2000

SENATE JUDICIARY I COMMITTEE

MINUTES

SENATE JUDICIARY I COMMITTEE

2000 SHORT SESSION

Senator Roy A. Cooper, III, Chairman

Susan M. Moore, Committee Assistant

SENATE JUDICIARY I COMMITTEE
1999

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — SENATE: JUDICIARY I — Valid Through 25-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 50	HURLEY	FAYETTEVILLE TRAFFIC VIOLATIONS	R -CH. SL 99-0017	03-18-99	
H 143	WRIGHT	HANDICAPPED PARKING FINES	*R -CH. SL 99-0265	05-03-99	06-02-99
H 202=	CULPEPPER	AMEND PROFESSIONAL CORP. ACT	*R -CH. SL 99-0440	03-30-99	06-30-99
H 226=	CULPEPPER	FORECLOSURE NOTICE	*R -CH. SL 99-0137	05-12-99	05-19-99
H 247	WAINWRIGHT	FUNERAL PROCESSIONS	*R -CH. SL 99-0441	04-22-99	07-12-99
H 248	ALEXANDER	PRECINCT BOUNDARIES/MUNIC. REDISTRIC	*R -CH. SL 99-0227	04-05-99	06-02-99
H 254	EDWARDS	HEALTH CARE FACILITY/PATIENT ABUSE	*S -REF TO COM ON JUDICI	04-29-99	
H 280	COLE	MOTOR VEHICLE TECH. AMENDMENTS	*R -CH. SL 99-0452	04-27-99	06-15-99
H 293	BRIDGEMAN	PROPRIETARY SCH./CIVIL PENALTIES	*H -CONF COM APPOINTED	07-06-99	07-08-99
H 517=	MOORE R	STOP THREATS/ACTS OF SCHOOL VIOLENCE	*R -CH. SL 99-0257	05-12-99	05-24-99
H 644=	GULLEY J	QUICK TAKE NOTICE OF APPEAL	*R -CH. SL 99-0410	04-27-99	05-05-99
H 813	HENSLEY	PROHIBIT CYBERSTALKING/TREAT DOM. VI	R -CH. SL 00-0125	04-26-99	00-06-27
H 818	HENSLEY	RULE 609 IMPEACHMENT EVIDENCE	R -CH. SL 99-0079	04-22-99	05-11-99
H 870	OWENS	MAGIST. ACCEPT WAIVER/VEHICLE VIOL.	R -CH. SL 99-0080	04-28-99	05-11-99
H 908	GILLESPIE	ROBBERY WITH CHEMICAL AGENT	S -REF TO COM ON JUDICI	04-21-99	
H 921=	BADDOUR	CAMPAIGN FINANCE CHANGES	*R -CH. SL 99-0031	04-22-99	04-27-99
H 924=	NESBITT	MEDIATION SETTLEMENT IN WRITING	*R -CH. SL 99-0354	04-22-99	06-15-99
H 924=	NESBITT	MEDIATION SETTLEMENT IN WRITING	*R -CH. SL 99-0354	06-17-99	07-07-99
H 968	NESBITT	AMEND CONTESTED CASE PROCEDURE	*H -PRES. TO GOV. 07-12	04-28-99	05-19-99
H 980=	BADDOUR	WORKERS' COMP./THIRD PARTY ACTIONS	*R -CH. SL 99-0194	04-26-99	05-05-99
H 991	BADDOUR	WORKERS' COMP AND UIM INSURANCE	*R -CH. SL 99-0195	04-28-99	05-05-99
H1026	JUSTUS	LIABILITY TO SALES REPRESENTATIVES	S -REF TO COM ON JUDICI	04-27-99	
H1048	MILLER G	AMEND RULE 4/MANNER OF SERVICE	*S -REF TO COM ON JUDICI	04-29-99	
H1072	ALEXANDER	ELECTION LAW CLEANUP	*R -CH. SL 99-0424	04-26-99	07-06-99
H1088	BAREFOOT	IMPROVE TORRENS LAW	R -CH. SL 99-0059	04-28-99	05-04-99
H1126	HACKNEY	PHYS. CONTRACTS/NONCOMPETE PROHIBITE	*S -REF TO COM ON JUDICI	04-29-99	
H1133	HACKNEY	HEALTH INS./LIABILITY	*S -REF TO COM ON JUDICI	00-06-30	
H1169	THOMPSON	SUCCESSION TECHNICAL AMENDMENTS	*S -REF TO COM ON JUDICI	05-03-99	
H1173	MCCRARY	PERSONAL INFORMATION DISCLOSURES	*R -CH. SL 99-0446	05-03-99	07-13-99
H1184=	WRIGHT	AMEND CERTIFICATE OF NEED	R -CH. SL 00-0135	04-28-99	07-01-99

