfeiture became final, the defendant or any surety named in the judgment may make a written motion for relief under this section, stating the reasons and setting forth the evidence in support of each reason.

(2) The motion shall be filed in the office of the clerk of superior court of the county in which the final judgment was entered, and a copy shall be served, pursuant to G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) A hearing on the motion shall be scheduled within a reasonable time in the trial division in which the defendant was bonded to appear.

(4) At the hearing the court may grant the party any relief from the judgment that the court considers appropriate, including the refund of all or a part of any money paid to satisfy the judgment.

(d) Only One Motion. -- No more than one motion by any party for relief under this section may be considered by the court.

(e) Finality of Judgment as to Other Parties Not Affected. -- The finality of a final judgment of forfeiture shall not be affected, as to any party to the judgment, by the filing of a motion by, or the granting of relief to, any other party.

(f) Appeal. -- An order on a motion for relief from a final judgment of forfeiture shall be a final order or judgment of the trial court for purposes of appeal. Appeal shall be as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on such conditions as it considers appropriate."

Section 6. G.S. 58-71-25 reads as rewritten:

"**§ 58-71-25. Procedure for surrender; exoneration of obligors; refund of deposit.**

~~The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.~~

~~Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded.~~

After there has been a breach of the undertaking in a bail bond, the surety may surrender the defendant as provided in G.S. 15A-540."

Section 7. G.S. 24-5(a1) reads as rewritten:

"(a1) In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~entry~~ docketing of judgment until the judgment is satisfied."

Section 8. There is appropriated to the Judicial Department in the Current Operations and Capital Improvements Appropriations Act for the 2000-2001 fiscal year, the sum of two hundred twenty-five thousand dollars ($225,000) to be used for temporary personnel, contract programming and training to implement the provisions of this act.

Section 9. This act becomes effective January 1, 2001, and applies to all bail bonds executed and all forfeiture proceedings initiated on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1499*
Committee Substitute Favorable 6/6/00

Short Title: Interlock/Open Container Changes. (Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE, AND TO CLARIFY THE EFFECTIVE DATE FOR COMMERCIAL MOTOR VEHICLE INSURANCE PROVISIONS OF SESSION LAW 330 OF THE 1999 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all registered vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) ~~A requirement that the person not drive with an alcohol concentration of 0.04 or greater.~~ An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

Section 2. G.S. 20-17.8(f) reads as rewritten:

"(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this ~~section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.~~ section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subdivision (b)(3) of this section."

Section 3. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area.~~ the right of way of a highway:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle is on a highway or the right-of-way of a highway. For purposes of this subsection, only the person who possesses or consumes an alcoholic beverage in violation of this subsection shall be charged with this offense.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a passenger to possess an alcoholic beverage other than in the unopened manufacturer's original container, or for a passenger to consume an alcoholic beverage, if the container is:

(1) In the passenger area of a motor vehicle required to be registered under the laws of North Carolina that is designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.; or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section by the driver of the motor vehicle is a lesser-included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area~~ the right-of-way of a highway with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right-of-way of a highway, or (ii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right-of-way of a highway.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and

restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 4. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the charging officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection."

Section 5. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a

conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway <u>or public vehicular area</u> in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

Section 6. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 7. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as

proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 8. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially ~~equivalent~~ similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 9. G.S. 20-16(a) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the

reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially ~~equivalent~~ similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing."

Section 10. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;
d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and
e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and
a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or
b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Section 11. G.S. 20-179.3(c) reads as rewritten:

"(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. -- A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in

another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation."

Section 12. G.S. 20-179.3(e) reads as rewritten:

"(e) Limited Basis for and Effect of Privilege. -- A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid."

Section 13. G.S. 14-7.7(b) reads as rewritten:

"(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially ~~equivalent~~ similar to the offenses set forth in subdivision (1) or (2)."

Section 14. G.S. 16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 15. G.S. 20-138.2A(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an

administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 16. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 17. G.S. 20-138.3(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 18. Section 10 of Session Law 1999-330 reads as rewritten:

"Section 10. Section 4 of this act becomes effective September 1, 2000, and applies to new or renewal policies written to become effective on or after that date. The remainder of this ~~This~~ act becomes effective December 1, 1999, and applies to violations occurring on or after that date."

Section 19. Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2000, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 1501*

Short Title: Service in DMV Lien Cases. (Public)

Sponsors: Representatives Sutton; Goodwin and Barefoot.

Referred to: Judiciary III.

May 11, 2000

A BILL TO BE ENTITLED

AN ACT TO ALLOW SERVICE OF PROCESS BY PUBLICATION IN MOTOR VEHICLE LIEN CASES IN SMALL CLAIMS COURT, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-211.1 reads as rewritten:

"**§ 7A-211.1. Actions to enforce motor vehicle mechanic and storage liens.**

Notwithstanding the provisions of G.S. 7A-210(2) and 7A- 211, the chief district judge may in his discretion, by specific order or general rule, assign to any magistrate of his district actions to enforce motor vehicle mechanic and storage liens arising under G.S. 44A-2(d) or 20-77(d) when the claim arose in the county in which the magistrate resides. The defendant may be subjected to the jurisdiction of the court over his person by the methods provided in G.S. 7A-217 or 1A-1, ~~Rule 4(j),~~ Rules 4(j) and 4(j1), Rules of Civil Procedure."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1596*

Short Title: APA Technical Changes. (Public)

Sponsors: Representatives Redwine; and Barefoot.

Referred to: Ways and Means.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO REVISE OBSOLETE STATUTORY REFERENCES TO VARIOUS ADMINISTRATIVE PROCEDURE ACT PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1368.6(e) reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking post-release supervision, the Commission shall, unless the supervisee waived the hearing or the time limit, provide a hearing within 45 days of the supervisee's reconfinement to determine whether to revoke supervision finally. For purposes of this subsection, the 45-day period begins when the preliminary hearing required by subsection (b) of this section is held or waived, or upon the passage of seven working days after arrest, whichever is sooner. The Commission shall adopt rules governing the ~~hearing and shall file and publish them as provided in Article 5 of Chapter 150B of the General Statutes.~~ hearing."

Section 2. G.S 15A-1376 reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking parole, the Post-Release Supervision and Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The Post-Release Supervision and Parole Commission must adopt ~~regulations~~ rules governing the ~~hearing and must file and publish them as provided in Article 5 of Chapter 150B of the General Statutes.~~ hearing."

Section 3. G.S. 15B-6(a)(1) reads as rewritten:

"(a) In addition to powers authorized by this Chapter and Chapter 150B, the Commission may:

(1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and Article ~~2~~ 2A of Chapter 150B of the General Statutes necessary to carry out the purposes of this Chapter;".

Section 4. G.S. 90-88(d) reads as rewritten:

"(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes ~~places [place]~~ place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by ~~G.S. [Chapter]~~ Chapter 150B of the General Statutes is required if the Commission makes a decision to similarly control a ~~substance, but any rule so adopted shall be filed pursuant to Article 5 of Chapter 150B.~~ substance. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to ~~G.S. [Chapter] 150B~~ Chapter 150B of the General Statutes within 180 days of its decision to object."

Section 5. G.S. 90-116 reads as rewritten:

"**§ 90-116. Board of Examiners in Optometry.**

In order to properly regulate the practice of optometry, there is established a North Carolina State Board of Examiners in Optometry, which shall consist of five regularly graduated optometrists who have been engaged in the practice of optometry in this State for at least five years and two members to represent the public at large.

No public member shall at any time be a health care provider, be related to or be the spouse of a health care provider, or have any pecuniary interest in the profitability of a health care provider. For purposes of this section, the term "health care provider" shall have the same meaning as provided in G.S. 58-47-5(4). The Governor shall appoint the two public members not later than July 1, 1981.

The optometric members of the Board shall be appointed by the Governor from a list provided by the North Carolina State Optometric Society. For each vacancy, the society must submit at least three names to the Governor. The society shall establish procedures for the nomination and election of optometrist members of the Board. These procedures shall be adopted under the rule-making procedures described in Article ~~2,~~ 2A, Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed optometrists residing in North Carolina. Such procedures shall not conflict with the provisions of this section. Every optometrist with a current North Carolina license residing in the State shall be eligible to vote in all such elections, and the list of licensed optometrists shall constitute the registration list for elections. Any decision of the society relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the society has rendered the decision in controversy, and all such cases shall be heard de novo.

All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive five-year terms, except that each member shall serve until his successor is chosen and qualifies.

The Governor may remove any member for good cause shown. Any vacancy in the optometrist membership of the Board shall be filled for the period of the unexpired term by the Governor from a list of at least three names submitted by the North Carolina State Optometric Society Executive Council. Any vacancy in the public membership of the Board shall be filled by the Governor for the unexpired term."

Section 6. G.S. 90-140 reads as rewritten:

"**§ 90-140. Selection of chiropractic members of Board.**

The Governor and the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint chiropractic members of the Board for terms of three years from a list provided by the Board, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint a chiropractic member of the Board for a term of two years from a list provided by the Board. For each vacancy, the Board must submit at least three names to the Governor, President Pro Tempore of the Senate and Speaker of the House.

The Board shall establish procedures for the nomination and election of chiropractic members. These procedures shall be adopted under Article ~~2~~ 2A of Chapter 150B of the General Statutes, and notice of the proposed procedures shall be given to all licensed chiropractors residing in North Carolina. These procedures shall not conflict with the provisions of this section. Every chiropractor with a current North Carolina license residing in this State shall be eligible to vote in all such elections, and the list of licensed chiropractors shall constitute the registration list for elections. Any decision of the Board relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the Board has rendered the decision in controversy, and all such cases shall be heard de novo."

Section 7. G.S. 90-223(b)(1) reads as rewritten:

"(b) The Board shall have the authority to make or amend rules and regulations not inconsistent with this Article governing the practice of dental hygiene and the granting, revocation and suspension of licenses and provisional licenses of dental hygienists.

(1) Any rule ~~promulgated or amended~~ adopted under this Article shall ~~be filed and distributed in accordance with the provisions of Article 5 of Chapter 150B of the General Statutes of North Carolina. A copy must~~ be distributed to all licensed dentists and all licensed dental hygienists within 30 days of final approval by the Board."

Section 8. G.S. 113-55.2(a) reads as rewritten:

"(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the Secretary may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement

officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the Secretary within the requirements of this section. These criteria are exempt from Article ~~2~~ 2A of Chapter 150B of the General ~~Statutes but shall be filed in accordance with Article 5 of that Chapter.~~ Statutes."

Section 9. G.S. 113-221(e1) reads as rewritten:

"(e1) Pursuant to the request of five or more members of the Marine Fisheries Commission, its chairman may call an emergency meeting of the Commission to review: (1) a proposed issuance or issuance of proclamations under the authority delegated to the Fisheries Director pursuant to (e) of this section, except those proclamations issued for reasons of public health; or (2) the need to issue a proclamation to allow the taking of certain fisheries resources in areas not opened through proclamations issued by the Fisheries Director. At least 48 hours prior to any such meeting, a public announcement of the meeting shall be issued that describes the action requested by the members of the Commission; and the Department must make every reasonable effort to give actual notice of the meeting to persons who may be affected thereby. After its review is complete, the Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance the commercial and sports fisheries resources of the State, may (1) approve, cancel, or modify the proposed proclamation or issued proclamation under review; or (2) direct the Fisheries Director to issue a proclamation that allows the taking of certain fisheries resources.

The variable conditions that affect such resource management decisions require that these emergency meetings and any resulting orders by the Commission be exempt from the provisions of ~~Articles 2 and 5~~ Article 2A of Chapter 150B. The decisions of the Marine Fisheries Commission shall be the final decision of the State and shall not be set aside on judicial review unless found to be arbitrary and capricious."

Section 10. G.S. 113-275(a1) reads as rewritten:

"(a1) Notwithstanding the fees specified for nonresident individuals by G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, 113-272.2, and 113-273, if the Wildlife Resources Commission finds that a state has a nonresident license fee related to wildlife resources that exceeds the fee for a comparable nonresident license in North Carolina, the Wildlife Resources Commission may, by resolution in official session, increase the nonresident license fee applicable to citizens of that state to an amount equal to the fee a North Carolina resident is required to pay in that state.

The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection is not subject to the provisions of Article ~~2~~ 2A of Chapter 150B of the General Statutes. ~~Notwithstanding the provisions of G.S. 150B-59(a), the~~ The action of the Wildlife Resources Commission to increase a fee pursuant to this subsection becomes effective on the date specified by the Wildlife Resources Commission."

Section 11. G.S. 113A-115(a) reads as rewritten:

"(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings required by this

section are in addition to the hearing required by Article ~~2~~ 2A of Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:

(1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.

(3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.

(4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby."

Section 12. G.S. 130A-309.29 reads as rewritten:

"**§ 130A-309.29. Adoption of rules.**

The Commission may adopt rules to implement the provisions of this Part pursuant to Article ~~2~~ 2A of Chapter 150B of the General Statutes."

Section 13. G.S. 130B-8(a)(8) reads as rewritten:

"(a) Neither the Commission nor any contractor performing services on behalf of the Commission shall be subject to the following provisions of the General Statutes:

. . .

(8) Article ~~2~~ 2A of Chapter 150B shall not apply to contractor selection or technology selection pursuant to G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of Chapter 150B shall not apply to final decisions regarding site selection, contractor selection or technology selection pursuant to G.S. 130B-11, 130B-13, and 130B-14."

Section 14. G.S. 150B-1(d)(2) is repealed.

Section 15. Effective dates. Section 14 of this act is effective July 1, 2000. The remainder of this act is effective when it becomes law.

SENATE BILL 1267:
Modernize Bail Bond Forfeitures

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Senator Robinson
Date:	June 20, 2000	**Summary by:**	Al Andrews
Version:	1st Edition		Research Dvision

SUMMARY: This bill seeks to modernize and clarify existing bail bond forfeiture statutes. This bill seeks to establish clear procedures for the entry and finalization of forfeiture judgments. It provides for notice to both bail agents and insurance companies who serve as sureties on bail bonds. It also provides a three year statute of limtations on motions seeking relief from final judgments of forfeiture.

BILL ANALYSIS: Section 1. substantially amends the current definitions section in G.S. §15A-531. This section adds definitions for the terms "accommodation bondsman," "address of record," "bail agent," "defendant," "insurance company," and "professional bondsman." The definitions for "accommodation bondsman" and "professional bondsman" were taken verbatim from the definitions found in the Insurance chapter, G.S. §58-71-1. This section deletes the definition for "obligor" and rewrites the definition for "surety." This section also deletes the term "principal" and substitutes the term "defendant." In the statutes affected by the bill, wherever the term "principal" is found, it is substituted with the term "defendant."

Section 2. changes the section name and rewrites G.S. §15A-540. This section sets forth the procedures to be followed when a bondsman surrenders a defendant before or after a breach of bail bond conditions. This section also sets forth new conditions of pretrial release when a bondsman surrenders a defendant after the defendant has breached a condition of bail by failing to appear. This section allows the judicial official (usually a magistrate) to double the previous bond and to impose restrictions on the defendant's travel, associations, conduct or residence. This section also directs the magistrate to indicate on the release order that the defendant was surrendered after failing to appear as required by a previous release order.

Section 3. repeals G.S. §15A-544 which currently contains bail bond forfeiture procedures.

Section 4. indicates that General Statutes, Chapter 15A, Article 26 (Bail), is amended by dividing the article into two parts. This section identifies Part 1 as covering Bail.

Section 5. adds Part 2 which covers Bail Bond Forfeitures and creates several new statute sections that provide reworked bail bond forfeiture procedures. These new sections are intended to clarify and simplify current statutory language.

New §15A-544.1 makes both the defendant and each surety bound to the jurisdiction of the court without the necessity of any independent action. New §15A-544.2 lists the required identifying information to be placed on a bail bond and identifies what will occur if the information is incomplete. New §15A-544.3 provides that a provisional judgment will be entered against the defendant and the bondsman if the defendant fails to appear before a court as required by the bail bond. Provisional judgment is a new term being used to identify the initial judgment of bail forfeiture. This section further

BACKGROUND: North Carolina's bail bond laws have been the subject of a great deal of focus both within and outside the General Assembly for a number of years. Though changes were made during the 1995 Session and suggested during later sessions, many parties still desired further modifications to these laws. During the interim, the Legislative Research Commission's Committee on Bail Bond Laws met three times, received a great deal of information, and heard the testimony of many interested parties. A working group was organized to come together and suggest language for a bill to modernize bail bond forfeiture laws. While there is not unanimous agreement by all parties as to exactly how to amend existing bail bond laws, this bill represents the product of that interested parties working group.

HOUSE BILL 1499:
Interlock/Open Container Changes

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 27, 2000
Version: 2nd Edition

Introduced by: Representative Crawford
Summary by: Brenda J. Carter
Committee Counsel and
Susan Hayes, Staff Attorney, Research Division

SUMMARY: House Bill 1499 amends the laws concerning the use of ignition interlock devices by repeat DWI offenders and possession of open containers in vehicles to comply with federal law and thereby avoid a mandatory transfer of federal highway funds. The bill also implements the recommendations of the Governor's DWI Task Force and clarifies the effective date for commercial motor vehicle insurance provisions of Session Law 330 of the 1999 General Assembly.

BILL ANALYSIS:

G.S. 20-17.8 applies to a person whose license was revoked as a result of a conviction of driving while impaired, and

- *the person had an alcohol concentration of 0.16 or more; or*
- *the person had been convicted of another offense involving impaired driving within the preceding 7 years of the offense for which the person's license has been revoked.*

When DMV restores the license of such person, in addition to any other restriction, the person is required to operate a vehicle equipped with ignition interlock.

Section 1 of the bill amends G.S. 20-17.8(b) in two ways. First, the statute is amended to require a person subject to the ignition interlock requirements to install an ignition interlock device on all registered vehicles they own. This change is made to comply with federal law and avoid the transfer of funds. Second, the language designating at what BAC level the ignition interlock must be set is amended to make G.S. 20-17.8 consistent with the provisions of G.S. 20-19 (lower BAC tolerance level for repeat offenders).

Section 2 of the bill amends G.S. 20-17.8(f) to clarify that an alcohol concentration report from an ignition interlock device is only admissible when the defendant actually drove the vehicle at the time the BAC reading was over the restriction placed on that person by 20-17.8(b)(3).

Section 3 amends G.S. 20-138.7 to comply with federal mandate, by making it an infraction to have an open container of beer or unfortified wine in a vehicle if the driver has NOT been drinking. This change would also make it an infraction for a passenger to possess an open container or to consume alcohol in a vehicle that is on the public highway or right of way. Current law makes it a Class 3 misdemeanor if the driver HAS been drinking, but no offense if the driver has not been drinking. There is an exception to the infraction if the vehicle is designed, maintained, or used primarily for the transportation of persons for compensation, or if the open container is in the living quarters of a house trailer, motor home, or house car. (An infraction is a noncriminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a penalty of not more

than $100. The proceeds of penalties for infractions are payable to the county in which the infraction occurred for the use of the public schools.)