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY I Valid Through 25-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1200=	MILLER G	JOURNALISTS' TESTIMONIAL PRIVILEGE	*S -REF TO COM ON JUDICI	04-28-99	
H1202=	CANSLER	CHILD HEALTH INS./SUPPORT ORDERS	S -REF TO COM ON JUDICI	04-28-99	
H1204	CULPEPPER	RESTORE DL AFTER FOREIGN JUDGEMENTS	S -RE-REF COM ON ED/HIED	04-29-99	00-07-05
H1216	BADDOUR	JUVENILE JUSTICE TECHNICAL CORRECTIO	*R -CH. SL 99-0423	04-26-99	07-07-99
H1222=	BADDOUR	STATE JUDICIAL COUNCIL/FUNDS	*R -CH. SL 99-0390	07-12-99	07-13-99
H1279	WARNER	FINANCIAL IDENTITY FRAUD	R -CH. SL 99-0449	04-28-99	06-30-99
H1286	GOODWIN	MASS GATHERINGS	*R -CH. SL 99-0171	04-28-99	05-11-99
H1286	GOODWIN	MASS GATHERINGS	*R -CH. SL 99-0171	05-11-99	05-19-99
H1431	BRASWELL	TOBACCO AND HEALTH TRUST FUNDS	H -PRES. TO GOV. 07-14	07-08-99	07-12-99
H1502=	SUTTON	ADVERSE WEATHER COURT CLOSING	H -PRES. TO GOV. 07-11	00-07-04	00-07-06
H1537=	NYE	PROMPT PAY/PATIENT PROTECTION	S -REF TO COM ON JUDICI	00-06-26	
H1804=	BADDOUR	ESTABLISH JUVENILE DEPARTMENT	*R -CH. SL 00-0137	00-07-04	00-07-11
S 12	ODOM	JUDICIAL APPT./VOTER RETENTION	*HF-FAILED 2ND READING	01-28-99	04-26-99
S 25=	WELLONS	GUARDIAN AD LITEM/ATTYS	R -CH. SL 99-0432	02-03-99	03-02-99
S 34=	COCHRANE	EMER SHELTER/HEALTH FACIL.RULES WAIV	*R -CH. SL 99-0307	02-04-99	04-22-99
S 49	RAND	D.A. WORK PRODUCT PROTECTION	S -REF TO COM ON JUDICI	02-08-99	
S 57=	COOPER	LOSE CONTROL LOSE YOUR LICENSE	R -CH. SL 99-0243	02-09-99	02-24-99
S 79	RAND	GUBERNATORIAL TEAM TICKET	S -REF TO COM ON JUDICI	02-15-99	
S 120	ALLRAN	UP SOME UNDERAGE SALES PENALTIES	R -CH. SL 99-0433	02-17-99	04-28-99
S 127=	HARTSELL	1999 TECHNICAL CORRECTIONS	S -REF TO COM ON JUDICI	02-18-99	
S 128=	HARTSELL	INTEREST ON MONEY JUDGMENTS	*R -CH. SL 99-0384	02-18-99	02-24-99
S 129	HARTSELL	REPEAL UCC ARTICLE ON BULK TRANSFERS	S -RE-REF COM ON FINANCE	02-18-99	04-28-99
S 165	**RAND**	**DNA SAMPLE ON ARREST**	***S -RE-REF COM ON JUDICI**	**00-07-11**	
S 165	**RAND**	**DNA SAMPLE ON ARREST**	***S -RE-REF COM ON JUDICI**	**02-23-99**	**00-07-06**
S 170	CARPENTER R	RESTRUCTURE CIVIL CONTEMPT	*R -CH. SL 99-0361	02-25-99	04-15-99
S 172	RAND	CLARIFY BLUE LIGHTS ILLEGAL	*R -CH. SL 99-0249	02-25-99	04-19-99
S 173	RAND	SPORTS CLUB ABC PERMITS	*H -RE-REF COM ON ALCOHOL	02-25-99	03-04-99
S 175=	HARTSELL	APPOINTMENT OF SUCCESSOR TRUSTEES	S -REF TO COM ON JUDICI	03-01-99	
S 176=	HARTSELL	SLAYER/FORFEITURE OF PROP. RIGHTS	*R -CH. SL 99-0296	03-01-99	04-19-99
S 177=	HARTSELL	SECURITIES TRANSFER ON DEATH	S -REF TO COM ON JUDICI	03-01-99	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY I Valid Through 25-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 178=	HARTSELL	UNIFORM PRUDENT INVESTOR ACT	*R -CH. SL 99-0215	03-01-99	03-24-99
S 193=	HARTSELL	AMEND PROFESSIONAL CORP ACT	S -REF TO COM ON JUDICI	03-01-99	
S 197=	COOPER	SAFE FAMILIES ACT	*R -CH. SL 99-0023	03-01-99	03-09-99
S 210=	HARTSELL	FORECLOSURE NOTICE	S -REF TO COM ON JUDICI	03-02-99	
S 236=	LUCAS	ADOPTION RECORDS AND REGISTRY	S -RE-REF COM ON CH&HUMRS	03-04-99	03-08-99
S 244=	HARTSELL	UNCLAIMED PROPERTY ACT	*R -CH. SL 99-0460	03-04-99	05-26-99
S 245=	HARTSELL	LETTERS OF CREDIT UCC REWRITE	*R -CH. SL 99-0073	03-04-99	04-19-99
S 246=	HARTSELL	APPEAL OR TRANSFER FROM CLERK	*R -CH. SL 99-0216	03-04-99	04-19-99
S 255	ALBERTSON	STATE AGENCY TELEPHONE MENUS	R -CH. SL 99-0429	03-08-99	03-29-99
S 272	ODOM	LOCAL PHOTO ENFORCEMENT	H -RE-REF COM ON FINANCE	03-08-99	03-24-99
S 288	REEVES	UNSOLICITED COMM. ELEC. BULK MAIL	*R -CH. SL 99-0212	03-08-99	04-12-99
S 292	BALLANCE	SUP. CT. CRIM. CASE DOCKETING	R -CH. SL 99-0428	03-08-99	04-28-99
S 297	CLODFELTER	LTD. PTRNERSP/PROF. LIABILITY CHANGE	*R -CH. SL 99-0362	03-08-99	04-21-99
S 303	RAND	INPATIENT COMMIT./CONDT'L RELEASE	S -REF TO COM ON JUDICI	03-09-99	
S 331	GARROU	AMEND SEX OFFENDER REGISTRY LAWS	*R -CH. SL 99-0363	03-11-99	04-22-99
S 336	ALLRAN	OMNIBUS ELECTION REFORM	S -REF TO COM ON JUDICI	03-11-99	
S 337	ALLRAN	DISCLOSURE OF PUSH POLLS	S -REF TO COM ON JUDICI	03-11-99	
S 339=	GULLEY W	SENTENCING SERVICES PROGRAM	S -REF TO COM ON JUDICI	03-15-99	
S 342=	RAND	ENHANCE CHILD SUPPORT ENFORCEMENT	S -RE-REF COM ON JUDICI	03-25-99	
S 370	BALLANCE	OSHA WITNESS STATEMENTS	*R -CH. SL 99-0364	03-15-99	04-22-99
S 409	HORTON	INDEPENDENT REDISTRICTING COMM.	S -REF TO COM ON JUDICI	03-18-99	
S 425=	CLODFELTER	ARREST WARRANTS/COPIES	S -REF TO COM ON JUDICI	03-18-99	
S 426	CLODFELTER	DISSENTERS' RIGHTS AMENDMENTS	R -CH. SL 99-0141	03-18-99	04-15-99
S 448	JORDAN	CRIMINAL IMPERSONATION	S -REF TO COM ON JUDICI	03-22-99	
S 452=	MARTIN W	STATE HOSPITALS/PEER REVIEW	S -REF TO COM ON JUDICI	03-22-99	
S 483	CLODFELTER	AMEND FOREIGN CORP. LAW	R -CH. SL 99-0151	03-24-99	04-15-99
S 501	JORDAN	WILMINGTON RED LIGHT CAMERAS	S -REF TO COM ON JUDICI	03-25-99	
S 527	HARTSELL	EMERGENCY TRAFFIC ORDINANCES	*R -CH. SL 99-0310	03-25-99	04-22-99
S 563=	DANNELLY	CHARLOTTE SCHOOL ZONE SPEED CAMERAS	*H -REF TO COM ON JUDICIV	03-29-99	04-12-99
S 579	JORDAN	CLERKS OF COURT AUTHORITY	S -REF TO COM ON JUDICI	03-29-99	