Section 4 amends G.S. 20-16.2(c1) regarding implied consent to chemical analysis. The bill requires that if the person's drivers license has an alcohol concentration restriction and the office has reasonable grounds to believe the person has violated some restriction other than the alcohol concentration restriction, the officer must indicate the restriction that was violated.

Section 5 amends G.S. 20-19(c3) regarding suspension or revocation of licenses to clarify that when there is a violation of an alcohol concentration restriction, the officer must submit an affidavit to DMV.

Section 6 amends G.S. 20-179.3(g5) to clarify that when a person receives a limited driving privilege with a mandatory ignition interlock requirement, that the ignition interlock system be set to prohibit driving with an alcohol concentration of greater than 0.00.

Section 7 amends G.S. 20-139.1(b3) regarding sequential breath tests to remove the requirement that refusal of the second test be "willful".

Sections 8 – 13 make a technical change in several statutes, from the phrase "substantially equivalent" to "substantially similar" in referring to laws of other states, or previous laws of North Carolina.

Section 14 makes a technical change to correct the omission of the word "motor".

Sections 15 – 17 make a technical correction to several statutes to correct the name of the Commission for Health Services.

Section 18 amends the effective date of Session Law 330 of the 1999 General Assembly, which dealt with commercial vehicle highway safety and work zone safety. The bill amends the effective date of the portion of the law that deals with financial responsibility for the operation of commercial motor vehicles to make it effective September 1, 2000 and applicable to new or renewal policies effective on or after that date.

EFFECTIVE DATE: Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000. The remainder of this act becomes effective July 1, 2000.

HOUSE BILL 1501:
SERVICE IN DMV LIEN CASES

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 27, 2000
Version: 1st Edition

Introduced by: Rep. Sutton
Summary by: Brenda J. Carter
Committee Counsel and
Frank Folger, Staff Attorney, Research Division

SUMMARY: House Bill 1501 is a technical amendment to Chapter 7A that would allow service of process by publication in motor vehicle lien cases in small claims court. The bill is a recommendation of the N.C. Courts Commission.

CURRENT LAW: Currently, the plaintiff in a small claims action to enforce a motor vehicle mechanic and storage lien must either have an individual personally serve the defendant with the summons and complaint or have the summons and complaint delivered by certified or registered mail. There is no adequate means of service if the defendant's whereabouts are unknown or if the defendant successfully avoids service by these other two methods.

BILL ANALYSIS: The bill amends the relevant statute to allow service of process by publication, pursuant to the North Carolina Rules of Civil Procedure, in obtaining personal jurisdiction over a defendant in these specified small claims actions..

BACKGROUND: In 1977, the General Assembly passed legislation allowing motor vehicle mechanic and storage liens to be enforced through small claims actions. These actions previously had been unenforceable via small claims actions because of the limited definition of small claims actions. At the time the law passed, the rules for personal service, service by certified and registered mail, and service by publication were all included in Rule 4(j) of the North Carolina Rules of Civil Procedure. In 1981, the General Assembly passed legislation which moved the service by publication procedures from 4(j) into a new section 4(j1); however, no change was made to accommodate for this change in this lien enforcement statute. By virtue of this reorganization of Rule 4, service by publication inadvertently became disallowed as a method of obtaining jurisdiction in these actions. The bill restores the statute to allow service by publication in these actions. The bill would be effective when it becomes law.

HOUSE BILL 1596:
APA Technical Changes

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 27, 2000
Version: First Edition

Introduced by: Representative Redwine
Summary by: Mary Shuping & Rick Zechini

SUMMARY: ***House Bill 1596 makes technical changes to and repeals obsolete references in the General Statutes.***

BILL ANALYSIS:

Sections 1-13

Former Article 2 of the APA governed the rule-making process agencies must follow. Former Article 5 of the APA governed effective dates and publication of agency rules. Both Article 2 and Article 5 were repealed in 1991; however, numerous references to these articles remain in the General Statutes.

Under the current APA, rule-making procedures, effective dates of rules, and the publication of rules are contained in Article 2A of the APA.

House Bill 1596 repeals the obsolete references to Article 5, and replaces references to Article 2 with Article 2A.

SECTION(S)	EXPLANATION
1-2	Deletes obsolete references to Article 5 of the APA in the Parole Commission's statutes.
3	Replaces "Article 2" with "Article 2A", in the Crime Victims Compensation Commission's statutes.
4	Replaces "Article 2" with "Article 2A", and deletes reference to Article 5 in the Commission for Mental Health/Developmental Disabilities, & Substance Abuse Services' statutes governing controlled substances. Section 4 also makes other technical changes.
5	Replaces "Article 2" with "Article 2A" in the Board of Examiners of Optometry statutes.
6	Replaces "Article 2" with "Article 2A" in the Board of Chiropractic Examiners statutes.
7	Deletes reference to Article 5 and makes clarifying changes to State Board of Dental Examiners' statutes. The Board of Dental Examiners is subject to the APA, and therefore, is also subject to the filing and publication requirements in the APA. Subdivision (b)(1) continues to require that any rules adopted by the Board must be sent to dental hygienists within 30 days of the approval of the rules.
8	Replaces "Article 2" with "Article 2A" and deletes reference to Article 5 in DENR statutes governing issuance of warning tickets for forest law violations.
9	Replaces "Articles 2" with Article 2A and deletes reference to Article 5 for the Marine Fisheries Commission issuance of proclamations.
10	Replaces "Article 2" with "Article 2A" in Wildlife Resources Commission statutes.
11	Replaces "Article 2" with "Article 2A" in Coastal Resources Commission statutes.

12	Replaces "Article 2" with "Article 2A" in Health Services Commission statutes.
13	Replaces "Article 2" with "Article 2A" in Hazardous Waste Management Commission statutes.

Section 14. Section 14 repeals the section of the APA that exempted the NC Low-Level Radioactive Waste Management Authority's exemption from Article 2A of the APA. Pursuant to SL 99-357, the Authority is being repealed effective July 1, 2000.

Section 15. Effective Dates. Section 14 is effective July 1, 2000. The remainder of the act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Jud II — 6-27-00
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Nicole Dusenberry	Gov DWI Task force
Stuart Albright	Lt. Governor's office
Jay Mayo	Womble Carlyle
Mike LaTuga	Intern
Carrie Cole	Intern- NCFPC
Alysse ElHage	NCFPC
Danny Rogers	NCDOT
Robert Hanby	ACLU-NC
[illegible]	Sen. Garrou's office
Sara Singleton	Governor's Office
Nancy Renn	NCDOT
Ruth Sappie	NCDOT
Benita Jones	Intern (Sen Dalton)
Melody Hairston	Intern
Nic Heinke	NCSITA
[illegible]	[illegible]
[illegible]	[illegible] Associates

VISITOR REGISTRATION SHEET

Jud II
Name of Committee

6-27-00
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Westbrook	KCLH
Charlie Diehl	NC Trucking Association
Joanna Bullock	GHK
Reed Lawrence	Triad Photo Color Labs
[illegible]	General Assembly
Alice Garland	Electrolites
[illegible]	NC Forestry Assoc.
Jo B. McCants	AOC
Ali Suher	NCCCS
[illegible]	UNC - Chapel Hill
ALEX KENNEDY	NCCONNECTED
Melissa Lovell	DOJ
Alan Miller	Bailey & Dixon LLP
Ron Forman	AIA
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Ind 7

Name of Committee

6/27/96

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Steve Woodson	NC Farm Bureau
R. Paul Wilms	NCMBA
Brian Buzby	NC CanNet
Dan McLamb	NC DENR
Bill Reeve	NCJCDC
Susan Adams	Nature Conservancy
Jerry Mobley	[illegible]
Mike Carpenter	NCHBA
Bruce Hudson	NCPA UNC
Christa Bartlett	CHPH
Deborah Ross	ACLU
Sen Bob Carpenter	N.C. Senate

SENATE JUDICIARY II COMMITTEE

JUNE 29, 2000

MINUTES

The Senate Judiciary II Committee met on June 29, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

Senator Hagan was recognized to explain HB 979, Modify Rights of Decedent's Spouse. She moved to adopt the proposed committee substitute. The motion carried unanimously.

Bill Scoggin, North Carolina Bar Association, spoke in support of the bill.

Senator Odom moved to amend the bill on page 2, by deleting lines 41-43, and on page 3, line 17, by changing 3 years to 6 months. The motion carried unanimously.

Senator Kerr moved to engross the amendment into a new committee substitute and to give the committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to committee substitute bill #1, but favorable as to Senate committee substitute.**

Senator Miller continued the discussion from the previous meeting of HB 1499, Interlock/Open Container Changes, and specifically on Sen. Horton's motion to amend the bill on page 3, lines 7 and 8. The motion carried unanimously.

Senator Ballance moved to amend the bill on page 1, line 15, by rewriting that line to read: "registered vehicles owned by and in possession of that person shall be equipped with..." Representative Hackney pointed out that passage of Senator Ballance's amendment would be in violation of Federal regulations and would result in loss of Federal money to the State.

After considerable discussion and comments from Ruth Sappie, with the NC Department of Transportation, and Jerry Mobley, the vendor authorized by the State of North Carolina to distribute and monitor the use of the ignition interlock system, Senator Ballance withdrew his motion and moved to adopt a substitute amendment. The new amendment dealt with vehicles subject to the requirements of the bill. The motion carried unanimously.

Senator Ballance moved to further amend the bill on page 3, line 24, by rewriting the line to read: "used primarily for the transportation of persons for compensation, or

that is being used at the time of the possession or consumption for the transportation of persons for compensation;" The amendment failed.

Senator Miller adjourned the meeting with the understanding that discussion of HB 1499 would continue at the next meeting.

Brad Miller, Chair

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Friday, June 30, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)979 Modify Rights of Decedent's Spouse.

Draft Number:	PCS8216
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Sen. Miller to sign.

SENATE JUDICIARY II COMMITTEE

JUNE 29, 2000

ROOM 1124

HB 979	Modify Rights of Decedent's Spouse	Rep. Baddour
HB 1499	Interlock/Open Container Changes	Rep. Crawford

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 979
Committee Substitute Favorable 4/20/99

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction.

"**§ 30-3.2. Definitions.**

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

(d) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code; and

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the surviving spouse, personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation

shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the

personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"**§ 30-3.5. Recovery of assets by personal representative.**

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any

Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds

that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated

and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall

promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

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

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"**§ 31C-3. Disposition of community property upon death.**

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an

elective share under Article 1A of Chapter 30 of the General Statutes.

e. Resolving questions of domicile and residence of a decedent.

f. Handling proceedings involving year's allowances of widows and children.

g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.

h. Drafting instruments releasing deeds of trust.

i. Drafting assignments of rent.

j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.

k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:

1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

3. Handling petitions to the tax court.

l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.

m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters or administration.

2. Abstracting or passing upon title to property.

3. Handling litigation relating to claims by or against the estate or trust.

4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act becomes effective October 1, 1999, and applies to estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1499*
Committee Substitute Favorable 6/6/00

Short Title: Interlock/Open Container Changes. (Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE, AND TO CLARIFY THE EFFECTIVE DATE FOR COMMERCIAL MOTOR VEHICLE INSURANCE PROVISIONS OF SESSION LAW 330 OF THE 1999 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all registered vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) ~~A requirement that the person not drive with an alcohol concentration of 0.04 or greater.~~ An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

Section 2. G.S. 20-17.8(f) reads as rewritten:

"(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this ~~section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.~~ section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subdivision (b)(3) of this section."

Section 3. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area.~~ the right of way of a highway:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle is on a highway or the right-of-way of a highway. For purposes of this subsection, only the person who possesses or consumes an alcoholic beverage in violation of this subsection shall be charged with this offense.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a passenger to possess an alcoholic beverage other than in the unopened manufacturer's original container, or for a passenger to consume an alcoholic beverage, if the container is:

(1) In the passenger area of a motor vehicle required to be registered under the laws of North Carolina that is designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.; or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section by the driver of the motor vehicle is a lesser-included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area~~ the right-of-way of a highway with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right-of-way of a highway, or (ii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right-of-way of a highway.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and

restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 4. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the charging officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection."

Section 5. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a

conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

Section 6. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 7. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as

proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 8. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially ~~equivalent~~ similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 9. G.S. 20-16(a) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the

reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially ~~equivalent~~ similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing."

Section 10. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;
d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and
e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and
a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or
b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Section 11. G.S. 20-179.3(c) reads as rewritten:

"(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. -- A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in

another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation."

Section 12. G.S. 20-179.3(e) reads as rewritten:

"(e) Limited Basis for and Effect of Privilege. -- A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid."

Section 13. G.S. 14-7.7(b) reads as rewritten:

"(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially ~~equivalent~~ similar to the offenses set forth in subdivision (1) or (2)."

Section 14. G.S. 16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 15. G.S. 20-138.2A(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an

administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 16. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 17. G.S. 20-138.3(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 18. Section 10 of Session Law 1999-330 reads as rewritten:

"Section 10. Section 4 of this act becomes effective September 1, 2000, and applies to new or renewal policies written to become effective on or after that date. The remainder of this ~~This~~ act becomes effective December 1, 1999, and applies to violations occurring on or after that date."

Section 19. Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2000, and applies to offenses committed on or after that date.

HOUSE BILL 1499:
Interlock/Open Container Changes

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 27, 2000
Version: 2nd Edition

Introduced by: Representative Crawford
Summary by: Brenda J. Carter
Committee Counsel and
Susan Hayes, Staff Attorney, Research Division

SUMMARY: *House Bill 1499 amends the laws concerning the use of ignition interlock devices by repeat DWI offenders and possession of open containers in vehicles to comply with federal law and thereby avoid a mandatory transfer of federal highway funds. The bill also implements the recommendations of the Governor's DWI Task Force and clarifies the effective date for commercial motor vehicle insurance provisions of Session Law 330 of the 1999 General Assembly.*

BILL ANALYSIS:

G.S. 20-17.8 applies to a person whose license was revoked as a result of a conviction of driving while impaired, and

- *the person had an alcohol concentration of 0.16 or more; or*
- *the person had been convicted of another offense involving impaired driving within the preceding 7 years of the offense for which the person's license has been revoked.*

When DMV restores the license of such person, in addition to any other restriction, the person is required to operate a vehicle equipped with ignition interlock.

Section 1 of the bill amends G.S. 20-17.8(b) in two ways. First, the statute is amended to require a person subject to the ignition interlock requirements to install an ignition interlock device on all registered vehicles they own. This change is made to comply with federal law and avoid the transfer of funds. Second, the language designating at what BAC level the ignition interlock must be set is amended to make G.S. 20-17.8 consistent with the provisions of G.S. 20-19 (lower BAC tolerance level for repeat offenders).

Section 2 of the bill amends G.S. 20-17.8(f) to clarify that an alcohol concentration report from an ignition interlock device is only admissible when the defendant actually drove the vehicle at the time the BAC reading was over the restriction placed on that person by 20-17.8(b)(3).

Section 3 amends G.S. 20-138.7 to comply with federal mandate, by making it an infraction to have an open container of beer or unfortified wine in a vehicle if the driver has NOT been drinking. This change would also make it an infraction for a passenger to possess an open container or to consume alcohol in a vehicle that is on the public highway or right of way. Current law makes it a Class 3 misdemeanor if the driver HAS been drinking, but no offense if the driver has not been drinking. There is an exception to the infraction if the vehicle is designed, maintained, or used primarily for the transportation of persons for compensation, or if the open container is in the living quarters of a house trailer, motor home, or house car. (An infraction is a noncriminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a penalty of not more

than $100. The proceeds of penalties for infractions are payable to the county in which the infraction occurred for the use of the public schools.)

Section 4 amends G.S. 20-16.2(c1) regarding implied consent to chemical analysis. The bill requires that if the person's drivers license has an alcohol concentration restriction and the office has reasonable grounds to believe the person has violated some restriction other than the alcohol concentration restriction, the officer must indicate the restriction that was violated.

Section 5 amends G.S. 20-19(c3) regarding suspension or revocation of licenses to clarify that when there is a violation of an alcohol concentration restriction, the officer must submit an affidavit to DMV.

Section 6 amends G.S. 20-179.3(g5) to clarify that when a person receives a limited driving privilege with a mandatory ignition interlock requirement, that the ignition interlock system be set to prohibit driving with an alcohol concentration of greater than 0.00.

Section 7 amends G.S. 20-139.1(b3) regarding sequential breath tests to remove the requirement that refusal of the second test be "willful".

Sections 8 – 13 make a technical change in several statutes, from the phrase "substantially equivalent" to "substantially similar" in referring to laws of other states, or previous laws of North Carolina.

Section 14 makes a technical change to correct the omission of the word "motor".

Sections 15 – 17 make a technical correction to several statutes to correct the name of the Commission for Health Services.

Section 18 amends the effective date of Session Law 330 of the 1999 General Assembly, which dealt with commercial vehicle highway safety and work zone safety. The bill amends the effective date of the portion of the law that deals with financial responsibility for the operation of commercial motor vehicles to make it effective September 1, 2000 and applicable to new or renewal policies effective on or after that date.

EFFECTIVE DATE: Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000. The remainder of this act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 979
Committee Substitute Favorable 4/20/99
Proposed Senate Committee Substitute H979-PCS8216-RV002

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction.

"**§ 30-3.2. Definitions.**

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

(d) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;

(3) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(4) The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(5) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(6) Any donative transfers of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code;

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and

c. Any gifts made prior to marriage;

(7) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

(8) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(9) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize

the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"§ 30-3.4. Procedure for determining the elective share.

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more

persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"**§ 30-3.5. Recovery of assets by personal representative.**

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary

receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the

distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"§ 30-3.6. Waiver of rights.

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with

the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been

allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

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

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"**§ 31C-3. Disposition of community property upon death.**

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an elective share under Article 1A of Chapter 30 of the General Statutes.

e. Resolving questions of domicile and residence of a decedent.

f. Handling proceedings involving year's allowances of widows and children.

g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
h. Drafting instruments releasing deeds of trust.
i. Drafting assignments of rent.
j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
3. Handling petitions to the tax court.
l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
m. In connection with the administration of an estate or trust:
1. Making application for letters testamentary or letters or administration.
2. Abstracting or passing upon title to property.
3. Handling litigation relating to claims by or against the estate or trust.
4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act becomes effective October 1, 2000, and applies to estates of decedents dying on or after that date.

HOUSE BILL 979:
Modify Rights of Decedent's Spouse

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Baddour
Date:	June 28, 2000	**Summary by:**	Rick Zechini
Version:	Proposed Committee Substitute for the Second Edition		Committee Counsel

SUMMARY: ***The proposed committee substitute for the Second Edition of House Bill 979 repeals the dissent statues (Article 1 of Chapter 30 of the General Statutes) and adds as its replacement the elective share statutes (Article 1A). The new Article 1A differs from the existing law by granting a surviving spouse a right to claim a certain share of the decedent's probate and non-probate property. Existing law provides the surviving spouse a right to claim a certain share of the decedent's probate property only.***

CURRENT LAW: Article 1 of Chapter 30 of the General Statutes (dissent statutes) gives the surviving spouse of a deceased spouse who executed a will prior to death the right to a minimum share of the decedent's probate property. If the surviving spouse's share under the will along with any non-probate property that the spouse receives is less than a threshold amount, which is based upon the amount that the surviving spouse would be entitled to under the Intestate Succession statutes (Chapter 29 of the General Statutes), the surviving spouse may dissent and is entitled to the respective threshold amount. Similarly, under the Intestate Succession statutes the surviving spouse of a deceased spouse who did not execute a will prior to death is entitled to a certain amount of the decedent's property.