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COMMITTEE SUMMARY REPORT

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BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 590	ODOM	FALSE IMPERSONATION/IDENTITY FRAUD	S -REF TO COM ON JUDICI	03-29-99	
S 601	RAND	DOC PRISONERS' UNIFORMS	R -CH. SL 99-0109	03-29-99	04-19-99
S 637	RAND	EXP. ASSAULT-SCHOOL PERSONNEL	R -CH. SL 99-0105	03-30-99	04-22-99
S 652	GULLEY W	AMBULANCE SERVICE FRAUD/DURHAM	R -CH. SL 99-0064	03-30-99	04-07-99
S 654	GULLEY W	MANUFACTURED HOME LAW RESTORATION	*R -CH. SL 99-0278	03-31-99	04-19-99
S 656=	GULLEY W	SENT. COMMN/CRIM LAW CHANGES	S -REF TO COM ON JUDICI	03-30-99	
S 657=	GULLEY W	LIMITATION FOR PROD. LIABILITY ACTIO	S -REF TO COM ON JUDICI	03-30-99	
S 707	HOYLE	UPDATE CORPORATE CONVEYANCING	S -REF TO COM ON JUDICI	04-01-99	
S 711	ODOM	CORNELIUS PHOTO ENFORCEMENT	S -REF TO COM ON JUDICI	04-01-99	
S 746=	COOPER	STRUCTURED SETTLEMENT PROTECTION ACT	*R -CH. SL 99-0367	04-05-99	04-21-99
S 760=	GULLEY W	LOBBYIST FUNDRAISING/ONE-STOP VOTING	*H -RE-REF COM ON ELECLAW	04-05-99	00-06-21
S 761	WELLONS	UPDATE CORPORATE CONVEYANCING	*R -CH. SL 99-0221	04-05-99	04-22-99
S 769	FOXX	AMEND LARCENY OF GENSING	R -CH. SL 99-0107	04-06-99	04-21-99
S 770=	RAND	COMMUNITY MEDIATION CENTERS	S -REF TO COM ON JUDICI	04-06-99	
S 773	CLODFELTER	CLARIFY ANNEXATION REMAND	R -CH. SL 99-0148	04-07-99	04-22-99
S 774	CLODFELTER	ELECTRONIC PROXIES FOR NONPROFITS	*R -CH. SL 99-0139	04-07-99	04-19-99
S 775	CLODFELTER	ALLOW ELECTRONIC/TELEPHONIC PROXIES	*R -CH. SL 99-0138	04-07-99	04-19-99
S 788	CLODFELTER	NATURAL HERITAGE FUND/PRIVATE GRANTS	S -REF TO COM ON JUDICI	04-07-99	
S 789	SOLES	CHARITABLE NONPROFIT NOTICE	*R -CH. SL 99-0204	04-07-99	04-22-99
S 794	WELLONS	EXEMPT TOBACCO SETTLEMENT PAYMENTS	S -REF TO COM ON JUDICI	04-08-99	
S 800	RAND	EN BANC PROCEDURE	HF-POSTPONED INDEFINITELY	04-12-99	04-22-99
S 835	CLODFELTER	REVISE LAW GOVERNING MERGERS	*R -CH. SL 99-0369	04-12-99	04-26-99
S 837	ALLRAN	TORRENS REGISTRATION SYSTEM	S -REF TO COM ON JUDICI	04-13-99	
S 838	WELLONS	COMPENSATE FOR ERRONEOUS CONVICTION	S -REF TO COM ON JUDICI	04-13-99	
S 842	WELLONS	APA PETITIONS/SPECIAL NEEDS	S -REF TO COM ON JUDICI	04-13-99	
S 852	JORDAN	DRUG TREATMENT COURT AMENDMENTS	*R -CH. SL 99-0298	04-13-99	04-27-99
S 873	DALTON	IMPROVE REGISTERED DOCUMENTS	*S -RE-REF COM ON RULES &	04-13-99	07-07-99
S 881	**GULLEY W**	**CAMPAIGN REFORM ACT**	***R -CH. SL 99-0453**	**05-26-99**	**06-02-99**
S 882	GULLEY W	CLEAN ELECTION ACT	S -RE-REF COM ON JUDICI	06-15-99	
S 885	COOPER	STATE AUDITOR RECORDS ACCESS	R -CH. SL 99-0188	04-13-99	04-22-99

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COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: JUDICIARY I Valid Through 25-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 888	COOPER	DRUG LAW AMENDMENTS	*R -CH. SL 99-0370	04-13-99	04-22-99
S 897=	DALTON	SAFETY PROFESSIONALS	R -CH. SL 00-0110	04-14-99	06-29-99
S 901	WELLONS	APPOINTMENT OF JUVENILE COUNSEL	S -RE-REF COM ON APPROPR	04-14-99	04-26-99
S 902	WELLONS	JUVENILE TRANSFER TO SUPERIOR COURT	S -REF TO COM ON JUDICI	04-14-99	
S 907	COOPER	LIMIT CHILD'S ACCESS/COMPUTER PORN	S -RE-REF COM ON INFOTECH	04-14-99	04-15-99
S 908	ALBERTSON	REVISE UCC WAREHOUSE RECEIPTS	*HF-POSTPONED INDEFINITELY	04-14-99	04-28-99
S 909=	ALBERTSON	COTTON GINS, WAREHOUSES, MERCHANTS	S -REF TO COM ON JUDICI	04-14-99	
S 915=	RAND	TOBACCO RESERVE FUND/NONPART.MFG.	*R -CH. SL 99-0311	04-14-99	04-22-99
S 917	CARPENTER R	DWI SCREENING TEST ADMISSIBILITY	S -REF TO COM ON JUDICI	04-14-99	
S 918	COOPER	JUVENILE JUSTICE TECH. CORRECTIONS	S -REF TO COM ON JUDICI	04-14-99	
S 919	GARROU	CHILD ABUSE CHANGES	S -REF TO COM ON JUDICI	04-14-99	
S 926	KINNAIRD	DOT CONDEMNATION PROCEDURES	S -REF TO COM ON JUDICI	04-14-99	
S 936=	FORRESTER	PERMANENT REVOCATION HEARING	S -REF TO COM ON JUDICI	04-14-99	
S 963=	GULLEY W	LOCAL GOVT ABC PERMIT INVOLVEMENT	S -REF TO COM ON JUDICI	04-15-99	
S 969	GULLEY W	N.C. HEALTH AND WELLNESS TRUST FUND	*H -REF TO COM ON SLCTTB	04-15-99	06-23-99
S 973=	WEINSTEIN	REGULATE USED MOTOR VEHICLE PARTS	S -REF TO COM ON JUDICI	04-15-99	
S1005	HOYLE	YEAR 2000 LIABILITY LIMITATIONS	*R -CH. SL 99-0295	04-15-99	04-28-99
S1009=	HOYLE	JOURNALISTS' TESTIMONIAL PRIVILEGE	*R -CH. SL 99-0267	04-15-99	04-26-99
S1011=	COOPER	BULLET PROOF VEST/COMMIT FELONY	*R -CH. SL 99-0263	04-15-99	04-27-99
S1012	COOPER	MEDICAL MALPRACTICE PLEADINGS	*HF-FAILED 2ND READING	04-15-99	04-28-99
S1021	CLODFELTER	COMPUTERIZED EVIDENCE AMENDMENTS	R -CH. SL 99-0131	04-15-99	04-28-99
S1023=	CLODFELTER	EXPAND MAGISTRATES' AUTHORITY	S -REF TO COM ON JUDICI	04-15-99	
S1024=	**CLODFELTER**	**STATE JUDICIAL COUNCIL**	**S -REF TO COM ON JUDICI**	**04-15-99**	
S1025=	**CLODFELTER**	**REORG. SUP. CT. DIVISIONS/PILOT FUND**	***R -CH. SL 99-0396**	**04-15-99**	**06-23-99**
S1026=	**CLODFELTER**	**SUPREME COURT RULES MAKING/FUNDS**	***H -REF TO COM ON JUDICIV**	**04-15-99**	**06-22-99**
S1033=	CARPENTER R	RAISE STATE TORT CLAIMS CAP	S -REF TO COM ON JUDICI	04-15-99	
S1040=	RAND	HOSPITAL GOVERNING AUTHORITY	S -REF TO COM ON JUDICI	04-15-99	
S1041	RAND	DV ORDER VIOLATIONS	S -REF TO COM ON JUDICI	04-15-99	
S1045	RAND	INTERFERE WITH EMERGENCY CALLS	S -REF TO COM ON JUDICI	04-15-99	
S1055	WELLONS	CERTAIN COURT REPORT SERVICES	*R -CH. SL 99-0264	04-15-99	04-28-99