The intent of the dissent statutes and the Intestate Succession statutes is to prevent the deceased spouse from disinheriting the surviving spouse and to protect the spouse against loss of support upon the decedent's death. However, these statues provide a surviving spouse with a minimum share of the deceased spouse's probate property only, and do not take into account the deceased spouse's non-probate property. As the result of federal tax law and the desire to distribute property outside of probate, the value of non-probate property, such as life insurance, IRAs, tax-deferred annuities, employee retirement plan accounts, and certain types of trusts, has increased since these statutes were enacted in 1959.

BILL ANALYSIS: The proposed committee substitute for the Second Edition of House Bill 979 grants the surviving spouse of a deceased spouse the right to claim an elective share of the total net assets, including probate and non-probate property, of the decedent. The applicable share of the total net assets is as follows:

- If the decedent is not survived by any lineal descendants, one-half of the total net assets.
- If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the total net assets.
- If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the total net assets.

In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the elective share is reduced by one-half.

The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse. A claim must be made within six months after the issuance of letters testamentary or letters of administration. The clerk of superior court is required to hold a hearing to determine whether the surviving spouse is entitled to an elective share, and if so, how much. Any party in interest may appeal from the decision to the superior court.

The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse. However, a waiver is not enforceable if the surviving spouse proves that the waiver was not executed voluntarily or the surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

EFFECTIVE DATE: The proposed committee substitute for the Second Edition of House Bill 979 becomes effective October 1, 2000, and applies to estates of decedents dying on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1499 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Horton
Sen.)

moves to amend the bill on page 3, line 5 7 + 8

( ) WHICH CHANGES THE TITLE
by changing That line to Read

(1) While There is an alcoholic beverage in The passenger area other Than ~~in~~ The unopened manufacturers Rejeral container.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASA-081

Date_____,2000

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

Senator Ballance

moves to amend the bill on page 1, lines 14-16 by rewriting the lines to read:
"approved by the Commissioner. The Commissioner shall not unreasonably withhold";

and on page 2, lines 22-23, by inserting between the lines a new Section to read:
"Section 2. G.S. 20-17.8 is amended by adding a new subsection to read:
'(c1) Vehicles Subject to Requirement. -- A person subject to this section shall have all registered vehicles owned by that person equipped with a functioning ignition interlock system of a type approved by the Commissioner, unless the Division determines that one or more specific registered vehicles owned by that person are relied upon by another member of that person's family for transportation and that the vehicle is not in the possession of the person subject to this section.'"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASA-081

and by renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASA-082

Date_____,2000

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

Senator Ballance

moves to amend the bill on page 3, line 24,
by rewriting the line to read:
"used primarily for the transportation of persons for compensation, or that is being used at the time of the possession or consumption for the transportation of persons for compensation;"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 979
Committee Substitute Favorable 4/20/99

PROPOSED SENATE COMMITTEE SUBSTITUTE
H979-PCSRV-001
THIS IS A DRAFT 28-JUN-00 14:35:56
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.
(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.
(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction.

"**§ 30-3.2. Definitions.**

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

(d) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;
(2) All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;
(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code;

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and

c. Any gifts made prior to marriage;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the

entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens,

claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without

regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified

and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"**§ 30-3.5. Recovery of assets by personal representative.**

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or

no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the

elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under

the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same

extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

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

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"**§ 31C-3. Disposition of community property upon death.**

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with

the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an elective share under Article 1A of Chapter 30 of the General Statutes.

e. Resolving questions of domicile and residence of a decedent.

f. Handling proceedings involving year's allowances of widows and children.

g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.

h. Drafting instruments releasing deeds of trust.

i. Drafting assignments of rent.

j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.

k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:

1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.

3. Handling petitions to the tax court.

l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.

m. In connection with the administration of an estate or trust:

1. Making application for letters testamentary or letters or administration.

2. Abstracting or passing upon title to property.
3. Handling litigation relating to claims by or against the estate or trust.
4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act becomes effective October 1, 2000, and applies to estates of decedents dying on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2ND

H. B. No. 979 DATE 6/29/00

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

COMMITTEE SUBSTITUTE _____

~~Rep.~~)
Sen.) ODOM

moves to amend the bill on page 2, lines 41 through 43

( ) WHICH CHANGES THE TITLE

by Deleting those lines and Renumbering the remaining subdivisions Accordingly.

on page 3, line 1, by inserting bit the words "any" and "property" the words "interest in"; and

on page 3, line 42, by inserting bit the words "any" and "property" the words "interest in"; and

on page 4, line 34, by inserting before the word "property" the words "interest in", and

on page 3, line 17, by replacing "three years" with "six months".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Jud. II — Name of Committee

6-29-00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
JONATHAN SHOR	NC CHILD ADVOCACY INSTITUTE 311 E. EDENTON, RALEIGH 27601
John McMillan	MFDS PA
J. B. McCants	AOC
[illegible]	AOC
Danny Roy	DOT
Nicole Duseberry	DWI TASK FORCE
Travis Hill	Lt. Gov's office
Bill Katt	NC Bar Assoc / Fiduciary & Estate Planning Section
Christie Barbee	CAPA
Ruth Sappie	NCDOT
Cam Cuer	BPMH
Sammy Sosa	Chicago Cubs
Gary Harris	NCPMA
Robert PASchal	Young, Moore
[illegible]	Gov. Office

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mark Dixon	Capital Group
Cathy Dick	OTT
David Ferrell	Hyatt McDonough Caldwell et al
Susan Valaw	Mainstreet
Mark Webster	Office of the Governor
Ali Sumer	NCCCS
Dawn Matheson	AP
Daniel Arnold	SEANC
Evelyn Hawthorne	UNC-CH
Wendy Mills	SEANC
Katherine Joyce	SEANC
Bill Sloggin	KCCH

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Travis Hill	Lt. Gov Office
Mike Bryant	DMV
Ruth Sappie	NCDOT
Nicole Duseberry	DWI Task Force
Jo B. McCants	AOC
Sona Shandilya	NCCADV
Anne Winner	NCCADV
D Z Rog	NCDOT

SENATE JUDICIARY II COMMITTEE

JULY 5, 2000

MINUTES

The Senate Judiciary II Committee met on July 5, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Twelve members were present, including Senator Brad Miller, who presided.

HB 1571, Adult Prot. Svce/Complaint Invest., was explained by Representative Earle. Senator Kinnaird moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

HB 1609, Clarify Juvenile Procedures, was explained by Representative Earle. Speaking from the public to clarify some questions was Ilene Nelson, the administrator of the Guardian Ad Litum program. Senator Martin moved a favorable report of the bill. The motion carried. **Favorable report.**

Representative Hackney was called on to continue the discussion of HB 1499, Interlock/Open Container Changes. Senator Ballance moved to amend the bill by allowing the court to make a determination at a hearing of the case as to whether a violation of Section 2 has occurred. The motion passed.

Senator Ballance moved to amend the bill on page 3, line 4, and subsequently withdrew the amendment.

Senator Ballance moved to amend the bill on page 12, lines 31-34, by rewriting the lines to read: "Section 19. Section 18 of this act is effective when it becomes law. The remainder of this act becomes effective September 1, 2000, and applies to offenses committed on or after that date." The motion passed unanimously.

Senator Lee moved to engross the amendments into a committee substitute and to give the committee substitute a favorable report. The motion passed. **Unfavorable as to committee substitute bill no # 1, but favorable as to Senate committee substitute.**

Brad Miller, Chair

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Wednesday, July 05, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1571** Adult Prot. Svce/Complaint Invest.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2)**1609** Clarify Juvenile Procedures.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: Sen. Miller to sign.

SENATE JUDICIARY II COMMITTEE

JULY 5, 2000

ROOM 1124

HB 1499	Interlock/Open Container Changes	Rep. Crawford
HB 1571	Adult Prot. Svce/Complaint Invest.	Rep. Earle
HB 1609	Clarify Juvenile Procedures	Rep. Earle

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1499*
Committee Substitute Favorable 6/6/00

Short Title: Interlock/Open Container Changes. (Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE, AND TO CLARIFY THE EFFECTIVE DATE FOR COMMERCIAL MOTOR VEHICLE INSURANCE PROVISIONS OF SESSION LAW 330 OF THE 1999 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner and that all registered vehicles owned by that person shall be equipped with the system. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) ~~A requirement that the person not drive with an alcohol concentration of 0.04 or greater.~~ An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) felony death by vehicle, G.S. 20-141.4(a1), or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

Section 2. G.S. 20-17.8(f) reads as rewritten:

"(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this ~~section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.~~ section, unless the person operated a vehicle when the ignition interlock system indicated an alcohol concentration in violation of the restriction placed upon the person by subdivision (b)(3) of this section."

Section 3. G.S. 20-138.7 reads as rewritten:

"**§ 20-138.7. Transporting an open container of alcoholic ~~beverage after consuming alcohol.~~ beverage.**

(a) Offense. -- No person shall drive a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area.~~ the right of way of a highway:

(1) While there is an alcoholic beverage other than in the unopened manufacturer's original container in the passenger area; and

(2) While the driver is consuming alcohol or while alcohol remains in the driver's body.

(a1) Offense. -- No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle is on a highway or the right-of-way of a highway. For purposes of this subsection, only the person who possesses or consumes an alcoholic beverage in violation of this subsection shall be charged with this offense.

(a2) Exception. -- It shall not be a violation of subsection (a1) of this section for a passenger to possess an alcoholic beverage other than in the unopened manufacturer's original container, or for a passenger to consume an alcoholic beverage, if the container is:

(1) In the passenger area of a motor vehicle required to be registered under the laws of North Carolina that is designed, maintained, or used primarily for the transportation of persons for compensation;

(2) In the living quarters of a motor home or house car as defined in G.S. 20-4.01(27)d2.; or

(3) In a house trailer as defined in 20-4.01(14).

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for the first offense and shall be ~~punished as~~ a Class 2 misdemeanor for a second or subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars ($1,000).~~ Violation of ~~this section~~ subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section by the driver of the motor vehicle is a lesser-included offense of subsection (a) of this section. A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

(g) Pleading. -- In any prosecution for a violation of ~~this section,~~ subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle required to be registered under the laws of North Carolina on a highway or ~~public vehicular area~~ the right-of-way of a highway with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right-of-way of a highway, or (ii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle required to be registered under the laws of North Carolina while the motor vehicle was on a highway or the right-of-way of a highway.

(h) Limited Driving Privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and

restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

Section 4. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

(1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;

(4) The person was notified of the rights in subsection (a); and

(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the charging officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection."

Section 5. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2(a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a

conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

Section 6. G.S. 20-179.3(g5) reads as rewritten:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the ~~Commissioner.~~ Commissioner, which is set to prohibit driving with an alcohol concentration of greater than 0.00. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 7. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. -- By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath shall require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as

proof of a person's alcohol concentration in any court or administrative proceeding.

A person's ~~willful~~ refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a ~~willful~~ refusal under G.S. 20-16.2(c).

A person's ~~willful~~ refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Section 8. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially ~~equivalent~~ similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially ~~equivalent~~ similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 9. G.S. 20-16(a) reads as rewritten:

"(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) through (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the

reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially ~~equivalent~~ similar to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing."

Section 10. G.S. 20-179.3(b) reads as rewritten:

"(b) Eligibility. --

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;
d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and
e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and
a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or
b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege."

Section 11. G.S. 20-179.3(c) reads as rewritten:

"(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. -- A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in

another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation."

Section 12. G.S. 20-179.3(e) reads as rewritten:

"(e) Limited Basis for and Effect of Privilege. -- A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially ~~equivalent~~ similar to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid."

Section 13. G.S. 14-7.7(b) reads as rewritten:

"(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially ~~equivalent~~ similar to the offenses set forth in subdivision (1) or (2)."

Section 14. G.S. 16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With Certain Implied-Consent Offenses. -- A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or

d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 15. G.S. 20-138.2A(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an

administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 16. G.S. 20-138.2B(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 17. G.S. 20-138.3(b2) reads as rewritten:

"(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission ~~on~~ for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use."

Section 18. Section 10 of Session Law 1999-330 reads as rewritten:

"Section 10. Section 4 of this act becomes effective September 1, 2000, and applies to new or renewal policies written to become effective on or after that date. The remainder of this ~~This~~ act becomes effective December 1, 1999, and applies to violations occurring on or after that date."

Section 19. Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2000, and applies to offenses committed on or after that date.

HOUSE BILL 1499:
Interlock/Open Container Changes

BILL ANALYSIS

Committee: Senate Judiciary II
Date: June 27, 2000
Version: 2nd Edition

Introduced by: Representative Crawford
Summary by: Brenda J. Carter
Committee Counsel and
Susan Hayes, Staff Attorney, Research Division

SUMMARY: House Bill 1499 amends the laws concerning the use of ignition interlock devices by repeat DWI offenders and possession of open containers in vehicles to comply with federal law and thereby avoid a mandatory transfer of federal highway funds. The bill also implements the recommendations of the Governor's DWI Task Force and clarifies the effective date for commercial motor vehicle insurance provisions of Session Law 330 of the 1999 General Assembly.

BILL ANALYSIS:

G.S. 20-17.8 applies to a person whose license was revoked as a result of a conviction of driving while impaired, and

- *the person had an alcohol concentration of 0.16 or more; or*
- *the person had been convicted of another offense involving impaired driving within the preceding 7 years of the offense for which the person's license has been revoked.*

When DMV restores the license of such person, in addition to any other restriction, the person is required to operate a vehicle equipped with ignition interlock.

Section 1 of the bill amends G.S. 20-17.8(b) in two ways. First, the statute is amended to require a person subject to the ignition interlock requirements to install an ignition interlock device on all registered vehicles they own. This change is made to comply with federal law and avoid the transfer of funds. Second, the language designating at what BAC level the ignition interlock must be set is amended to make G.S. 20-17.8 consistent with the provisions of G.S. 20-19 (lower BAC tolerance level for repeat offenders).

Section 2 of the bill amends G.S. 20-17.8(f) to clarify that an alcohol concentration report from an ignition interlock device is only admissible when the defendant actually drove the vehicle at the time the BAC reading was over the restriction placed on that person by 20-17.8(b)(3).

Section 3 amends G.S. 20-138.7 to comply with federal mandate, by making it an infraction to have an open container of beer or unfortified wine in a vehicle if the driver has NOT been drinking. This change would also make it an infraction for a passenger to possess an open container or to consume alcohol in a vehicle that is on the public highway or right of way. Current law makes it a Class 3 misdemeanor if the driver HAS been drinking, but no offense if the driver has not been drinking. There is an exception to the infraction if the vehicle is designed, maintained, or used primarily for the transportation of persons for compensation, or if the open container is in the living quarters of a house trailer, motor home, or house car. (An infraction is a noncriminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a penalty of not more

than $100. The proceeds of penalties for infractions are payable to the county in which the infraction occurred for the use of the public schools.)

Section 4 amends G.S. 20-16.2(c1) regarding implied consent to chemical analysis. The bill requires that if the person's drivers license has an alcohol concentration restriction and the office has reasonable grounds to believe the person has violated some restriction other than the alcohol concentration restriction, the officer must indicate the restriction that was violated.

Section 5 amends G.S. 20-19(c3) regarding suspension or revocation of licenses to clarify that when there is a violation of an alcohol concentration restriction, the officer must submit an affidavit to DMV.

Section 6 amends G.S. 20-179.3(g5) to clarify that when a person receives a limited driving privilege with a mandatory ignition interlock requirement, that the ignition interlock system be set to prohibit driving with an alcohol concentration of greater than 0.00.

Section 7 amends G.S. 20-139.1(b3) regarding sequential breath tests to remove the requirement that refusal of the second test be "willful".

Sections 8 – 13 make a technical change in several statutes, from the phrase "substantially equivalent" to "substantially similar" in referring to laws of other states, or previous laws of North Carolina.

Section 14 makes a technical change to correct the omission of the word "motor".

Sections 15 – 17 make a technical correction to several statutes to correct the name of the Commission for Health Services.

Section 18 amends the effective date of Session Law 330 of the 1999 General Assembly, which dealt with commercial vehicle highway safety and work zone safety. The bill amends the effective date of the portion of the law that deals with financial responsibility for the operation of commercial motor vehicles to make it effective September 1, 2000 and applicable to new or renewal policies effective on or after that date.

EFFECTIVE DATE: Section 18 of this act is effective when it becomes law. Section 3 of this act becomes effective September 1, 2000. The remainder of this act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1571*

Short Title: Adult Prot. Svce/Complaint Invest. (Public)

Sponsors: Representatives Earle; Easterling, Melton, Sherrill, Warren, and Insko.

Referred to: Aging.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT PERTAINING TO TIME REQUIREMENTS FOR THE INVESTIGATION OF COMPLAINTS UNDER THE PROTECTION OF THE ABUSED, NEGLECTED, OR EXPLOITED DISABLED ADULT ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-103(d) reads as rewritten:

"**§ 108A-103. Duty of director upon receiving report.**

. . .

(d) The director shall initiate the evaluation described in subsection (a) of this section as follows:

(1) Immediately upon receipt of the complaint if the complaint alleges a ~~life-threatening situation.~~ danger of death in an emergency as defined in G.S. 108A-101(g).

(2) Within 24 hours if the complaint alleges ~~abuse of a resident~~ danger of irreparable harm in an emergency as defined by G.S. ~~131D-20(1).~~ 108A-101(g).

(3) Within ~~48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).~~ 72 hours if the complaint does not allege danger of death or irreparable harm in an emergency as defined by G.S. 108A-101(g).

~~(4) Within two weeks in all other situations.~~

~~The investigation shall be completed within 30 days.~~ The evaluation shall be completed within 30 days for allegations of abuse or neglect and within 45 days for allegations of exploitation."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 1609*
Committee Substitute Favorable 6/6/00
Committee Substitute #2 Favorable 6/22/00
Fourth Edition Engrossed 6/28/00

Short Title: Clarify Juvenile Procedures. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AND CLARIFY THE PROCEDURES FOR FILING A MOTION TO TERMINATE PARENTAL RIGHTS IN A PENDING JUVENILE ABUSE, NEGLECT, OR DEPENDENCY PROCEEDING, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY WHETHER INFORMATION SHOULD BE EXPUNGED FROM CERTAIN RECORDS WHEN AN ABUSE, NEGLECT, OR DEPENDENCY REPORT IS NOT SUBSTANTIATED OR PROVEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-406(b) reads as rewritten:

"(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

(1) Notice of the nature of the proceeding;

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing;

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State; and

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

e. May, upon proper notice and hearing and a finding based on the criteria set out in G.S. 7B-1111, terminate the parental rights of the respondent parent."