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S1058	CLODFELTER	GENERAL CONTRACTORS LICENSURE	*R -CH. SL 99-0427	04-15-99	04-27-99
S1063	METCALF	CAMPAIGN STANDARDS	S -REF TO COM ON JUDICI	04-15-99	
S1065	RAND	AMEND IMPEACHMENT EVIDENCE RULE	S -REF TO COM ON JUDICI	04-15-99	
S1068	RAND	MCGRUFF CRIM.BACKGD. CHECKS	*R -CH. SL 99-0214	04-15-99	04-26-99
S1069	RAND	CRIMINAL IMPERSONATION-2	S -REF TO COM ON JUDICI	04-15-99	
S1072	RAND	IDENTITY THEFT	S -REF TO COM ON JUDICI	04-15-99	
S1073=	RAND	PROS. DISCRETION/CAPITAL SENTENCING	S -REF TO COM ON JUDICI	04-15-99	
S1119	LUCAS	PERFUSIONIST LICENSURE	S -RE-REF COM ON HLTHCARE	04-15-99	05-11-99
S1125=	EAST	MOTORCYCLE SAFETY ACT	S -REF TO COM ON JUDICI	04-15-99	
S1145	RAND	HARASSING COMMUNICATIONS	S -REF TO COM ON JUDICI	04-15-99	
S1146	RAND	AMEND SECRET PEEPING	S -REF TO COM ON JUDICI	04-15-99	
S1147	RAND	AMEND STALKING LAW	S -REF TO COM ON JUDICI	04-15-99	
S1149=	COOPER	PROHIBIT PREDATORY LENDING	*R -CH. SL 99-0332	04-15-99	06-16-99
S1154	RAND	AMEND ASSAULT INFL. SERIOUS INJURY	S -REF TO COM ON JUDICI	04-15-99	
S1192=	RAND	CRIM. RECORD CHECKS/LONG-TERM CARE	*S -PRES. TO GOV. 07-13	00-05-10	00-06-27
S1211=	ODOM	SERVICE IN DMW LIEN CASES	S -REF TO COM ON JUDICI	00-05-11	
S1213=	BALLANTINE	ADVERSE WEATHER COURT CLOSING	S -REF TO COM ON JUDICI	00-05-11	
S1269=	WARREN E	LIMIT LIABILITY/DEFIBRILLATOR	*R -CH. SL 00-0113	00-05-17	00-05-18
S1275=	JORDAN	EXTEND BILLBOARD MORATORIUM	R -CH. SL 00-0101	00-05-17	00-06-28
S1290	CLODFELTER	ELECTION BOARD CONDUCT	*R -CH. SL 00-0114	00-05-31	00-06-27
S1298=	WELLONS	CLARIFY JUVENILE PROCEDURES	S -REF TO COM ON JUDICI	00-05-18	
S1299=	HARTSELL	CODIFY TEMP. RULE EXCEPTIONS	S -REF TO COM ON JUDICI	00-05-18	
S1305=	HARTSELL	REVISE ARTICLE 9 OF UCC	S -PRES. TO GOV. 07-10	00-05-18	00-06-20
S1324=	WELLONS	EXTERNAL REVIEW/MANAGED CARE	S -REF TO COM ON JUDICI	00-06-14	
S1325=	WELLONS	HMO INSOLVENCY	S -REF TO COM ON JUDICI	00-06-14	
S1326=	WELLONS	HMO PATIENT PROTECTION ACT	S -REF TO COM ON JUDICI	00-06-14	
S1327=	WELLONS	"PROMPT PAY/PATIENT PROTECTION"	S -REF TO COM ON JUDICI	00-06-14	
S1335	HARTSELL	2000 TECHNICAL CORRECTIONS	*R -CH. SL 00-0140	00-05-18	00-07-06
S1436	COOPER	DISTRICT ATTY/PUBLIC DEFENDER SALARI	S -REF TO COM ON JUDICI	00-05-25	
S1462=	COOPER	ESTABLISH JUVENILE DEPARTMENT	S -REF TO COM ON JUDICI	00-05-25	

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.
BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium | SENATE: JUDICIARY I | Valid Through 25-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S1483	HOYLE	LOCAL OPTION ELDERLY TAX RELIEF	S -REF TO COM ON JUDICI	00-05-25	
S1484	HOYLE	LOCAL OPTION HOMESTEAD RELIEF	HF-POSTPONED INDEFINITELY	00-05-25	00-06-20

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.
BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

SENATE JUDICIARY I COMMITTEE
INDEX OF BILLS
2000

Bill Number	Short Title	Date Heard
Senate Bill 760	Lobbyist Fundraising/One-Stop Voting	6/20/00
Senate Bill 1125	Motorcycle Safety Act	5/23/00
Senate Bill 1192	Criminal Record Checks/ Long-Term Care	6/22/00
Senate Bill 1290	Election Board Conduct	6/15/00
Senate Bill 1290	Election Board Conduct	6/27/00
Senate Bill 1305	Revise Article 9 of UCC	6/15/00
Senate Bill 1305	Revise Article 9 of UCC	6/20/00
Senate Bill 1335	2000 Technical Corrections	7/05/00
Senate Bill 1483	Local Option Elderly Tax Relief	6/20/00
Senate Bill 1484	Local Option Homestead Relief	6/20/00
House Bill 813	Prohibit Cyberstalking	5/23/00
House Bill 813	Prohibit Cyberstalking	6/22/00
House Bill 1026	Liability to Sales Reps	6/27/00
House Bill 1502	Adverse Weather Court Closing	7/05/00
House Bill 1804	Establish Juvenile Department	7/05/00
House Bill 1804	Establish Juvenile Department	7/11/00

MINUTES
SENATE JUDICIARY I COMMITTEE
MAY 23, 2000

The Senate Judiciary I Committee met on May 23, 2000 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and welcomed members and guests to the first meeting of the Judiciary I Committee for the short session.

Representative Hensley was recognized to explain **House Bill 813** – AN ACT TO MAKE CYBERSTALKING A CRIMINAL OFFENSE AND TO PERMIT DOMESTIC VIOLENCE ABUSER TREATMENT A SPECIAL CONDITION OF PROBATION IN CERTAIN CRIMINAL CASES.

Senator Clodfelter moved to adopt a Proposed Committee Substitute for House Bill 813 for discussion. The motion carried by a majority voice vote.

Senator Soles moved to amend the Proposed Committee Substitute on Page 2, Line 7 and Page 2, Line 21 (in 2 separate places). (Amendment is attached.) The motion carried by a majority voice vote.

After further discussion, Senator Cooper assigned the Proposed Committee Substitute to a subcommittee to be chaired by Senator Clodfelter. Two additional members will be appointed.

Senator East was recognized to explain **Senate Bill 1125** – AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES AND TO INCREASE THE TAX ON PRIVATE MOTORCYCLE REGISTRATIONS THAT IS USED TO PROVIDE FUNDS FOR MOTORCYCLE SAFETY PROGRAMS.

Representative Baker, sponsor of House Bill 1203 (identical bill to SB 1125), was recognized to comment on the bill.

The following people were recognized to speak on the bill:

Joy Barbour, Fayetteville, member of ABATE
David McGowan, Greenville, a motorcycle rider and owner
Don Reinfert, with the UNC Highway Safety Research Center

Due to time constraints, Senate Bill 1125 will be brought back to the Committee for discussion at a future date.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 813 3rd Edition

SHORT TITLE: Prohibit Cyberstalking

SPONSOR(S): Rep. Hensley

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available (X)**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES	May be a significant fiscal impact on the courts. No estimate available.				
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch, Department of Correction.

EFFECTIVE DATE: December 1, 1999 and applies to offenses committed on or after that date.

BILL SUMMARY:

PROHIBIT CYBERSTALKING. TO MAKE CYBERSTALKING A CRIMINAL OFFENSE. Criminalizes (1) the use of electronic mail or other electronic communications with the intent to harass, threaten, annoy, terrify, defame or embarrass anyone, and (2) the introduction of any computer virus into electronic mail or electronic communication. Makes offense (1) above a Class 1 misdemeanor, or Class A1 misdemeanor for recidivists or persons under court order to refrain from contact with the victim. Makes offense (2) a Class H felony. Establishes locus of the crime as where the electronic mail or communication was originally sent, received, or first viewed by any person. Excludes peaceable, nonviolent or nonthreatening activity intended to express political views, to provide lawful information to others, or that is otherwise constitutionally protected. Permits providers of electronic mail and communications services to give information or conduct surveillance with a court order.
Source: Institute of Government, Daily Bulletin, April 1, 1999.

PROHIBIT CYBERSTALKING. Intro. 4/1/99. House committee substitute makes the following changes to 1st edition. Redefines virus as a program or set of instructions including a virus,

Trojan horse, boot sector, macro, logic bomb, worm, or hoax, the purpose of which is to replicate itself and to destroy, damage, or infect software or hardware designed to transmit or receive electronic mail or electronic communication.
Source: Institute of Government, Daily Bulletin, April 19, 1999.

ASSUMPTIONS AND METHODOLOGY:

The bill would make it unlawful for anyone to use e-mail or other electronic device with the intent to harass or annoy a person. A first offense would be a Class 1 misdemeanor unless there is an court order in effect that prohibits the defendant from contacting the victim in which case it would be a Class A1 misdemeanor. Defendants charged with a second or subsequent violation also would be charged as a Class A1 misdemeanor. Defendants charged with intentionally introducing a damaging computer virus would be charged with a Class H felony.

Judicial Branch

According to the Administrative Office of the Courts (AOC), a substantial impact is anticipated from the potentially high number of misdemeanor cases. Electronic communication with the intent to harass, threaten, annoy, terrify, defame, or embarrass any person could be quite prevalent. While the AOC has no means of estimating the frequency with which these offenses would be charged, it is conceivable that the misdemeanor offenses could be charged with great frequency. Other than some threats or violations of court orders that are charged under current law, these offenses would represent new cases to the court system and would have a significant cost. The felony charges are anticipated to be infrequent and therefore not expected to have a significant fiscal impact. The Fiscal Research Division agrees that there is the potential for numerous misdemeanor cases and therefore the likelihood of a significant fiscal impact on the courts.

Department of Correction

Because the misdemeanor offenses for harassing a person using e-mail would be a new offense, there is no information available on the number of offenders that would be charged and convicted. However, under G. S. 14-196 Harassing and Threatening Phone Calls, there were 759 convictions in fiscal 1997-98. If there were 400 offenders convicted of Class 1 Cyberstalking, there would be approximately 29 active prison sentences per year which would produce 10 full time equivalent inmates the first year and a total of 13 the second year from both direct admissions and probation revocations. Statewide, there would also be approximately 141 active jail sentences per year which would require an additional 12 jail beds the first year and 16 total in the second year.

If there were 30 additional convictions per year for the Class A1 misdemeanor for additional violations or when there is a court order, approximately three offenders would receive an active prison sentence of 4.6 months. There would be an additional need for one full time inmate equivalent in the first year and seven total in the second year.

It is unknown how many convictions would result from the new offense of intentionally introducing a computer virus through e-mail. However, under G.S. 14-454 Accessing Computers under (c) it is unlawful to access a computer and includes "introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network." Under this code, there were six convictions. If there are 10 convictions for the new offense, there would be approximately three offenders who would receive an active prison sentence of 8.3 months. This would create two additional full time equivalent inmates the first year and a total of four by the second year including probation revocations.