Section 2. G.S. 7B-1101 reads as rewritten:

"**§ 7B-1101. Jurisdiction.**

The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the ~~petition.~~ petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Administrative Office of the Courts. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1111(6); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Administrative Office of the Courts when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally."

Section 3. G.S. 7B-1102 reads as rewritten:

"**§ 7B-1102. Pending child abuse, neglect, or dependency ~~hearings.~~ proceedings.**

~~When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental~~

~~rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7B-407 shall be served with the petition to terminate parental rights in accordances with G.S. 1A-1, Rule 5.~~

(a) When the district court is exercising jurisdiction over a juvenile and the juvenile's parent in an abuse, neglect, or dependency proceeding, a person or agency specified in G.S. 7B-1103(a) may file in that proceeding a motion for termination of the parent's rights in relation to the juvenile.

(b) A motion pursuant to subsection (a) of this section and the notice required by G.S. 7B-1106.1 shall be served in accordance with G.S. 1A-1, Rule 5(b), except:

(1) Service must be in accordance with G.S. 1A-1, Rule 4, if one of the following applies:

a. The person or agency to be served was not served originally with summons.

b. The person or agency to be served was served originally by publication that did not include notice substantially in conformity with the notice required by G.S. 7B-406(b)(4)e.

c. Two years has elapsed since the date of the original action.

(2) In any case, the court may order that service of the motion and notice be made pursuant to G.S. 1A-1, Rule 4.

The parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(c) When a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, the court on its own motion or motion of a party may consolidate the action pursuant to G.S. 1A-1, Rule 42."

Section 4. G.S. 7B-1103 reads as rewritten:

"**§ 7B-1103. Who may ~~petition.~~ file a petition or motion.**

(a) A petition or motion to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed ~~by:~~ by one or more of the following:

(1) Either parent seeking termination of the right of the other ~~parent; or~~ parent.

(2) Any person who has been judicially appointed as the guardian of the person of the ~~juvenile; or~~ juvenile.

(3) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent ~~jurisdiction; or~~ jurisdiction.

(4) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the

parents or by the guardian of the person of the juvenile, pursuant to G.S. ~~48-3-701; or~~ 48-3-701.

(5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the ~~petition; or~~ petition or motion.

(6) Any guardian ad litem appointed to represent the minor juvenile pursuant to G.S. 7B-601 who has not been relieved of this ~~responsibility and who has served in this capacity for at least one continuous year; or~~ responsibility.

(7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

(b) Any person or agency that may file a petition under subsection (a) of this section may intervene in a pending abuse, neglect, or dependency proceeding for the purpose of filing a motion to terminate parental rights."

Section 5. G.S. 7B-1104 reads as rewritten:

"**§ 7B-1104. ~~Petition.~~ Petition or motion.**

The ~~petition~~ petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled 'In Re (last name of ~~juvenile)",~~ juvenile), a minor ~~juvenile;~~ juvenile'; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

(1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.

(2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one ~~entitled to petition under G.S. 7B-1103.~~ authorized by G.S. 7B-1103 to file a petition or motion.

(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the ~~petitioner,~~ petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference.

(4) The name and address of any person who has been judicially appointed as guardian of the person of the ~~juvenile pursuant to the provisions of Chapter 35A of the General Statutes, or of G.S. 7B-600.~~ juvenile.

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the ~~petition.~~ petition or motion.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

(7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act."

Section 6. Article 11 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-1106.1. Notice in pending child abuse, neglect, or dependency cases.**

(a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall prepare a notice directed to each of the following persons or agency, not otherwise a movant:

(1) The parents of the juvenile.

(2) Any person who has been judicially appointed as guardian of the person of the juvenile.

(3) The custodian of the juvenile appointed by a court of competent jurisdiction.

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the juvenile has been given by a court of competent jurisdiction.

(5) The juvenile's guardian ad litem if one has been appointed pursuant to G.S. 7B-601 and has not been relieved of responsibility.

(6) The juvenile, if the juvenile is 12 years of age or older at the time the motion is filed.

Provided, no notice need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the movant. The notice shall notify the person or agency to whom it is directed to file a written response within 30 days after service of the motion and notice. Service of the motion and notice shall be completed as provided under G.S. 7B-1102(b).

(b) The notice required by subsection (a) of this section shall include all of the following:

(1) The name of the minor juvenile.

(2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.

(3) Notice that any attorney appointed previously to represent the parent in the abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.

(4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.

(5) Notice that the date, time, and place of hearing will be mailed by the moving party upon filing of the response or 30 days from the date of service if no response is filed.

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a movant, is served with a motion seeking termination of a parent's rights, the director shall file a written response and shall be deemed a party to the proceeding."

Section 7. G.S. 7B-1107 reads as rewritten:

"**§ 7B-1107. Failure of ~~respondents to answer.~~ parent to answer or respond.**

Upon the failure of ~~the respondents~~ a respondent parent to file written answer to the petition or written response to the motion ~~with the court~~ within 30 days after service of the summons and ~~petition,~~ petition or notice and motion, or within the time period established for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by publication, the court ~~shall~~ may issue an order terminating all parental and custodial rights of ~~the respondent or respondents~~ that parent with respect to the juvenile; provided the court shall order a hearing on the petition or motion and may examine the petitioner or movant or others on the facts alleged in the ~~petition.~~ petition or motion."

Section 8. G.S. 7B-1108 reads as rewritten:

"**§ 7B-1108. ~~Answer of respondents.~~ Answer or response of parent.**

(a) Any respondent may file a written answer to the ~~petition.~~ petition or written response to the motion. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer or response denies any material allegation of the ~~petition,~~ petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. ~~7B-1103.~~ 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days ~~to the petitioner, the answering respondent,~~ given by the petitioner or movant to the respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and ~~answer.~~ answer or motion and response.

Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the

~~petitioner,~~ respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading.

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise."

Section 9. G.S. 7B-1109 (b) and (f) read as rewritten:

"(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, the court shall appoint counsel to represent them. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination ~~petition.~~ petition or motion. In the event that the parents do not desire counsel and are present at the hearing, the court shall examine each parent and make findings of fact sufficient to show that the waivers were knowing and voluntary. This examination shall be reported as provided in G.S. 7A-198.

. . .

(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights."

Section 10. G.S. 7B-1110 reads as rewritten:

"**§ 7B-1110. Disposition.**

(a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.

(b) Should the court conclude that, irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the juvenile require that rights should not be terminated, the court shall dismiss the

~~petition,~~ petition or deny the motion, but only after setting forth the facts and conclusions upon which the dismissal or denial is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the ~~petition,~~ petition or deny the motion, making appropriate findings of fact and conclusions.

(d) Counsel for the petitioner or movant shall serve a copy of the termination of parental rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if the juvenile is 12 years of age or older.

(e) The court may tax the cost of the proceeding to any party."

Section 11. G.S. 7B-1111 reads as rewritten:

"**§ 7B-1111. Grounds for terminating parental rights.**

(a) The court may terminate the parental rights upon a finding of one or more of the following:

(1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.

(2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.

(3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the ~~petition,~~ petition or motion, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

(4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.

(5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition or motion to terminate parental rights:

a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the

court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or

b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or

c. Legitimated the juvenile by marriage to the mother of the juvenile; or

d. Provided substantial financial support or consistent care with respect to the juvenile and mother.

(6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.

(7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the ~~petition.~~ petition or motion.

(8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.

(9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner or movant to prove the facts justifying such termination by clear and convincing evidence."

Section 12. G.S. 7B-1112 reads as rewritten:

"**§ 7B-1112. Effects of termination order.**

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency

at the time of the filing of the ~~petition,~~ petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the juvenile as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

(2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the ~~petitioner,~~ petitioner or movant, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interests of the juvenile."

Section 13. The Legislative Research Commission shall study issues related to expungement of information from the central registry of abuse, neglect, and dependency cases or from judicial records of juvenile cases that alleged abuse, neglect, or dependency. In particular, this study should consider whether expungement (i) from the central registry should be available when a local department of social services does not substantiate a report of abuse, neglect, or dependency or (ii) from the juvenile court record in a case where alleged abuse, neglect, or dependency is not proven by clear and convincing evidence. The Commission shall make recommendations to the 2001 Session of the General Assembly.

Section 14. This act becomes effective October 1, 2000.

HOUSE BILL 1571:
Adult Protective Services/Complaint Investigation

BILL ANALYSIS

Committee: Senate Judiciary II
Date: July 5, 2000
Version: First Edition

Introduced by: Rep. Earle
Summary by: John Young

Summary:

One may get the impression from reading HB 1571 that new significant changes are being made by the bill to the time requirements for investigation of complaints under the Adult Protective Services Act. In fact the changes proposed in HB 1571 are hardly more than technical changes to return G.S. 108A-103 as it was before the passage of SB10 in July of 1999. Changes were made to G.S. 108A-103 by SB 10 because SB 10 also made changes to G.S. 131D-26. to add new time frames to the statute relating to resident's bill of rights in adult care homes. Since both G.S. 108A- and G.S. 131D-26 address abuse and neglect of adults, the drafter changed the language in G.S. 108A to parallel the new language in G.S. 131D-26. The Division of Social Services came before the Study Commission on Aging and requested that G.S. 108A-26 be returned to the original language as it was before July 1999 because, in fact, the two statutes had significant differences and the time frames should not be parallel.

Background

The 1999 General Assembly passed Senate Bill 10 which established new safety regulations and standards for adult care homes pertaining to medication administration, staff training, and resident safety. The bill also included new time frames in which the Division of Facility Services had to initiate investigation of a complaint of a violation of the residents' bill of rights. For a number of years prior to the passage of SB 10, the Division of Facility Services was required to enforce the adult care home resident's bill of rights but there were no statutorily defined time periods required for the initiation of the investigation in the facility. Therefore the sponsor of the SB 10 felt that if a complaint alleged a violation of patient safety or patient care, there should be some direction to the Division of Facility Services about how quickly these complaints should be investigated. Therefore, as established in SB 10, complaints alleging life-threatening situations must be investigated immediately. Investigations of complaints alleging abuse of a resident must be initiated within 24 hours of receipt of the complaint; investigations involving neglect of a resident must be initiated within forty-eight hours. All other investigations must be initiated within two weeks of the date the complaint is received. DFS must complete all investigations within 30 days.

Besides the requirement for DFS to investigate violations of a resident's bill of rights in an adult care home in G.S. 131D-26, there has been the Adult Protective Services Act in Article 6 of G.S. 108A since 1973. This Act is enforced by the local department of social services and has primarily been applied to adults in noninstitutional settings.

This bill pertains to the time frames for local DSS personnel to respond to complaints under the Adult Protective Services statute (APS). This statute was changed in SB 10 to conform to complaint investigation times required for adult care homes (ACH).

Below is a comparison of the time frames in G.S. 108A-103 and G.S. 131D-26 as they were before the passage of SB 10 and as they will be if SB 1292 passes.

APS Times		ACH Times
Immediately	Life Threatening (ACH) Danger of death (APS)	Immediately
24 hours	Abuse of a resident (ACH) Danger of Irreparable harm (APS)	24 hours
	Neglect of a resident (ACH)	48 hours
72 hours	All other	2 weeks
30 days except exploitation==45 days	Complete eval/invest.	30 days

Summary: Death and abuse complaint times are identical

ACH neglect must be investigated within 48 hours; APS neglect-within 72 hours

All other complaints for ACH=2 wks; All other Complaints for APS= 72 hours

At first glance, it looks as if the time periods for investigation under the Adult Protective Services Act is longer than the time frames for adult care home residents but after several discussions with the Commission, the Division of Social Services convinced the Commission that there are unique factors when investigating allegations in a person's home rather than in an institution. The reasons given for the differences:

- Although it appears that under APS there is a longer time allowed for investigating neglect complaints (72 hours vs. 48 hours), 90% of APS complaints pertain to persons in their own homes and therefore take longer to gather the facts.
- The terminology for investigating APS complaints is unique ("the investigation can occur under specific circumstances and without obtaining a resident's consent or going through court procedure as required under G.S. 108A-104 and 105) The term emergency is not used in the ACH statute

HOUSE BILL 1609:
Clarify Juvenile Procedures.

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Reps. Earle, Clary & Easterling
Date:	July 5, 2000	**Summary by:**	Robin Johnson
Version:	Fourth Edition		Staff Attorney

SUMMARY: ***House Bill 1609 would amend the Juvenile Code to clarify that termination of parental rights may occur by either a petition or by motion in a proceeding that alleges a juvenile is abused, neglected or dependent. The bill would also direct the Legislative Research Commission to study issues related to expungement of information from the central registry of abuse, neglect, and dependency cases or from juvenile court records of cases that alleged abuse, neglect, or dependency.***

The bill would take effect October 1, 2000.

CURRENT LAW: Currently, the Juvenile Code authorizes the filing of a petition to initiate a proceeding to terminate parental rights of a juvenile. In addition, G.S. 7B-1102 allows a petition for termination of parental rights to be filed as a motion in a pending abuse, neglect or dependency proceeding.

SECTION-BY-SECTION BILL ANALYSIS:

Section 1. G.S. 7B-406(b) is amended to specify what must be included in a summons, which is issued to the parent, guardian, custodian, or caretaker upon the filing of a petition alleging abuse, neglect, or dependency. The proposed change would add to the summons a notice that the dispositional order or a subsequent order may terminate the parental rights of the respondent parent.

Section 2. G.S. 7B-1011 is amended to include the hearing of motions as part of the court's exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights.

Section 3. G.S. 7B-1102 is rewritten to provide that a motion for termination of parental rights may be filed in pending abuse, neglect, or dependency proceedings (changes from "hearings"). The proper procedure is also given for filing this motion. It further states that when a petition for termination of parental rights is filed in the same district in which there is pending an abuse, neglect, or dependency proceeding involving the same juvenile, a motion may be filed to consolidate the action.

Section 4. G.S. 7B-1103 is amended to stipulate who may file a motion to terminate parental rights. It further states that the parties who petition or motion may intervene in pending abuse, neglect or dependency proceedings for the purpose of filing a motion to terminate parental rights. G.S. 7B-1103 also removes the requirement that the guardian ad litem must have served in that capacity for at least one continuous year in order to be able to file a petition or motion to terminate parental rights.

Section 5: G.S. 7B-1104 states what must be included in a motion to terminate parental rights.

Section 6: G.S. 7B-1106.1 is a new section that identifies to whom a notice must be sent upon the filing of a motion to terminate parental rights in a pending child abuse, neglect or dependency case. In addition to the persons that must be sent a summons when the petition seeks termination of parental rights, this new section requires the notice be sent to the juvenile's guardian ad litem if one has been appointed. The new section also specifies the information that must be included in this notice. It further states that if the county director of social services is served a motion seeking termination of a parent's rights, the director must file a written response to the motion and be a party to the proceeding if the director is not already involved.

Section 7: G.S. 7B-1107 is amended to identify the respondent as the parent and sets forth the time period that the parent must respond. The court may proceed with a hearing to terminate parental rights if the parent fails to respond in the time period.

Section 8: G.S. 7B-1108 is amended to conform the requirements of a response to a motion to terminate parental rights to the requirements applicable to the answer to a petition to terminate these rights. These requirements provide that, if the parent denies the allegations in the petition or motion, a guardian ad litem for the juvenile must be appointed unless the child is already represented, and an attorney must be appointed to represent the guardian ad litem if the guardian ad litem is not an attorney. Payments for their services will be the responsibility of the Administrative Office of the Court. The appointment of a guardian ad litem is not necessary if the parent does not deny the allegations, but the judge may appoint one to determine the best interest of the child.

Section 9: G.S.7B-1109, governing the adjudicatory hearing on termination, is amended to provide the same protections to parents in connection with a hearing on a motion that they have in connection with a hearing on a petition. If the parents are indigent, desire counsel, and are unable to afford counsel, the court shall appoint counsel and grant the necessary time for the counsel to prepare their defense to the termination petition or motion. If the parents refuse counsel and are present at the hearing, the judge shall determine their ability to proceed without counsel. Likewise, the burden of proof is on the petitioner or the movant. The findings of fact must be based on clear, cogent, and convincing evidence.

Section 10: G.S. 7B-1110 is amended to allow the court to deny a motion to terminate parental rights based on what is in the best interest of a child. Counsel for the petitioner or movant is responsible for serving a copy of the order to the guardian ad litem and the child if the child is at least 12 years old.

Section 11: G.S. 7B 1111, which provides the grounds for terminating parental rights, is amended to add the word "motion", or "movant".

Section 12: G.S. 7B-1112, governing the effects of a termination order, is also amended to add the word "motion" or "movant".

Section 13 directs the LRC to study issues related to expungement of certain records when an abuse, neglect, or dependency report is not substantiated or proven.

Section 14 provides that the act takes effect October 1, 2000.

This summary substantially contributed to by DSS.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASA-082

Page 1 of __

Date_____,2000

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

Senator Ballance

moves to amend the bill on page 3, line 24,
by rewriting the line to read:
"used primarily for the transportation of persons for compensation, or that is being used at the time of the possession or consumption for the transportation of persons for compensation;"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASA-081

Date_____,2000

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

Senator Ballance

moves to amend the bill on page 1, lines 14-16 by rewriting the lines to read:
"approved by the Commissioner. The Commissioner shall not unreasonably withhold";

and on page 2, lines 22-23, by inserting between the lines a new Section to read:
"Section 2. G.S. 20-17.8 is amended by adding a new subsection to read:
'(c1) Vehicles Subject to Requirement. -- A person subject to this section shall have all registered vehicles owned by that person equipped with a functioning ignition interlock system of a type approved by the Commissioner, unless the Division determines that one or more specific registered vehicles owned by that person are relied upon by another member of that person's family for transportation and that the vehicle is not in the possession of the person subject to this section.'"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASA-081 Page 2 of __

and by renumbering the remaining sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASA-083

Date_____,2000

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

Senator Ballance

moves to amend the bill on page 2, line 44,
by rewriting the line to read:
"person by subdivision (b)(3) of this section. If a person subject to this section is charged with driving while license revoked by violating the requirements of subsection (c1) of this section, and no other violation of this section is alleged, the court may make a determination at the hearing of the case that the vehicle, on which the ignition interlock system was not installed, was relied upon by another member of that person's family for transportation and that the vehicle was not in the possession of the person subject to this section and therefore the vehicle was not required to be equipped with a functioning ignition interlock system. If the court determines that the vehicle was not required to be equipped with a functioning ignition interlock system and the person subject to this section has committed no other violation of this section, the court shall find the person not guilty of driving while license revoked."

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. 1499 DATE 6-29-00

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Ballance
Sen.)

moves to amend the bill on page 3, line 4

( ) WHICH CHANGES THE TITLE

by deleting "required to be registered"

and inserting "of a type required to be registered"

and on page 3, line 13

by inserting between "vehicle" and "required" the phrase "of a type"

and on page 3, line 22

by inserting between "vehicle" and "required" the phrase "of a type."

and on page 4, line 28

by inserting at the beginning of the line "of a type"

and on page 4, line 34 and line 37

by inserting between "vehicle" and "required" the phrase "of a type."

SIGNED Frank Ballance

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1499

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

H1499-ASA-084

Date_____,2000

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

Senator Ballance

moves to amend the bill on page 12, line 31-34, by rewriting the lines to read:

"Section 19. Section 18 of this act is effective when it becomes law. The remainder of this act becomes effective September 1, 2000, and applies to offenses committed on or after that date."

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Jud. II — Name of Committee

7-5-00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Travis Hill	Lt. Gov's office
Stuart Albright	Lt. Gov's office
Nicole Duesenberry	DWI Task Force
Shannon Bullock	Governors Hwy Safety Program
Chris Z. Sinha	NC Div Soc Services
[signature]	DSS
[signature]	AOC
Mat Osborne	AOC
Alex Reeves	Sen. Garron's office
[signature]	NCFPC
Jeff Rau	Grass Roots North Carolina
THOMAS BHYNE	GRASS ROOTS OF NORTH CAROLINA
Ilene Nelson	AOC
[signature]	DCHS
Eddie Avery	DMV

VISITOR REGISTRATION SHEET

Jud. II — Name of Committee

7-5-00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dudley Register	DMJ
Fred Aiken	NC Aggregates Assn
Bob Stowman	NC Forestry Assoc.
Christie Barbee	CAPA
Ruth Sappie	NCDOT
Doug Howey	NCPMA
Gary Harris	"
Darrell Arnold	SEANC
Carl Goodwin	OSP
Patrice Rankin	DCACC
Sandy Sands	USGS
Brian Francis	Mecklenburg County
Russell Rochat	Bonner Associates
Bill Walker	NCDOT, NCPTA, ETC
John Melchor	MAMA NC

VISITOR REGISTRATION SHEET

Jud. II
Name of Committee

July 5, 2000
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
David Knight	NC Sierra Club

SENATE JUDICIARY II COMMITTEE

JULY 6, 2000

MINUTES

The Senate Judiciary II Committee met on July 6, 2000 at 10:00 a.m. in room 1124 of the Legislative Building. Thirteen members were present, including Senator Brad Miller, who presided.

HB 1607, Modernize Bail Bond Forfeitures, was explained by Representative Culpepper. Senator Odom moved a favorable report of the bill. The motion carried unanimously. **Favorable report.**

Senator Miller announced that HB 968, Amend Contested Case Procedure, would be heard immediately after session.

The Senate Judiciary II Committee reconvened on July 6, 2000 at 5:15 p.m. in room 1124 of the Legislative Building. Fourteen members were present, including Senator Brad Miller, who presided.

Senator Hagan moved to adopt the proposed committee substitute. The motion carried unanimously.

Senator Miller called on Karen Cochrane-Brown, Legislative Research, to explain the committee substitute.

Speaking from the public in support of the final version of the bill were the following: Julian Mann, Chief Administrative Law Judge with the Office of Administration; Charles Case, Hunton and Williams; Mark Lodge, NC Department of Health and Human Services; and Bill Rowe, NC Justice Center.

Speaking in opposition to the bill was Tom Moffitt with the NC Attorney General's office.

Senator Kerr moved to give the proposed committee substitute a favorable report. The motion carried unanimously. **Unfavorable as to committee substitute #1, but favorable as to Senate committee substitute.**

Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Thursday, July 06, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1499** Interlock/Open Container Changes.

Draft Number:	PCS8218
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Sen. Miller to sign.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Thursday, July 06, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1)**1607** Modernize Bail Bond Forfeitures.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Sen. Miller to sign.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Friday, July 07, 2000

SENATOR BRAD MILLER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)968 Amend Contested Case Proc.

Draft Number:	PCS7394
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Sen. Miller to sign.

SENATE JUCICIARY II COMMITTEE

JULY 6, 2000

ROOM 643

HB 968	Amend Contested Case Procedure	Rep. Nesbitt
HB 1607	Modernize Bail Bond Forfeitures	Rep. Culpepper

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 968
Committee Substitute Favorable 4/22/99

Short Title: Amend Contested Case Proc. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

Section 2. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the

administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review."

Section 3. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. ~~Recommended~~ Final decision or ~~order of administrative law judge.~~ order.**

(a) Except as provided in ~~G.S. 150B-36(c),~~ subsection (c) of this section, in each contested case the administrative law judge shall make a ~~recommended~~ final decision or order that contains findings of fact and conclusions of law.

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissable under G.S. 150B-29(a), 150B-30, or 150B-31.

(d) Except for the exemptions contained in G.S. 150B-1, and subsection (c) of this section, the provisions of this section shall apply to all agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges and final agency decisions."

Section 4. G.S. 150B-35 reads as rewritten:

"**§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the administrative law judge assigned to a contested case ~~nor a member or employee of the agency making a final decision in the case~~ may not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

Section 5. G.S. 150B-36 is repealed.

Section 6. G.S. 150B-37 reads as rewritten:

"**§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
(5) Repealed by Session Laws 1987, c. 878, s. 25.
(6) The administrative law judge's ~~recommended~~ final decision, or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the recommended~~ decision to each party."

Section 7. G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 90 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision.~~ Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 180 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency ~~or, if the case was heard by an administrative law judge,~~ or by the administrative law judge."

Section 8. G.S. 150B-43 reads as rewritten:

"**§ 150B-43. Right to judicial review.**

Any ~~person~~ party who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him~~ the party by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person~~ party from invoking any judicial remedy available to ~~him~~ the party under the law to test the validity of any administrative action not made reviewable under this Article."

Section 9. G.S. 150B-47 reads as rewritten:

"**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the ~~agency that made the final decision in the contested case~~ Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under ~~review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

Section 10. G.S. 150B-49 reads as rewritten:

"**§ 150B-49. New evidence.**

~~An aggrieved person~~ A party who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a ~~recommended~~ final decision in the case, the court shall remand the case to the agency that conducted the administrative ~~hearing.~~ hearing, under Article 3A of this Chapter and under G.S. 150B-34(c) of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made ~~a recommended~~ the final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and ~~recommended~~ final decision. ~~The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision.~~ The additional evidence and any affirmation or modification of a ~~recommended decision or~~ final decision shall be made part of the official record."

Section 11. G.S. 150B-50 reads as rewritten:

"**§ 150B-50. Review by superior court without jury.**

The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall be conducted by the court without a jury."

Section 12. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope of review.**

~~(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states~~

~~the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.~~

~~(b) Standard of Review. After making the determinations, if any, required by subsection (a), the~~ The court reviewing a final decision may affirm the decision ~~of the agency~~ or remand the case for further proceedings. It may also reverse or modify the ~~agency's~~ decision if the substantial rights of the petitioners may have been prejudiced because the ~~agency's~~ findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary or capricious."

Section 13. This act becomes effective January 1, 2000, and applies to contested cases commenced on or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 968
Committee Substitute Favorable 4/22/99

Short Title: Amend Contested Case Proc. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

Section 2. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the

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(b) Repealed by Session Laws 1991, c. 35, s. 6.

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Section 9. G.S. 150B-47 reads as rewritten:

"**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the ~~agency that made the final decision in the contested case~~ Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under ~~review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

Section 10. G.S. 150B-49 reads as rewritten:

"**§ 150B-49. New evidence.**

~~An aggrieved person~~ A party who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a ~~recommended~~ final decision in the case, the court shall remand the case to the agency that conducted the administrative ~~hearing.~~ hearing, under Article 3A of this Chapter and under G.S. 150B-34(c) of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made ~~a recommended~~ the final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and ~~recommended~~ final decision. ~~The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision.~~ The additional evidence and any affirmation or modification of a ~~recommended decision or~~ final decision shall be made part of the official record."

Section 11. G.S. 150B-50 reads as rewritten:

"**§ 150B-50. Review by superior court without jury.**

The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall be conducted by the court without a jury."

Section 12. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope of review.**

~~(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states~~

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 968
Committee Substitute Favorable 4/22/99
Proposed Committee Substitute
H968-CSRO-018
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Amend Contested Case Proc. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS, TO AUTHORIZE ADMINISTRATIVE LAW JUDGES TO AWARD REASONABLE ATTORNEY'S FEES IN CERTAIN CASES, AND TO AUTHORIZE THE COURTS TO AWARD REASONABLE ATTORNEY'S FEES FOR ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 6-19.1 reads as rewritten:

"**§6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

In any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's ~~fees~~ fees, including attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of

Chapter 150B, to be taxed as court costs against the appropriate agency if:

(1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the administrative review portion of the case in contested cases arising under Article 9 of Chaper 131E of the General Statutes.

Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

Any attorney's fees assessed against an agency under this section shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source."

Section 2. G.S. 7A-750 reads as rewritten:

"§ 7A-750. Creation; status; purpose.

There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Sec. 11 of the Constitution and, in accordance with Article IV, Sec. 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established to ensure that administrative decisions are made in a fair and impartial manner to protect the due process rights of citizens who challenge administrative action and to provide a source of independent ~~hearing officers to preside in administrative cases and thereby~~ administrative law judges to conduct administrative hearings in contested cased in accordance with Chapter 150B of the General Statutes and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. It shall also maintain dockets and records of contested cases and shall codify and publish all administrative rules."

Section 3. G.S. 7A-754 reads as rewritten:

"§ 7A-754. Qualifications; standards of conduct; removal.

Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and chief administrative law judge or as an administrative law judge in the Office of Administrative Hearings. The Chief Administrative Law Judge and the administrative law judges shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, as adopted by the National Conference of Administrative Law Judges, Judicial Division, American Bar Association, (revised August 1998), as amended from time to time, except that the provisions of this section shall control as to the private practice of law in lieu of Canon 4G, and G.S. 126-13 shall control as to political activity in lieu of Canon 5. Failure to comply with the applicable provisions of the Model Code may constitute just cause for disciplinary action under Chapter 126 of the General Statutes and grounds for removal from office. Neither the chief administrative law judge nor any administrative law judge may engage in the private practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall constitute just cause for disciplinary action under Chapter 126 of the General Statutes and shall be grounds for ~~removal.~~ removal from office. Each administrative law judge shall take the oaths required by Chapter 11 of the General Statutes. An administrative law judge may be removed from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in ~~G.S. 126-35.~~ G.S. 126-35 and this section."

Section 4. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a ~~recommended~~ decision, by the agency in making a final decision, or by the court on judicial review."

Section 5. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

. . .

(11) Order the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved in contested cases decided under Chapter 126 where the administrative law judge finds discrimination, harassment, or orders reinstatement or back pay."

Section 6. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. ~~Recommended decision~~ Decision ~~or order~~ of administrative law judge.**

(a) Except as provided in G.S. 150B-36(c), and subsection (c) of this section, in each contested case the administrative law judge shall make a ~~recommended~~ decision ~~or order~~ that contains findings of fact and conclusions of ~~law.~~ law, and return the decision to the agency for a final decision in accordance with G.S. 150B-36. The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(c).

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1),(b2), (b3), and (d), and G.S. 150B-51(a1) do not apply to cases arising under this subsection.

(d) Except for the exemptions contained in G.S. 150B-1(c) and (e), and subsection (c) of this section, the provisions of this section regarding the decision of the administrative law judge

shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges."

Section 7. G.S. 150B-36 reads as rewritten:

"**§ 150B-36. Final decision.**

(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision ~~recommended~~ made by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the case, and the determination is subject to judicial review at the conclusion of the case.

(b) Except as provided in G.S. 150B-34(c) or subsection (d) of this section, ~~A~~ a final decision ~~or order~~ in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The agency shall adopt each finding of fact contained in the administrative law judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the administrative law judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency and each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall follow the procedures set forth in subsections (b1) and (b2) of this section.

(b1) For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the following:

(1) The reasons for not adopting the findings of fact.

(2) The evidence in the record relied upon by the agency in not adopting the finding of fact contained in the administrative law judge's decision.

Any finding of fact not specifically rejected as required by this subsection shall be deemed accepted for purposes of judicial review of the final decision pursuant to Article 4 of this Chapter.

(b2) For each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

Any new finding of fact made by the agency shall be supported by a preponderance of the admissible evidence in the record. The agency shall not make any new finding of fact that is inconsistant with a finding of fact contained in the administrative law judge's decision unless the finding of fact in the administrative law judge's decision is not adopted as required by subsection (b1) of this section.

(b3) Except as provided in G.S. 150B-34(c), the agency shall adopt the decision of the administrative law judge unless the agency demonstrates that the decision of the administrative law judge is clearly contrary to the preponderance of the admissible evidence in the record. If the agency does not adopt the administrative law judge's ~~recommended~~ decision as its final decision, the agency shall set forth its reasoning for the final decision in light of the findings of fact and conclusions of law in the final decision, including any exercise of discretion by the agency. ~~state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended decision.~~ The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision ~~or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31.~~ A copy of the decision ~~or order~~ shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions appealable directly to Superior Court under Article 4 of this Chapter:

(1) A determination that the Office of Administrative Hearings lacks jurisdiction.

(2) An order entered pursuant to the authority in G.S. 7A-759(e).

(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.

(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

(d) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (b) of this section, a decision granting a motion for summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c) or Rule 56. For any decision by the administrative law judge granting judgment on the pleadings or summary judgment that disposes of all issues in the contested case, the agency shall make a final decision. If the agency does not adopt the administrative law judge's decision, it shall set forth the basis for failing to adopt the decision and shall remand the case to the administrative law judge for hearing. The party aggrieved by the agency's decision shall be entitled to immediate judicial review of the decision under Article 4 of this Chapter."

Section 8. G.S. 150B-37 reads as rewritten:

"**§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) Repealed by Session Laws 1987, c. 878, s. 25.

(6) The administrative law judge's ~~recommended~~ decision, or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the ~~recommended~~ administrative law judge's decision to each party."

Section 9. G.S. 150B-44 reads as rewritten:

"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has ~~90~~ 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90~~ 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has ~~90~~ 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or ~~90~~ 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90~~ 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's ~~recommended~~ decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within ~~180~~ 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge."

Section 10. G.S. 150B-49 reads as rewritten:

"§ 150B-49. New evidence.

An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a ~~recommended~~ decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made

a ~~recommended~~ decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and ~~recommended~~ decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a ~~recommended~~ decision of the administrative law judge or final decision shall be made part of the official record."

Section 11. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope and standard of review.**

(a) ~~Initial Determination in Certain Cases.~~ In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(a1) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the administrative law judge's decision, the court shall determine whether the agency heard new evidence after receiving the decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. The court shall also determine whether the agency specifically rejected findings of fact contained in the administrative law judge's decision in the manner provided by G.S. 150B-36(b1), and made findings of fact in accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b) of this section.

(b) ~~Standard of Review. After making the determinations, if any, required by subsection (a), the court reviewing a final decision~~ Except as provided in subsection (c) of this section, in reviewing a final decision, the court may affirm the decision of the agency or remand the case to the agency or to the administrative law judge for further proceedings. It may also reverse or modify the agency's ~~decision~~ decision, or adopt the administrative law judge's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;

(2) In excess of the statutory authority or jurisdiction of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or

(6) ~~Arbitrary or capricious.~~ Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the administrative law judge's decision, the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case, and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record. The court reviewing a final decision under this subsection may adopt the administrative law judge's decision; may adopt, reverse or modify the agency's decision; may remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2), or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the explanations; and may take any other action allowed by law.

(d) In reviewing a final decision in which the agency does not adopt an administrative law judge's decision granting a motion for judgment on the pleadings or summary judgement, as provided in G.S. 150B-36(d), the court shall review the record, de novo, and shall determine whether the motion was properly granted. The court may enter judgment on the pleadings or summary judgement in

favor of any party in accordance with G.S. 1A-1, Rule 12(c) and Rule 56, or may remand the case to the administrative law judge for further proceedings."

Section 12. G.S. 150B-52 reads as rewritten:

"**§ 150B-52. Appeal; stay of court's decision.**

A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. The scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. In cases reviewed under G.S. 150B-51(a1)(3), the court's findings of fact shall be upheld if supported by substantial evidence. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate.

Section 13. G.S. 126-35 is amended by adding a new subsection to read:

"(d) In contested cases conducted pursuant to Chapter 150B of the General Statutes, the burden of showing that a career State employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause rests with the department or agency employer."

Section 14. This act becomes effective January 1, 2001, and applies to contested cases commenced on or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 968
Committee Substitute Favorable 4/22/99
Proposed Committee Substitute H968-PCS7394-RO018

Short Title: Amend Contested Case Proc. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS, TO AUTHORIZE ADMINISTRATIVE LAW JUDGES TO AWARD REASONABLE ATTORNEY'S FEES IN CERTAIN CASES, AND TO AUTHORIZE THE COURTS TO AWARD REASONABLE ATTORNEY'S FEES FOR ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 6-19.1 reads as rewritten:

"**§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

In any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's ~~fees~~ fees, including attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of Chapter 150B, to be taxed as court costs against the appropriate agency if:

(1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the administrative review portion of the case in contested cases arising under Article 9 of Chapter 131E of the General Statutes.

Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

Any attorney's fees assessed against an agency under this section shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source."

Section 2. G.S. 7A-750 reads as rewritten:

"**§ 7A-750. Creation; status; purpose.**

There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Sec. 11 of the Constitution and, in accordance with Article IV, Sec. 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established to ensure that administrative decisions are made in a fair and impartial manner to protect the due process rights of citizens who challenge administrative action and to provide a source of independent ~~hearing officers to preside in administrative cases and thereby~~ administrative law judges to conduct administrative hearings in contested cases in accordance with Chapter 150B of the General Statutes and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. It shall also maintain dockets and records of contested cases and shall codify and publish all administrative rules."

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"**§ 7A-754. Qualifications; standards of conduct; removal.**

Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and chief administrative law judge or as an administrative law judge in the Office of Administrative Hearings. The Chief Administrative Law Judge and the administrative law judges shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, as adopted by the National Conference of Administrative Law Judges, Judicial Division, American Bar Association, (revised August 1998), as amended from time to time, except that the provisions of this section shall control as to the private practice of law in lieu of Canon 4G, and G.S. 126-13 shall control as to political activity in lieu of Canon 5. Failure to comply with the applicable provisions of the Model Code may constitute just cause for disciplinary action under Chapter 126 of the General Statutes and grounds for removal from office. Neither the chief administrative law judge nor any administrative law judge may engage in the private practice of law as defined in G.S.

84-2.1 while in office; violation of this provision shall constitute just cause for disciplinary action under Chapter 126 of the General Statutes and shall be grounds for ~~removal.~~ removal from office. Each administrative law judge shall take the oaths required by Chapter 11 of the General Statutes. An administrative law judge may be removed from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in ~~G.S. 126-35.~~ G.S. 126-35 and this section."

Section 4. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a ~~recommended~~ decision, by the agency in making a final decision, or by the court on judicial review."

Section 5. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

. . .

(11) Order the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved in contested cases decided under Chapter 126 where the administrative law judge finds discrimination, harassment, or orders reinstatement or back pay."