Since there is no reliable estimate available on the additional number of convictions under the new offenses, the Fiscal Research Division is unable to provide an estimate of the fiscal impact. However, there is no direct fiscal impact resulting from the passage of this bill because any additional beds of this magnitude and their associated costs can be absorbed within the DOC's existing resources.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Tammy Lester

APPROVED BY: Tom Covington

DATE: Monday, April 26, 1999

REVISED

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

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

DATE: Tuesday, May 23, 2000
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 1125	Motorcycle Safety Act	East
HB 813	Prohibit Cyberstalking	Hensley

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - May 23, 2000

SB 1125	Motorcycle Safety Act	East
HB 813	Prohibit Cyberstalking	Hensley

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

H813-CSRU-001
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 813
Committee Substitute Favorable 4/19/99
Committee Substitute #2 Favorable 4/22/99

THIS IS A DRAFT 22-MAY-00 22:13:41
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Prohibit Cyberstalking/Dom. Viol. Treatment. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CYBERSTALKING A CRIMINAL OFFENSE AND TO PERMIT DOMESTIC VIOLENCE ABUSER TREATMENT A SPECIAL CONDITION OF PROBATION IN CERTAIN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

Section 1. Article 35 of Chapter 14 is amended by adding a new section to read:

"**§ 14-277.5. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. -- Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. -- The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular

telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Harass. -- A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes that person and that serves no legitimate purpose.

(4) Provider. -- A provider of electronic mail or electronic communication or the provider's officer, employee, agent, landlord, custodian, or designee.

(5) Virus. -- A program or set of instructions including, but not limited to, a virus, Trojan horse, boot sector, macro, logic bomb, worm, or hoax, the purpose of which is to replicate itself and to destroy, damage, or infect software or hardware designed to transmit or receive electronic mail or electronic communication.

(b) It is unlawful for a person to use electronic mail or electronic communication with the intent to harass, threaten, annoy, terrify, defame, or embarrass any person. A first offense under this subsection is a Class 1 misdemeanor; however, a first offense under this subsection is a Class A1 misdemeanor if there is in effect at the time of the offense a temporary restraining order, injunction, or other court order prohibiting the defendant from contact with the victim. A second or subsequent offense under this subsection is a Class A1 misdemeanor.

(c) It is unlawful for a person to use electronic mail or electronic communication to intentionally introduce a virus into electronic mail or electronic communication. An offense under this subsection is a Class H felony.

(d) Any offense committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, or assembly.

(f) It is not an offense for a provider to provide information, facilities, or technical assistance to persons authorized by federal or State law to intercept or provide

electronic mail or electronic communication or to conduct electronic mail or electronic communication surveillance, if the provider has been provided with a court order signed by the authorizing judge directing the provision of information, facilities, or technical assistance."

Section 2. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of residential treatment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), pursuant to G.S. 15A-1343.1, for a minimum of 90 days or a maximum of 120 days and abide by all rules and regulations of that program. This condition may also include a period of supervision through the Post-Boot Camp Probation Program.

(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of

vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of

Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(9a) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) the program is available within a reasonable distance of the defendant's residence and is approved by the Department of Administration.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

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

HOUSE BILL 813:
Prohibit Cyberstalking

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Hensley
Date:	May 23, 2000	**Summary by:**	O. Walker Reagan
Version:	PCS for 3rd Edition		Committee Co-Counsel
	H813-SMRU-001		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 813 creates the criminal offense of "cyberstalking", making it unlawful to use electronic communications to harass or threaten a person, or to introduce a virus into electronic communications. The bill also permits as a special condition of probation that a person guilt of domestic violence may be required to attend an abuser treatment program approved by the Department of Administration.***

CURRENT LAW: There are existing criminal provisions relating to similar behavior. G. S. 14-277.1 makes communicating a threat – orally, in writing or by any other means -- a Class 1 misdemeanor. Under G.S. 14-196, it is a Class 2 misdemeanor to use profane, indecent or threatening language to any person over the telephone or to annoy or harass a person by repeated telephoning or making false statements over the phone. Under 14-394, it is a Class 1 misdemeanor to write and send any letter without signing one's true name which threatens injury or violence, uses vulgar or obscene language, or which would disgrace any person if published. G.S. 50B-3(12) currently allows the court in a civil domestic violence action to order abuser treatment at an approved treatment program. There is currently no similar provision in criminal cases.

BILL ANALYSIS: Section 1 of the Proposed Senate Committee Substitute for House Bill 813 creates two new criminal offenses related to the use of electronic mail and electronic communication. The bill would make it a Class 1 misdemeanor (for a first offense) to use electronic mail or electronic communication with the intent to harass, threaten, annoy, terrify, defame or embarrass any person. Assuming the defendant has no prior convictions, a Class 1 misdemeanor is punishable by 1-45 days community punishment. Community punishment may consist of a fine only; the amount of the fine for a Class 1 misdemeanor is in the discretion of the judge. Any second or subsequent offense would be a Class A1 misdemeanor. The offense would also be a Class A1 misdemeanor when a temporary restraining order, injunction, or court order prohibiting the defendant from contact with the victim is in effect at the time of the offense. Assuming the defendant has from 1-4 prior convictions, a Class A1 misdemeanor is punishable by up to 75 days community, intermediate, or active punishment and/or a fine in the discretion of the judge.

The bill also makes it a Class H felony for any person to introduce a computer virus into electronic mail or electronic communication. Assuming the defendant has no prior record, the presumptive minimum sentence for a Class H felony is 5-6 months community, intermediate, or active punishment.

The bill provides that an offense is committed where the electronic mail or communication was originally sent, received, or first viewed by any person. Peaceable, nonviolent or nonthreatening activity intended to express political views, to provide lawful information to others, or that is otherwise constitutionally protected is specifically excluded and does not constitute a criminal offense. In compliance with a signed court order, the provider of electronic mail or electronic communication may give information or assistance to authorized persons to conduct electronic surveillance.