Section 6. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. ~~Recommended decision~~ Decision ~~or order~~ of administrative law judge.**

(a) Except as provided in G.S. 150B-36(c), and subsection (c) of this section, in each contested case the administrative law judge shall make a ~~recommended~~ decision ~~or order~~ that contains findings of fact and conclusions of ~~law.~~ law and return the decision to the agency for a final decision in accordance with G.S. 150B-36. The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(c).

(b) Repealed by Session Laws 1991, c. 35, s. 6.

(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts

set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.

(d) Except for the exemptions contained in G.S. 150B-1(c) and (e), and subsection (c) of this section, the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges."

Section 7. G.S. 150B-36 reads as rewritten:

"**§ 150B-36. Final decision.**

(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision ~~recommended~~ made by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the case, and the determination is subject to judicial review at the conclusion of the case.

(b) Except as provided in G.S. 150B-34(c) or subsection (d) of this section, ~~A~~ a final decision ~~or order~~ in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The agency shall adopt each finding of fact contained in the administrative law judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the administrative law judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency and each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall follow the procedures set forth in subsections (b1) and (b2) of this section.

(b1) For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the following:

(1) The reasons for not adopting the findings of fact.

(2) The evidence in the record relied upon by the agency in not adopting the finding of fact contained in the administrative law judge's decision.

Any finding of fact not specifically rejected as required by this subsection shall be deemed accepted for purposes of judicial review of the final decision pursuant to Article 4 of this Chapter.

(b2) For each finding of fact made by the agency that is not contained in the administrative law judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact. Any new finding of fact made by the agency shall be supported by a preponderance

of the admissible evidence in the record. The agency shall not make any new finding of fact that is inconsistent with a finding of fact contained in the administrative law judge's decision unless the finding of fact in the administrative law judge's decision is not adopted as required by subsection (b1) of this section.

(b3) Except as provided in G.S. 150B-34(c), the agency shall adopt the decision of the administrative law judge unless the agency demonstrates that the decision of the administrative law judge is clearly contrary to the preponderance of the admissible evidence in the record. If the agency does not adopt the administrative law judge's ~~recommended~~ decision as its final decision, the agency shall set forth its reasoning for the final decision in light of the findings of fact and conclusions of law in the final decision, including any exercise of discretion by the agency. ~~state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended decision.~~ The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision ~~or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31.~~ A copy of the decision ~~or order~~ shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions appealable directly to superior court under Article 4 of this Chapter:

(1) A determination that the Office of Administrative Hearings lacks jurisdiction.

(2) An order entered pursuant to the authority in G.S. 7A-759(e).

(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.

(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

(d) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (b) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c) or Rule 56. For any decision by the administrative law judge granting judgment on the pleadings or summary judgment that disposes of all issues in the contested case, the agency shall make a final decision. If the agency does not adopt the administrative law judge's decision, it shall set forth the basis for failing to adopt the decision and shall remand the case to the administrative law judge for hearing. The party

aggrieved by the agency's decision shall be entitled to immediate judicial review of the decision under Article 4 of this Chapter."

Section 8. G.S. 150B-37 reads as rewritten:

"**§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) Repealed by Session Laws 1987, c. 878, s. 25.

(6) The administrative law judge's ~~recommended~~ decision, or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the ~~recommended~~ administrative law judge's decision to each party."

Section 9. G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has ~~90~~ 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90~~ 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has ~~90~~ 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or ~~90~~ 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90~~ 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's ~~recommended~~ decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within ~~180~~ 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge."

Section 10. G.S. 150B-49 reads as rewritten:

"**§ 150B-49. New evidence.**

An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a ~~recommended~~ decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a ~~recommended~~ decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and ~~recommended~~ decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a ~~recommended~~ decision of the administrative law judge or final decision shall be made part of the official record."

Section 11. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope and standard of review.**

(a) ~~Initial Determination in Certain Cases.~~ In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(a1) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the administrative law judge's decision, the court shall determine whether the agency heard new evidence after receiving the decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. The court shall also determine whether the agency specifically rejected findings of fact contained in the administrative law judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the

procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b) of this section.

(b) ~~Standard of Review. After making the determinations, if any, required by subsection (a), the court reviewing a final decision~~ Except as provided in subsection (c) of this section, in reviewing a final decision, the court may affirm the decision of the agency or remand the case to the agency or to the administrative law judge for further proceedings. It may also reverse or modify the agency's ~~decision~~ decision, or adopt the administrative law judge's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) ~~Arbitrary or capricious.~~ Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the administrative law judge's decision, the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record. The court reviewing a final decision under this subsection may adopt the administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2), or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the explanations; and may take any other action allowed by law.

(d) In reviewing a final decision in which the agency does not adopt an administrative law judge's decision granting a motion for judgment on the pleadings or summary judgment, as provided in G.S. 150B-36(d), the court shall review the record, de novo, and shall determine whether the motion was properly granted. The court may enter judgment on the pleadings or summary judgment in favor of any party in accordance with G.S. 1A-1, Rule 12(c) and Rule 56, or may remand the case to the administrative law judge for further proceedings."

Section 12. G.S. 150B-52 reads as rewritten:

"**§ 150B-52. Appeal; stay of court's decision.**

A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. The

scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. In cases reviewed under G.S. 150B-51(a1)(3), the court's findings of fact shall be upheld if supported by substantial evidence. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate."

Section 13. G.S. 126-35 is amended by adding a new subsection to read:

"(d) In contested cases conducted pursuant to Chapter 150B of the General Statutes, the burden of showing that a career State employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause rests with the department or agency employer."

Section 14. This act becomes effective January 1, 2001, and applies to contested cases commenced on or after the effective date.

HOUSE BILL 968:
Amend Contested Case Procedure.

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Rep. Nesbitt and Wilson
Date:	July 6, 2000	**Summary by:**	Karen Cochrane Brown, Staff Attorney
Version:	PCS (H968-CSRO-018)		

SUMMARY:

This proposed committee substitute for House Bill 968 amends the Administrative Procedure Act to strengthen the weight which must be given to the decisions of administrative law judges by agencies when making final decisions. It also changes the court's standard of review of final agency decisions in cases in which the agency rejects the decision of the ALJ. This draft also authorizes administrative law judges to award attorney's fees in certain cases under the State Personnel Act, and the courts to award attorney's fees for administrative hearings.

BILL ANALYSIS:

Section 1. – Section 1 amends the law relating to court costs to authorize the court, in its discretion, to award attorney's fees to a party appealing or defending against an agency decision, for the portion of the case applicable to administrative review, except for cases involving Certificate of Need under Chapter 131E. Currently, the court can make this award only for the judicial review portion of the case.

Section 2. – Section 2 amends the law, which created the Office of Administrative Hearings (OAH) to clarify the purposes for which this agency was created. The purposes include ensuring that administrative decisions are made in a fair and impartial manner to protect the due process rights of citizens who challenge administrative actions, and providing a source of independent administrative law judges to conduct administrative hearings.

Section 3. - Section 3 amends the law relating to the Office of Administrative Hearings to require that administrative law judges be subject to the Model Code of Judicial Conduct for State Administrative Law Judges. This amendment also provides that current North Carolina law shall control with regard to the private practice of law and political activity. Failure to comply with the Model Cause may constitute just cause for disciplinary action under Chapter 126 and removal from office.

Section 4. – This Section amends Chapter 150B to clarify that the party with the burden of proof in a contested case must establish the facts by a preponderance of the evidence. Administrative law judges currently apply this standard. This provision merely codifies it.

Section 5. – Section 5 authorizes administrative law judges (ALJs) to assess reasonable attorney's and witnesses' fees against an agency in state personnel cases when the administrative law judge finds

discrimination, harassment, or orders reinstatement or back pay. Currently, the State Personnel Commission has the same authority. This bill does not divest the State Personnel Commission of the authority to award attorney's fees; it just gives administrative law judges the same power.

Section 6. – Section 6 amends the APA to delete the word ***recommended*** from the provision authorizing the ALJ to make a decision in a contested case. The ALJ will now make a decision containing findings of fact and conclusions of law, and return the decision to the agency to make a final decision. The ALJ must give due regard to the demonstrated knowledge and expertise of the agency and must determine facts by a preponderance of the evidence.

This section also creates an exception for cases involving Certificate of Need, under Chapter 131E. These cases will continue to receive a recommended decision from the ALJ and a final decision from the agency, under the same standard as currently applies. However, the agency will be required to cite the specific reasons, based on the evidence in the record, for not adopting the findings made by the ALJ.

This section also provides that the new process only applies to State agencies that are subject to Article 3 of the APA, except for the CON exception contained in this section.

Section 7. – Section 7 makes a major change to the current law. Although agencies will continue to make final decisions, they will have to meet a much higher standard to reject an ALJ's decision. The agency must adopt each of the ALJ's findings of fact unless the finding is clearly contrary to the preponderance of the admissible evidence. Furthermore, if the agency:

1. Rejects a finding of fact, it must state the reason for not adopting the finding and the evidence it relied on in not adopting the finding. Any finding not specifically rejected in this manner is deemed accepted for purposes of judicial review.
2. Makes a new finding; it must cite the evidence in the record which the agency relied on to make the new finding and the finding must be supported by a preponderance of the evidence in the record.
3. Substitutes a new finding for an inconsistent finding of the ALJ, it must specifically reject the ALJ's finding and establish the new finding as provided by this section.

The agency must adopt the ALJ's decision unless the agency demonstrates that the decision is clearly contrary to the preponderance of the admissible evidence in the record. If the agency rejects the ALJ's decision, it must set forth its reasoning including any exercise of discretion used by the agency. This provision sets a standard to be used by agencies when reviewing ALJ's decisions.

CON cases will not be held to this standard. CON cases will continue to be reviewed under the substantial evidence test, as provided in G.S. 150B-34(c).

This section also authorizes ALJs to grant motions for judgment on the pleadings or summary judgment in accordance with G.S. 1A-1, Rule 12(c) and Rule 56. These decisions, like others, will be returned to the agency for a final decision. If the agency rejects the decision granting summary judgment, it may remand the case to the ALJ for a hearing. However, this interlocutory decision can be immediately appealed to the Superior Court.

Section 9. – Shortens the time limits within which agencies must make final decisions.

Section 11. – This section modifies the scope and standard of judicial review to reflect the higher standard to which agencies will be held when they reject ALJ's decisions.

Subsection (a) now applies only to cases involving local governmental employees who are subject to the State Personnel Act. These cases will continue to be decided and reviewed under current law. Currently, these cases are decided like other state personnel cases except that the decision of the State Personnel Commission is advisory and the final decision is made by the local appointing authority. The bill leaves the current scope of review unchanged in these cases.

Subsection (a1) sets out the new review for all other cases under Article 3 of Chapter 150B, in which the agency adopts the administrative law judge's decision. (CON cases are reviewed by the Court of Appeals pursuant to Chapter 131E and are not covered by this section.) This subsection directs the court to reverse or remand the case to the agency if the agency heard new evidence, and to determine whether the agency complied with the procedure for rejecting and making new findings of fact as set forth in G.S. 150B-36(b1) and (b2). If the court determines that the agency did not comply with the procedural requirements, it can take appropriate remedial action.

Subsection (b) authorizes the court to take appropriate action after reviewing final decisions under subsections (a) and (a1). It retains each of the existing standards of review and expands the standard of arbitrary or capricious to include abuse of discretion.

Subsection (c) applies to final decisions made under Article 3 of Chapter 150B, other than local employee cases. If the agency rejects the ALJ's decision, the court shall review the record, de novo, and make its own findings of fact and conclusions of law. The court shall not give deference to any prior decision in the case nor shall it be bound by the agencies' findings of fact or conclusions of law, but shall determine whether the petitioner is entitled to the relief sought in the petition. The court's review includes the agency's compliance with the procedural requirements of G.S. 150B-36(b1), (b2) and (b3). The court can take a number of specified remedial actions and may take any other action allowed by law.

Subsection (d) applies to review of decisions granting motions for judgment on the pleadings and summary judgment.The court also reviews these decisions, de novo, and determines whether the motion was properly granted. The court can grant judgment in favor of any party in accordance with G.S. 1A-1, Rule 12(c) and Rule 56, or may remand the the case to the administrative law judge for further proceedings.

Section 12. – This section adds clarifying language relating to appellate review of the Superior Court's decision under Article 4 of Chapter 150B. The scope of review on appeal is the same as for other civil cases, which is whether the lower court made errors of law. In addition, in cases where the court made new findings of fact, the appellate court shall apply the substantial evidence standard.

Section 13. – This section adds a new provision to Chapter 126. It assigns the burden of proof in just cause cases under the State Personnel Act to the department or agency employer rather than the employee.

Sections 8 and 10. Make technical and conforming changes.

Section 14. The act becomes effective January 1, 2001, and applies to contested cases commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1607*
Committee Substitute Favorable 6/28/00

Short Title: Modernize Bail Bond Forfeitures. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE BAIL BOND FORFEITURE PROCEEDINGS, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S BAIL BOND LAWS COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-531 reads as rewritten:

"**§ 15A-531. Definitions.**

As used in this Article the following definitions apply unless the context clearly requires otherwise:

~~(1) Bail Bond. — An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a surety bondsman, as defined in G.S. 58-71-1, acting on behalf of an insurer shall be considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a surety bondsman, as defined in G.S. 58-71-1, shall not be considered the same as a cash deposit under this Article. Cash bonds set in child support contempt~~

~~proceedings shall not be satisfied in any manner other than the deposit of cash.~~

~~(2) Obligor. -- A principal or a surety on a bail bond.~~

~~(3) Principal. -- A defendant or material witness obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.~~

~~(4) Surety. -- One who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.~~

(1) 'Accommodation bondsman' means a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value, and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a defendant by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the defendant's liability to the surety by reason of a breach in the conditions of said bail bond.

(1a) 'Address of record' means:

a. For a defendant or an accommodation bondsman, the address entered on the bail bond under G.S. 15A-544.2, or any later address filed by that person with the clerk of superior court.

b. For an insurance company, the address of the insurance company as it appears on the power of appointment of the company's bail agent registered with the clerk of superior court under G.S. 58-71-140.

c. For a bail agent, the address shown on the bail agent's license from the Department of Insurance registered with the clerk of superior court under G.S. 58-71-140.

d. For a professional bondsman, the address shown on that bondsman's license from the Department of Insurance, as registered with the clerk of superior court under G.S. 58-71-140.

(1b) 'Bail agent' means any person who is licensed by the Commissioner as a surety bondsman under Article 71 of Chapter 58 of the General Statutes, is appointed by an insurance company by power of attorney to execute or countersign bail bonds for the

insurance company in connection with judicial proceedings, and receives or is promised consideration for doing so.

(1c) 'Bail bond' means an undertaking by the defendant to appear in court as required upon penalty of forfeiting bail to the State in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage under G.S. 58-74-5, and an appearance bond secured by at least one solvent surety. A bail bond for which the surety is a bail agent acting on behalf of an insurance company is considered the same as a cash deposit for all purposes in this Article. A bail bond signed by a professional bondsman who is not a bail agent is not considered the same as a cash deposit under this Article. Cash bonds set in child support contempt proceedings shall not be satisfied in any manner other than the deposit of cash.

(1d) 'Defendant' means a person obligated to appear in court as required upon penalty of forfeiting bail under a bail bond.

(1e) 'Insurance company' means any domestic, foreign, or alien surety company which has qualified under Chapter 58 of the General Statutes generally to transact surety business and specifically to transact bail bond business in this State.

(1f) 'Professional bondsman' means any person who is approved and licensed by the Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.

(4) 'Surety' means:

a. The insurance company, when a bail bond is executed by a bail agent on behalf of an insurance company.

b. The professional bondsman, when a bail bond is executed by a professional bondsman or by a runner on behalf of a professional bondsman.

c. The accommodation bondsman, when a bail bond is executed by an accommodation bondsman."

Section 2. G.S. 15A-540 reads as rewritten:

"**§ 15A-540. Surrender of a ~~principal~~ defendant by a surety; setting new conditions of release.**

~~(a) A surety may surrender his principal to the sheriff of the county in which the principal is bonded to appear or to the sheriff where the defendant was bonded. A surety may arrest his principal for the purpose of returning him to the sheriff. Upon surrender of the principal the sheriff must provide a receipt to the surety, a copy of which must be filed with the clerk. Upon application by the surety after the surrender~~

~~of the principal, before the forfeiture of bail under G.S. 15A-544(b), the clerk must exonerate him from his bond.~~

~~(b) A principal surrendered by his surety is entitled to an immediate hearing on whether he is again entitled to release and, if so, upon what conditions.~~

(a) Going Off the Bond Before Breach. -- Before there has been a breach of the conditions of a bail bond, the surety may surrender the defendant as provided in G.S. 58-71-20. Upon application by the surety after such surrender, the clerk must exonerate the surety from the bond.

(b) Surrender After Breach of Condition. -- After there has been a breach of the conditions of a bail bond, a surety may surrender the defendant as provided in this subsection. A surety may arrest the defendant for the purpose of returning the defendant to the sheriff. After arresting a defendant, the surety may surrender the defendant to the sheriff of the county in which the defendant is bonded to appear or to the sheriff where the defendant was bonded. Alternatively, a surety may surrender a defendant who is already in the custody of any sheriff by appearing in person and informing the sheriff that the surety wishes to surrender the defendant. Before surrendering a defendant to a sheriff, the surety must provide the sheriff with a certified copy of the bail bond. Upon surrender of the defendant, the sheriff shall provide a receipt to the surety.

(c) New Conditions of Pretrial Release. -- When a defendant is surrendered by a surety under subsection (b) of this section, the sheriff shall without unnecessary delay take the defendant before a judicial official, along with a copy of the undertaking received from the surety and a copy of the receipt provided to the surety. The judicial official shall then determine whether the defendant is again entitled to release and, if so, upon what conditions. The judicial official determining conditions of pretrial release under this subsection shall impose any conditions set by the court in any order for arrest issued for the defendant's failure to appear. If no conditions have been set, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the previous bond, and shall impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The magistrate shall also indicate on the release order that the defendant was surrendered after failing to appear as required under a prior release order."

Section 3. G.S. 15A-543(a) reads as rewritten:

"(a) In addition to forfeiture imposed under ~~G.S. 15A-544,~~ Part 2 of this Article, any person released pursuant to this Article who willfully fails to appear before any court or judicial official as required is subject to the criminal penalties set out in this section."

Section 4. G.S. 15A-544 is repealed.

Section 5. The heading for Article 26 of Chapter 15A of the General Statutes reads as rewritten:

"ARTICLE 26.
Bail.
Part 1. General Provisions."

Section 6. Article 26 of Chapter 15A of the General Statutes is amended by adding a new Part 2 to read:

"Part 2. Bail Bond Forfeiture.

"**§ 15A-544.1. Forfeiture jurisdiction.**

By executing a bail bond the defendant and each surety submit to the jurisdiction of the court and irrevocably consent to be bound by any notice given in compliance with this Part. The liability of the defendant and each surety may be enforced as provided in this Part, without the necessity of an independent action.

"**§ 15A-544.2. Identifying information on bond.**

(a) The following information shall be entered on each bail bond executed under Part 1 of this Article:

(1) The name and mailing address of the defendant.

(2) The name and mailing address of any accommodation bondsman executing the bond as surety.

(3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company.

(b) If a defendant is released upon execution of a bail bond that does not contain all the information required by subsection (a) of this section, the defendant's order of pretrial release may be revoked as provided in G.S. 15A-534(f).

"**§ 15A-544.3. Entry of forfeiture.**

(a) If a defendant who was released under Part 1 of this Article upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a forfeiture for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

(b) The forfeiture shall contain the following information:

(1) The name and address of record of the defendant.

(2) The file number of each case in which the defendant's appearance is secured by the bail bond.

(3) The amount of the bail bond.

(4) The date on which the bail bond was executed.

(5) The name and address of record of each surety on the bail bond.

(6) The name, address of record, license number, and power of appointment number of any bail agent who executed the bail bond on behalf of an insurance company.

(7) The date on which the forfeiture is entered.

(8) The date on which the forfeiture will become a final judgment under G.S. 15A-544.6 if not set aside before that date.

(9) The following notice: 'TO THE DEFENDANT AND EACH SURETY NAMED ABOVE: The defendant named above has failed to appear as required before the court in the case identified above. A forfeiture for the amount of the bail bond shown above was entered in favor of the State against the defendant and each surety named above on the date of forfeiture shown above. This forfeiture will be set aside if, on or before the final judgment date shown above, satisfactory evidence is presented to the court that one of the following events has occurred: (i) the defendant's failure to appear has been stricken by the court in which the defendant was required to appear and any order for arrest that was issued for that failure to appear is recalled, (ii) all charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking a voluntary dismissal with leave, (iii) the defendant has been surrendered by a surety or bail agent to a sheriff of this State as provided by law, (iv) the defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question, (v) the defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate, or (vi) the defendant was incarcerated in a unit of the Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear. The forfeiture will not be set aside for any other reason. If this forfeiture is not set aside on or before the final judgment date shown above, and if no motion to set it aside is pending on that date, the forfeiture will become a final judgment on that date. The final judgment will be enforceable by execution against the defendant and any accommodation bondsman and professional bondsman on the bond. The final judgment will also be reported to the Department of Insurance. Further, no surety will be allowed to execute any bail bond in the above county until the final judgment is satisfied in full.'

"**§ 15A-544.4. Notice of forfeiture.**

(a) The court shall give notice of the entry of forfeiture by mailing a copy of the forfeiture to the defendant and to each surety whose name appears on the bail bond.

(b) The notice shall be sent by first-class mail to the defendant and to each surety named on the bond at the surety's address of record.

(c) If a bail agent on behalf of an insurance company executed the bond, the court shall also provide a copy of the forfeiture to the bail agent, but failure to provide notice to the bail agent shall not affect the validity of any notice given to the insurance company.

(d) Notice given under this section is effective when the notice is mailed.

(e) Notice under this section shall be mailed not later than the thirtieth day after the date on which the forfeiture is entered. If notice under this section is not given within the prescribed time, the forfeiture shall not become a final judgment and shall not be enforced or reported to the Department of Insurance.

"**§ 15A-544.5. Setting aside forfeiture.**

(a) Relief Exclusive. -- There shall be no relief from a forfeiture except as provided in this section. The reasons for relief are those specified in subsection (b) of this section. The procedures for obtaining relief are those specified in subsections (c) and (d) of this section. Subsections (f), (g), (h), and (i) of this section apply regardless of the reason for relief given or the procedure followed.

(b) Reasons for Set Aside. -- A forfeiture shall be set aside for any one of the following reasons, and none other:

(1) The defendant's failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question.

(5) The defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate.

(6) The defendant was incarcerated in a unit of the Department of Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear.

(c) Procedure When Failure to Appear Is Stricken. -- If the court before which a defendant's appearance was secured by a bail bond enters an order striking the defendant's failure to appear and recalling any order for arrest issued for that failure to appear, that court may simultaneously enter an order setting aside any forfeiture of that bail bond. When an order setting aside a forfeiture is entered, the defendant's further appearances shall continue to be secured by that bail bond unless the court orders otherwise.

(d) Motion Procedure. -- If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

(1) At any time before the expiration of 150 days after the date on which notice was given under G.S. 15A-544.4, the defendant or any surety on a bail bond may make a written motion that the

forfeiture be set aside, stating the reason and attaching the evidence specified in subsection (a) of this section.

(2) The motion is filed in the office of the clerk of superior court of the county in which the forfeiture was entered, and a copy is served, under G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) Either the district attorney or the county board of education may object to the motion by filing a written objection in the office of the clerk and serving a copy on the moving party.

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the tenth day after the motion is served, the clerk shall enter an order setting aside the forfeiture.

(5) If either the district attorney or the county board of education files a written objection to the motion, then not more than 30 days after the objection is filed a hearing on the motion and objection shall be held in the county, in the trial division in which the defendant was bonded to appear.

(6) If at the hearing the court allows the motion, the court shall enter an order setting aside the forfeiture.

(7) If at the hearing the court does not enter an order setting aside the forfeiture, the forfeiture shall become a final judgment of forfeiture on the later of:

a. The date of the hearing.

b. The date of final judgment specified in G.S. 15A-544.6.

(e) Only One Motion Per Forfeiture. -- No more than one motion to set aside a specific forfeiture may be considered by the court.

(f) No More Than Two Forfeitures May Be Set Aside Per Case. -- In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no forfeiture of that bond may be set aside for any reason.

(g) No Final Judgment After Forfeiture Is Set Aside. -- If a forfeiture is set aside under this section, the forfeiture shall not thereafter ever become a final judgment of forfeiture or be enforced or reported to the Department of Insurance.

(h) Appeal. -- An order on a motion to set aside a forfeiture is a final order or judgment of the trial court for purposes of appeal. Appeal is the same as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on any conditions the court considers appropriate.

"**§ 15A-544.6. Final judgment of forfeiture.**

A forfeiture entered under G.S. 15A-544.3 becomes a final judgment of forfeiture without further action by the court and may be enforced under G.S. 15A-544.7, on the one hundred fiftieth day after notice is given under G.S. 15A-544.4, if:

(1) No order setting aside the forfeiture under G.S. 15A-544.5 is entered on or before that date; and

(2) No motion to set aside the forfeiture is pending on that date.

"§ 15A-544.7. Docketing and enforcement of final judgment of forfeiture.

(a) Final Judgment Docketed As Civil Judgment. -- When a forfeiture has become a final judgment under this Part, the clerk of superior court, under G.S. 1-234, shall docket the judgment as a civil judgment against the defendant and against each surety named in the judgment.

(b) Judgment Lien. -- When a final judgment of forfeiture is docketed, the judgment shall become a lien on the real property of the defendant and of each surety named in the judgment, as provided in G.S. 1-234.

(c) Execution; Copy to Commissioner of Insurance. -- After docketing a final judgment under this section, the clerk shall:

(1) Issue execution on the judgment against the defendant and against each accommodation bondsman and professional bondsman named in the judgment and shall remit the clear proceeds to the county finance officer as provided in G.S. 115C-452.

(2) If an insurance company or professional bondsman is named in the judgment, send the Commissioner of Insurance a copy of the judgment, showing the date on which the judgment was docketed.

(d) Sureties May Not Execute Bonds in County. -- After a final judgment is docketed as provided in this section, no surety named in the judgment shall become a surety on any bail bond in the county in which the judgment is docketed until the judgment is satisfied in full.

"§ 15A-544.8. Relief from final judgment of forfeiture.

(a) Relief Exclusive. -- There is no relief from a final judgment of forfeiture except as provided in this section.

(b) Reasons. -- The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

(1) The person seeking relief was not given notice as provided in G.S. 15A-544.4.

(2) Other extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.

(c) Procedure. -- The procedure for obtaining relief from a final judgment under this section is as follows:

(1) At any time before the expiration of three years after the date on which a judgment of forfeiture became final, the defendant or any surety named in the judgment may make a written motion for relief under this section, stating the reasons and setting forth the evidence in support of each reason.

(2) The motion is filed in the office of the clerk of superior court of the county in which the final judgment was entered, and a copy shall be served, under G.S. 1A-1, Rule 5, on the district attorney for that county and the county board of education.

(3) A hearing on the motion shall be scheduled within a reasonable time in the trial division in which the defendant was bonded to appear.

(4) At the hearing the court may grant the party any relief from the judgment that the court considers appropriate, including the refund of all or a part of any money paid to satisfy the judgment.

(d) Only One Motion. -- No more than one motion by any party for relief under this section may be considered by the court.

(e) Finality of Judgment as to Other Parties Not Affected. -- The finality of a final judgment of forfeiture shall not be affected, as to any party to the judgment, by the filing of a motion by, or the granting of relief to, any other party.

(f) Appeal. -- An order on a motion for relief from a final judgment of forfeiture is a final order or judgment of the trial court for purposes of appeal. Appeal is the same as provided for appeals in civil actions. When notice of appeal is properly filed, the court may stay the effectiveness of the order on any conditions it considers appropriate."

Section 7. G.S. 58-71-25 reads as rewritten:

"**§ 58-71-25. Procedure for ~~surrender; exoneration of obligors; refund of deposit.~~ surrender.**

~~The person desiring to make a surrender of the defendant shall procure a certified copy of the undertakings and deliver them together with the defendant to the official in whose custody the defendant was at the time bail was taken, or to the official into whose custody he would have been given had he been committed, who shall detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing acknowledge the surrender.~~

~~Upon the presentation of certified copy of the undertakings and the certificate of the official, the court before which the defendant has been held to answer, or the court in which the preliminary examination, warrant, indictment, information or appeal as the case may be, is pending, shall upon notice of three days given by the person making the surrender to the prosecuting officer of the court having jurisdiction of the offense, together with a copy of the undertakings and certificate, order that the obligors be exonerated from liability of their undertakings, and, if money or bonds have been deposited as bail, that such money or bonds be refunded.~~

After there has been a breach of the undertaking in a bail bond, the surety may surrender the defendant as provided in G.S. 15A-540."

Section 8. G.S. 24-5(a1) reads as rewritten:

"(a1) In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of ~~entry~~ docketing of judgment until the judgment is satisfied."

Section 9. This act becomes effective January 1, 2001, and applies to all bail bonds executed and all forfeiture proceedings initiated on and after that date.

HOUSE BILL 1607:
Modernize Bail Bond Forfeitures

BILL ANALYSIS

Committee:	Senate Judiciary II	**Introduced by:**	Representative Culpepper
Date:	July 5, 2000	**Summary by:**	Al Andrews
Version:	Second Edition		Research Division

SUMMARY: ***This bill, recommended by the LRC's Committee on Bail Bond Laws, seeks to modernize and clarify existing bail bond forfeiture statutes. This bill would establish clear procedures for the entry and finalization of forfeiture judgments. It would provide for notice to both bail agents and insurance companies who serve as sureties on bail bonds. It also would provide a three-year statute of limitations on motions that seek relief from final judgments of forfeiture.***

CHANGES FROM THE 1st EDITION: The 1st edition of H1607 was a companion bill to S1267 which was in this committee previously. The 2nd edition of H1607 makes a few technical and substantive changes to the 1st edition. The term "forfeiture" was substitued throughout the bill for the term "provisional judgment." The $225,000 appropriation was deleted. Two additional reasons for setting aside a forfeiture were added. These are enumerated in proposed G.S. 15A-544.5. There were a few other technical conforming changes made.

CURRENT LAW (generally): When a defendant is ordered to pay bond as a condition of release, the defendant may enter into an agreement with a bondsman (or surety) whereby the defendant pays a certain percentage of the required bond to the bondsman and promises to appear in court. The bondsman promises to pay the full amount of the bond if the defendant fails to appear. If the defendant, in fact, fails to appear, the court must enter an order of forfeiture against the bondsman. This order requires the bondsman to forfeit (i.e., pay) the bond. Currently, it is unclear who receives notice of this order, particularly when an agent for an insurance company is involved. The court must set aside the order if the defendant failed to appear because he or she was incarcerated in the State and was unable to appear. The court also may set aside the order if the surety files a motion, either in writing or orally, that asks for relief because the defendant's appearance when required was "impossible" or the defendant's failure to appear was not due to the defendant's "fault." After 60 days, the clerk prepares a forfeiture calendar that lists all the outstanding forfeiture orders. The judge signs these orders into absolute judgments, after which the surety has another 90 days within which relief may be requested. The forfeiture is stricken if, within those 90 days, the surety surrenders the defendant and the defendant is arrested or the defendant is incarcerated or served an order for arrest and the defendant posts another bond or is released. After those 90 days and if the bondsman has not remitted the amount of the judgment, the sheriff has 10 days to locate the bondsman. After those 10 days, the sheriff must notify the clerks and magistrates in the prosecutorial district. The bondsman is then prohibited from becoming surety on additional bonds until the judgment is paid. After the judgment is executed, the court may, for extraordinary reasons shown, remit all or part of the amount paid.

BILL ANALYSIS: **Section 1** substantially amends the current definitions section in G.S. 15A-531. This section adds definitions for the terms "accommodation bondsman," "address of record," "bail agent," "defendant," "insurance company," and "professional bondsman." The definitions for "accommodation bondsman" and "professional bondsman" were taken verbatim from the definitions found in the Insurance chapter, G.S. 58-71-1. This section deletes the definition for "obligor" and rewrites the definition for

This section clarifies that the procedure for setting aside a forfeiture must occur within one time period, *i.e.* 150 days. It provides the procedures to follow when an order for arrest based on a failure to appear is stricken and the procedures for filing motions and holding hearings on whether to set aside a forfeiture. . Only one motion to set aside a forfeiture will be considered. Also, in cases where the surety or bail agent had notice or actual knowledge, prior to executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, the forfeiture may not be set aside. Finally, this section sets forth the rules for appealing an order on a motion to set aside a forfeiture.

G.S. 15A-544.6 provides that a forfeiture becomes a final judgment on the 150th day after notice is given if no order has been entered to set aside the forfeiture and no motion to set aside the forfeiture is pending.

G.S. 15A-544.7 sets forth when a final judgment may be docketed as a civil judgment and become a lien against the real property of the defendant and each surety named in the judgment. This section also provides the rules for execution of a final forfeiture judgment. Until the final judgment is satisfied, sureties may not continue issuing bonds in the county (rather than in the prosecutorial district) in which the judgment is docketed.

G.S. 15A-544.8 sets forth the only reasons relief from a final judgment of forfeiture may be had. These include the lack of proper notice to necessary parties or other extraordinary circumstances. This section sets a three-year statue of limitations for a defendant or surety to seek relief from a final judgment of forfeiture. It further provides the rules for motions and appeals.

Section 7 amends and simplifies G.S. 58-71-25, from the Insurance chapter, which governs the procedure for a surety to surrender a defendant, by adopting the process found in the rewritten G.S. 15A-540.
Section 8 amends G.S. 24-5(a1), which covers interest on judgments, by making the interest calculation be based on the date of judgment docketing rather than the date of judgment entry.
Section 9 sets the bill's effective date as January 1, 2001. It applies to all bail bonds executed and all forfeiture proceedings initiated on and after that date.

BACKGROUND: North Carolina's bail bond laws have been the subject of a great deal of focus both within and outside the General Assembly for a number of years. Though changes were made during the 1995 Session and suggested during later sessions, many parties still desired further modifications to these laws. During the interim, the Legislative Research Commission's Committee on Bail Bond Laws met three times, received a great deal of information, and heard the testimony of many interested parties. A working group was organized to come together and suggest language for a bill to modernize bail bond forfeiture laws. While there is not unanimous agreement by all parties as to exactly how to amend existing bail bond laws, this bill represents the product of that interested parties working group.

Robin Johnson, Staff Attorney, Research Division, and Tom Andrews, Administrative Office of the Court, substantially contributed to this summary.

H1607-SMSN-001

PLEASE VOTE YES FOR FAIRNESS

The following organizations request your support of HB 968 (Amend Contested Case Procedures):

AFL-CIO
American Furniture Manufacturers Association
Carolina Asphalt Pavement Association (CAPA)
Charlotte Chamber of Commerce
ElectriCities
Manufacturers & Chemical Industry Council (MCIC)
NC Academy of Trial Lawyers (NCATL)
NC Association of Educators
NC Agribusiness Council, Inc. (NCAC)
NC Association of Realtors
NC Justice & Community Development Center
NC Citizens for Business and Industry (NCCBI)
NC Farm Bureau Federation
NC Forestry Association (NCFA)
NC Home Builders Association (NCHBA)
NC National Federation of Independent Business (NFIB/NC)
NC Petroleum Marketers Association
NC Public Service Workers Union, UE Local 150
NC Retail Merchants Association (NCRMA)
Police Benevolent Association

HB968 simplifies the administrative review process by making th ALJ the final decision-maker. Contested cases will continue to be commenced and conducted as they are under present law. However, once the ALJ makes a decision it will be the final administrative decision, rather than merely a recommendation..The bill also amends the APA to allow agencies to seek judicial review of administrative decisions by which they are aggrieved, in the same manner as now applies to petitioners.

Currently, if the ALJ finds against the agency the agency reverses the ALJ's recommended decision approximately 90% of the time. If the ALJ finds in favor of the agency, the agency adopts the ALJ's recommended decision approximately 100% of the time.

HB 968
Amend Contested Case

1998

- ALJ Recommended Decision Adopted by Agency* - Of the 265 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 224 (85%) of these cases.
- ALJ Recommended Decision Partially Adopted by Agency* - Of the 15 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 10 (67%) of these cases.
- ALJ Recommended Decision Rejected by Agency*** - Of the 43 Recommended Decisions which were rejected by the agency as their Final Agency Decision, the Administrative Law Judge ruled against the agency in 37 (86%) of these cases.

1999

- ALJ Recommended Decision Adopted by Agency* - Of the 1 Recommended Decisions which were adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 1 (100%) of these cases.
- ALJ Recommended Decision Partially Adopted by Agency* - Of the 1 Recommended Decisions which were partially adopted by the agency as their Final Agency Decision, the Administrative Law Judge ruled in favor of the agency in 1 (100%) of these cases.

ALJ RECOMMEND DECISIONS REJECTED BY AGENCY IN 1998

AGENCY CODE	DOCKET NUMBER	PETITIONER	RESPONDENT	CLOSED DATE
ABC	97 ABC 1205	N. C. Alcoholic Beverage Control	Kenneth Jerome Hargrove	7/23/98
ABC	98 ABC 0382	Sokha Huor Ramadneh d/b/a	Alcoholic Beverage Control Com	6/30/98
CPS	97 CPS 1499	Cynthia Austin	North Carolina Victims Compens	8/12/98
CPS	98 CPS 0065	Marcella Skaggs	North Carolina Crime Victims	6/5/98
DHR	97 DHR 0746	Geneva B Horne	NC Dept. of Human Resources	1/26/98
DHR	97 DHR 0854	Raleigh Child Care, Inc.	N.C. Dept. of Human Resources;	2/12/98
DHR	97 DHR 0865	Lynn E. Thorpe	Department of Human Resource	1/13/98
DHR	97 DHR 1046	Annie K. Morgan	Department of Human Resource	7/23/98
DHR	97 DHR 1059	Frances B. Morgan	Health Care Personnell Registry	4/7/98
DHR	97 DHR 1118	Brenda Harper	Department of Human Resource	2/2/98
DHR	97 DHR 1193	Genoal Blalock	Department of Human Resource	2/12/98
DHR	97 DHR 1209	Mooresville Hospital Managemen	N.C. Department of Human Res	6/23/98
DHR	97 DHR 1456	Frances B. Morgan	Department of Health and Huma	4/7/98
DHR	97 DHR 1588	Dialysis Care of North Carolina,	North Carolina Department of He	8/31/98
DHR	97 DHR 1672	Robin Anette Reavis	Department of Health Resources	8/12/98
DHR	98 DHR 0173	Helen Shokoti	Department of Health and Huma	8/26/98
DHR	98 DHR 0496	Annie K. Morgan	Dept. of Human Resources	7/23/98
DHR	98 DHR 0666	Stephanie Wade (Vance)	N.C. Dept. of Human Resources	8/19/98
DOJ	97 DOJ 0556	Bobby Earl Maynard	N. C. Criminal Justice Education	5/22/98

AGENCY CODE	DOCKET NUMBER	PETITIONER	RESPONDENT	CLOSED DATE
DOJ	97 DOJ 0976	Richard Allen Price	N. C. Criminal Justice Education	3/12/98
DOJ	97 DOJ 1318	Robert Hoyt Porter	N. C. Sheriffs' Education and Tr	4/9/98
DOJ	97 DOJ 1319	Thomas Dwayne Brown	N. C. Sheriffs' Education and Tr	7/29/98
DOJ	97 DOJ 1547	Thomas Albert Stone	N. C. Criminal Justice Education	4/20/98
DOJ	97 DOJ 1698	Odis Fitzgerald Darden	N. C. Sheriffs' Education and Tr	6/12/98
DST	97 DST 1609	Jane A. Wallace	Board of Trustees, Local Govern	5/14/98
EDC	97 EDC 1233	George & Ruth Sinclair	Wake County Schools	8/11/98
EHR	97 EHR 1459	Lady Lashanda	State of North Carolina Dept. of	7/20/98
OSP	96 OSP 0833	Annette Honea	North Carolina Department of Hu	8/24/98
OSP	96 OSP 1011	Gale Worrells	North Carolina Department of Hu	4/24/98
OSP	96 OSP 1157	Margaret Martin Roberts	North Carolina Department of Co	1/26/98
OSP	96 OSP 2008	Elizabeth Rouse Mosley	North Carolina Department of Ju	3/26/98
OSP	97 OSP 0531	Charles F Fields	N.C. Department of Human Res	3/25/98
OSP	97 OSP 0595	Shirlene R. Boone	Hertford County Department of S	4/6/98
OSP	97 OSP 0598	Anne K. Brock	North Carolina Department of Hu	5/22/98
OSP	97 OSP 0733	Theon Shan	Caswell Center	4/29/98
OSP	97 OSP 0760	Richard G. Steeves	Scotland County Board of Health	3/6/98
OSP	97 OSP 0862	Roy Hudson	Department of Human Resource	8/13/98
OSP	97 OSP 0863	Yolandra Best and	John Umstead Hospital	8/13/98
OSP	97 OSP 0998	Bernie B. Kelly	Harry Chambers	2/3/98
OSP	97 OSP 1161	Lisa R. Wilson	Cabarrus County Dept. of Social	3/20/98

AGENCY CODE	DOCKET NUMBER	PETITIONER	RESPONDENT	CLOSED DATE
OSP	98 OSP 0050	Leon Owens	North Carolina Department of Co	7/10/98
OSP	98 OSP 0231	Michael A. Smith	N. C. Department of Correction	8/11/98
OSP	98 OSP 0317	Michael A. Smith	Department of Corrections	8/11/98

AGENCIES THAT ARE EXEMPT FROM THE ARTICLE 3 CONTESTED CASE PROVISIONS

AGENCIES HAVING FULL EXEMPTIONS FROM THE APA, *INCLUDING* ARTICLE 3 CONTESTED CASES

- The NC National Guard in exercising it court-martial jurisdiction. *(G.S. 150B-1(c)(1))*
- DHHS in exercising its authority over Camp Butner. *(G.S. 150B-1(c)(2))*
- The Utilities Commission. *(G.S. 150B-1(c)(3))*
- The Industrial Commission. *(G.S. 150B-1(c)(4))*
- The Employment Security Commission. *(G.S. 150B-1(c)(5))*
- The University of NC, except for Article 4, Judicial Review. *(G.S. 150B-1(f))*
- The NC Tobacco Research Commission. *(G.S. 106-568.8)*
- Local boards of trustees for community colleges. *(G.S. 115D-80)*
- State departments, institutions and commissions with regard to rules for the selection and retention of law-enforcement officers. *(G.S. 143-166.40)*
- The Department of Administration, State Property Office, in granting certain easements where approval is not required by the Governor or the Council of State. *(G.S. 146-12(i))*
- The State Board of Elections with regard to precinct boundaries. *(G.S. 163-132.5B)*

AGENCIES EXEMPT FROM ARTICLE 3 CONCERNING CONTESTED CASES

- DHHS and DENR in complying with procedural safeguards in the federal Education of the Handicapped Act Amendments of 1986. *(G.S. 150B-1(e)(1))*
- NC Low-Level Radioactive Waste Management Authority. *(G.S. 150B-1(e)(3))*
- NC Hazardous Waste Management Commission. *(G.S. 150B-1(e)(4))*
- Hearings required pursuant to the Rehabilitation Act of 1973. *(G.S. 150B-1(e)(5))*
- The Department of Revenue. *(G.S. 150B-1(e)(6))*
- The Department of Correction. *(G.S. 150B-1(e)(7))*
- The Department of Transportation, except for G.S. 136-29, regarding adjustment and resolution of highway contract claim. *(G.S. 150B-1(e)(8))*
- OSHA Review Board. *(G.S. 150B-1(e)(9))*
- NC Global TransPark Authority with respect to the acquisition, construction, operation or use, including fees or charges, of any portion of a cargo airport complex. *(G.S. 150B-1(e)(11))*
- DHHS hearings regarding eligibility and provision of services for eligible assaultive and violent children. *(G.S. 150B-1(e)(11))*
- Proclamations issued by the Marine Fisheries Director pursuant to G.S. 113-221(e). *(G.S. 113-221(e1))*
- Decisions of the Standard Commercial Fishing (SCFL) Eligibility Board regarding whether or not an applicant is eligible to receive a SCFL. *(S.L. 1998-225, Sec. 4.24)*

VISITOR REGISTRATION SHEET

Jud. II — Name of Committee

7-6-00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Moore & Van Allen
Mark Black	SSI
Jay Mayo	WCSR
Mike LaTuga	Intern
Austin Chestnut	NCGA - Research Division
Alex Reeves	Sen. Garcia's office
Erin Spong	Senator Garcia's office
Wendy Mills	SLCANC
Dawn Lunsford	"
Kaitlin Jayne	"
Brandon Thomas	Sizemore
Harriett Dial	NVCALC
Paula Cox	DD Consumer Family
L'Tryce Slade	DENR
Leanne Winner	NCSBA

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Fred Mohn	N. C. Dept. of Ins
Joshi Bedsaul	NCCBI
Tom Andrews	AOC
MT Burnette	GACPD
Tom Kilbin	Moore + Van Allen
FRAN PRESTON	NCRMA
Andy Ellen	NCRMA
Ann Edmondson	NCRMA
Anne Wimer	NCAWA
Mary Carmbs	RESIC
Jerry Fullbright	Hunton & Williams
Cissy Porter	Bone & Associates
Stacy Hennessy	NCHCFA
Lucius PULLEN	ATTORNEY
David Ferrell	Hoffa, McNamara, Caldwell et al
R. Paul Wiles	NCHBA

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Becky Mercer	Bankers Insurance Group
Glen Peterson	NC Dept of Administration

SENATE JUDICIARY II COMMITTEE

JULY 12, 2000

MINUTES

The Senate Judiciary II Committee met on Wednesday, July 12, 2000 at 6:15 p.m. around Senator Miller's desk in the Senate Chamber. Six members were present, including Senator Miller, who presided.

Senator Ballance explained HB 1608, Amend Bail Bondsmen and Runners Law, and moved to adopt the proposed Committee Substitute. The motion carried unanimously. Senator Ballance then moved to give the proposed Committee Substitute a favorable report. The motion carried unanimously. **Unfavorable as to Committee Substitute bill #1, but favorable as to Senate Committee Substitute bill.**

Senator Brad Miller, Chairman

Cornelia McMillan, Committee Asst.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Brad Miller, Chair

Wednesday, July 12, 2000

SENATOR MILLER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1608** Amend Bail Bondsmen and Runners Law.

Draft Number:	PCS6319
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

SENATE JUDICIARY II COMMITTEE

JULY 12, 2000

SENATE CHAMBER

HB 1608 Amend Bail Bondsmen and Runners Law Rep. Culpepper

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1608*
Committee Substitute Favorable 6/27/00

Short Title: Amend Bail Bondsmen and Runners Law. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SUPERVISION OF FIRST-YEAR BAIL BONDSMEN AND RUNNERS; TO MAKE IT A CLASS I FELONY FOR A PERSON TO ACT AS A RUNNER OR BAIL BONDSMAN WITHOUT OBTAINING AND MAINTAINING THE REQUIRED LICENSE OR FOR A BONDSMAN TO KNOWINGLY AND WILLFULLY FAIL TO RETURN ANY COLLATERAL SECURITY VALUED AT MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS; TO REQUIRE THAT COLLATERAL SECURITY IN THE FORM OF CASH OR NEGOTIABLE INSTRUMENTS BE HELD IN TRUST ACCOUNTS; TO PROVIDE FOR THE DISPOSITION OF OUTSTANDING BAIL BOND OBLIGATIONS UPON THE DEATH OR TERMINAL ILLNESS OF A BAIL BONDSMAN; AND TO INCREASE THE MINIMUM SECURITIES DEPOSIT REQUIRED OF PROFESSIONAL BONDSMEN.

The General Assembly of North Carolina enacts:

Section 1. G. S. 58-71-1 is amended by adding a new subdivision to read:

"(4a) 'First-year licensee' means any person who has been licensed as a bail bondsman or runner under this Article and who has held the license for a period of less than 12 months."

Section 2. G. S. 58-71-1 is amended by adding a new subdivision to read:

"(9a) 'Supervising bail bondsman' means any person licensed by the Commissioner as a professional bondsman or surety bondsman who employs or contracts with any new licensee under this Article."

Section 3. G.S. 58-71-40(a) reads as rewritten:

"(a) ~~No~~ It is a Class I felony for any person ~~shall~~ to act in the capacity of a bail bondsman or runner or perform any of the functions, duties, or powers prescribed for bail bondsmen or runners ~~under the provisions of this Article unless that person shall be qualified and (except as regards an accommodation bondsman) licensed in accordance with the provisions of~~ without obtaining and maintaining a license under this Article. No license shall be issued to a professional bondsman or runner except to an individual natural person."

Section 4. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-71-41. First-year licensees; limitations.**

(a) Except as provided in this section, a first-year licensee shall have the same authority as other persons licensed as bail bondsmen or runners under this Article. A first-year licensee shall operate only under the supervision of and from the business address of a licensed supervising bail bondsman, which address shall be on file with the Department. A first-year licensee may only be employed by or contract with one supervising bail bondsman and shall be limited to writing bail bonds within the judicial district or bordering judicial districts where the supervising bail bondsman maintains a place of business.

(b) When a first-year licensee has completed 12 uninterrupted months of supervision, the supervising bail bondsman shall give notice of that fact to the Commissioner in writing. If the licensee will continue to be employed by or contract with the supervising bail bondsman beyond the initial 12-month period, the supervising bail bondsman shall continue to supervise and be responsible for the licensee's acts.

(c) If the employment of or contract with a first-year licensee is terminated, the supervising bail bondsman shall notify the Commissioner in writing and shall specify the reason for the termination.

(d) Provided all other licensing requirements are met, an applicant for a bail bondsman or runner's license who has previously been licensed with the Commissioner for a period of at least three consecutive years and who has been inactive or unlicensed for a period of not more than three consecutive years shall not be deemed a new licensee for purposes of this section."

Section 5. G.S. 58-71-80 is amended by adding a new subsection to read:

"(c) In the case of a first-year licensee whose employment or contract is terminated prior to the end of the 12-month supervisory period, the Commissioner may consider all information provided in writing by the supervising bail bondsman in determining whether sufficient cause exists to suspend, revoke, or refuse to renew the license or to warrant criminal prosecution of the first-year licensee. If the Commissioner determines there is not sufficient cause for adverse administrative action or criminal prosecution, the termination shall not be deemed an interruption and the period of time the licensee was employed by or contracted with the terminating supervising bail bondsman will be credited toward the licensee's

completion of the required 12 months of supervision with a subsequent supervising bail bondsman."

Section 6. G.S. 58-71-95(5) reads as rewritten:

"(5) Accept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond; provided that the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned within 72 hours after final termination of liability on the bond. Any bail bondsman who knowingly and willfully fails to return any collateral security, the value of which exceeds one thousand five hundred dollars ($1,500), is guilty of a Class I felony. All collateral security, such as personal and real property, subject to be returned must be done so under the same conditions as requested and received by the bail bondsman."

Section 7. G.S. 58-71-100 reads as rewritten:

"**§ 58-71-100. Receipts for ~~collateral.~~ collateral; trust accounts.**

When a bail bondsman accepts collateral he shall give a written receipt for ~~same,~~ the collateral. ~~and this~~ The receipt shall give in detail a full description of the collateral received. Collateral security shall be held and maintained in trust. When collateral security is received in the form of cash or check or other negotiable instrument, the licensee shall deposit the cash or instrument within two banking days after receipt, in an established, separate noninterest-bearing trust account in any bank located in North Carolina. The trust account funds shall not be commingled with other operating funds."

Section 8. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-71-121. Death, incapacitation, or incompetence of a bail bondsman.**

In the case of death, incapacitation, or incompetence of a licensed bail bondsman, the spouse or surviving spouse, next of kin, person or persons holding a power of attorney, guardian, executor or administrator of the licensed bail bondsman may contract with another licensed bail bondsman to perform those duties to have the licensee's outstanding bail bond obligations resolved to the satisfaction of the courts. The contract must be filed with the Commissioner and every clerk of superior court where it can be determined the licensee has pending outstanding bail bond obligations. The licensed bail bondsman who has agreed to perform these duties shall not, at the time of the execution of the contract, have any administrative or criminal actions pending against him or her."

Section 9. G.S. 58-71-145 reads as rewritten:

"**§ 58-71-145. Financial responsibility of professional bondsmen.**

Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair

market value of at least one-eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than ~~five thousand dollars ($5,000).~~ fifteen thousand dollars ($15,000)."

Section 10. G.S. 58-71-185 reads as rewritten:

"**§ 58-71-185. Penalties for violations.**

~~Any person, firm, association or corporation violating~~ Except as otherwise provided in this Article, any person who violates any of the provisions of this Article is guilty of a Class 1 misdemeanor."

Section 11. This act becomes effective October 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1608*
Committee Substitute Favorable 6/27/00
Proposed Committee Substitute H1608-PCS6319-SN005

Short Title: Amend Bail Bondsmen and Runners Law. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SUPERVISION OF FIRST-YEAR BAIL BONDSMEN AND RUNNERS; TO MAKE IT A CLASS I FELONY FOR A BONDSMAN TO KNOWINGLY AND WILLFULLY FAIL TO RETURN ANY COLLATERAL SECURITY VALUED AT MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS; TO REQUIRE THAT COLLATERAL SECURITY IN THE FORM OF CASH OR NEGOTIABLE INSTRUMENTS BE HELD IN TRUST ACCOUNTS; TO PROVIDE FOR THE DISPOSITION OF OUTSTANDING BAIL BOND OBLIGATIONS UPON THE DEATH, INCAPACITATION, OR INCOMPETENCE OF A BAIL BONDSMAN; AND TO INCREASE THE MINIMUM SECURITIES DEPOSIT REQUIRED OF PROFESSIONAL BONDSMEN.

The General Assembly of North Carolina enacts:

Section 1. G. S. 58-71-1 is amended by adding a new subdivision to read:

"(4a) 'First-year licensee' means any person who has been licensed as a bail bondsman or runner under this Article and who has held the license for a period of less than 12 months."

Section 2. G. S. 58-71-1 is amended by adding a new subdivision to read:

"(9a) 'Supervising bail bondsman' means any person licensed by the Commissioner as a professional bondsman or surety bondsman who employs or contracts with any new licensee under this Article."

Section 3. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-71-41. First-year licensees; limitations.**

(a) Except as provided in this section, a first-year licensee shall have the same authority as other persons licensed as bail bondsmen or runners under this Article. Except as provided in subsection (d) of this section, a first-year licensee shall operate only under the supervision of and from the official business address of a licensed supervising bail bondsman for the first 12 months of licensure. A first-year licensee may only be employed by or contract with one supervising bail bondsman.

(b) When a first-year licensee has completed 12 months of supervision, six of which shall be uninterrupted, the supervising bail bondsman shall give notice of that fact to the Commissioner in writing. If the licensee will continue to be employed by or contract with the supervising bail bondsman beyond the initial 12-month period, the supervising bail bondsman shall continue to supervise and be responsible for the licensee's acts.

(c) If the employment of or contract with a first-year licensee is terminated, the supervising bail bondsman shall notify the Commissioner in writing and shall specify the reason for the termination.

(d) If, after exercising due diligence, a first-year licensed bail bondsman is unable to become employed by or to contract with a supervising bail bondsman, the first-year licensed bail bondsman must submit to the Department a sworn affidavit stating the relevant facts and circumstances regarding the first-year licensed bail bondman's inability to become employed by or contract with a supervising bail bondsman. The Department shall review the affidavit and determine whether the first-year licensed bail bondsman will be allowed to operate as an unsupervised bail bondsman. A first-year licensed bail bondsman is prohibited from becoming a supervising bail bondsman during the first two years of licensure.

(e) Provided all other licensing requirements are met, an applicant for a bail bondsman or runner's license who has previously been licensed with the Commissioner for a period of at least 18 consecutive months and who has been inactive or unlicensed for a period of not more than three consecutive years shall not be deemed a new licensee for purposes of this section."

Section 4. G.S. 58-71-80 is amended by adding a new subsection to read:

"(c) In the case of a first-year licensee whose employment or contract is terminated prior to the end of the 12-month supervisory period, the Commissioner may consider all information provided in writing by the supervising bail bondsman in determining whether sufficient cause exists to suspend, revoke, or refuse to renew the license or to warrant criminal prosecution of the first-year licensee. If the Commissioner determines there is not sufficient cause for adverse administrative action or criminal prosecution, the termination shall not be deemed an interruption and the period of time the licensee was employed by or contracted with the terminating supervising bail bondsman will be credited toward the licensee's completion of the required 12 months of supervision with a subsequent supervising bail bondsman."

Section 5. G.S. 58-71-95(5) reads as rewritten:

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Section 10. This act becomes effective October 1, 2000.