Section 2 of the bill amends the probation statute to permit as a special condition of probation that a judge may order the defendant to attend and complete an abuser treatment program approved by the Department of Administration, if the court finds that the defendant was responsible for the acts of domestic violence and a suitable program is located within a reasonable distance of the defendant's residence.

The act would take effect December 1, 2000, and would apply to offenses committed on or after that date.

This summary was substantially contributed to by Brenda Carter, Counsel to the House Technology Committee and Robin Johnson, Co-counsel to the House Judiciary II Committee.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5-23-00

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

COMMITTEE SUBSTITUTE _____

~~Rep.~~) SOLES
Sen.)

1 moves to amend the bill on page 2, line 7
2 ( ) WHICH CHANGES THE TITLE
3 by DELETING THE WORD "ANNOYS," ; AND
4
5 ON PAGE 2, LINE 21
6 BY DELETING THE WORD "ANNOY," ; AND
7
8 ON PAGE 2, LINE 21
9 BY DELETING THE WORDS "DEFAME, OR EMBARRASS"
10 AND SUBSTITUTING THE WORDS "OR DEFAME".
11
12
13
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 813 3rd Edition

SHORT TITLE: Prohibit Cyberstalking

SPONSOR(S): Rep. Hensley

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available (X)**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES	May be a significant fiscal impact on the courts. No estimate available.				
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch, Department of Correction.

EFFECTIVE DATE: December 1, 1999 and applies to offenses committed on or after that date.

BILL SUMMARY:

PROHIBIT CYBERSTALKING. TO MAKE CYBERSTALKING A CRIMINAL OFFENSE. Criminalizes (1) the use of electronic mail or other electronic communications with the intent to harass, threaten, annoy, terrify, defame or embarrass anyone, and (2) the introduction of any computer virus into electronic mail or electronic communication. Makes offense (1) above a Class 1 misdemeanor, or Class A1 misdemeanor for recidivists or persons under court order to refrain from contact with the victim. Makes offense (2) a Class H felony. Establishes locus of the crime as where the electronic mail or communication was originally sent, received, or first viewed by any person. Excludes peaceable, nonviolent or nonthreatening activity intended to express political views, to provide lawful information to others, or that is otherwise constitutionally protected. Permits providers of electronic mail and communications services to give information or conduct surveillance with a court order.
Source: Institute of Government, Daily Bulletin, April 1, 1999.

PROHIBIT CYBERSTALKING. Intro. 4/1/99. House committee substitute makes the following changes to 1st edition. Redefines virus as a program or set of instructions including a virus,

Trojan horse, boot sector, macro, logic bomb, worm, or hoax, the purpose of which is to replicate itself and to destroy, damage, or infect software or hardware designed to transmit or receive electronic mail or electronic communication.
Source: Institute of Government, Daily Bulletin, April 19, 1999.

ASSUMPTIONS AND METHODOLOGY:

The bill would make it unlawful for anyone to use e-mail or other electronic device with the intent to harass or annoy a person. A first offense would be a Class 1 misdemeanor unless there is an court order in effect that prohibits the defendant from contacting the victim in which case it would be a Class A1 misdemeanor. Defendants charged with a second or subsequent violation also would be charged as a Class A1 misdemeanor. Defendants charged with intentionally introducing a damaging computer virus would be charged with a Class H felony.

Judicial Branch

According to the Administrative Office of the Courts (AOC), a substantial impact is anticipated from the potentially high number of misdemeanor cases. Electronic communication with the intent to harass, threaten, annoy, terrify, defame, or embarrass any person could be quite prevalent. While the AOC has no means of estimating the frequency with which these offenses would be charged, it is conceivable that the misdemeanor offenses could be charged with great frequency. Other than some threats or violations of court orders that are charged under current law, these offenses would represent new cases to the court system and would have a significant cost. The felony charges are anticipated to be infrequent and therefore not expected to have a significant fiscal impact. The Fiscal Research Division agrees that there is the potential for numerous misdemeanor cases and therefore the likelihood of a significant fiscal impact on the courts.

Department of Correction

Because the misdemeanor offenses for harassing a person using e-mail would be a new offense, there is no information available on the number of offenders that would be charged and convicted. However, under G. S. 14-196 Harassing and Threatening Phone Calls, there were 759 convictions in fiscal 1997-98. If there were 400 offenders convicted of Class 1 Cyberstalking, there would be approximately 29 active prison sentences per year which would produce 10 full time equivalent inmates the first year and a total of 13 the second year from both direct admissions and probation revocations. Statewide, there would also be approximately 141 active jail sentences per year which would require an additional 12 jail beds the first year and 16 total in the second year.

If there were 30 additional convictions per year for the Class A1 misdemeanor for additional violations or when there is a court order, approximately three offenders would receive an active prison sentence of 4.6 months. There would be an additional need for one full time inmate equivalent in the first year and seven total in the second year.

It is unknown how many convictions would result from the new offense of intentionally introducing a computer virus through e-mail. However, under G.S. 14-454 Accessing Computers under (c) it is unlawful to access a computer and includes "introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network." Under this code, there were six convictions. If there are 10 convictions for the new offense, there would be approximately three offenders who would receive an active prison sentence of 8.3 months. This would create two additional full time equivalent inmates the first year and a total of four by the second year including probation revocations.

Since there is no reliable estimate available on the additional number of convictions under the new offenses, the Fiscal Research Division is unable to provide an estimate of the fiscal impact. However, there is no direct fiscal impact resulting from the passage of this bill because any additional beds of this magnitude and their associated costs can be absorbed within the DOC's existing resources.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Tammy Lester

APPROVED BY: Tom Covington

DATE: Monday, April 26, 1999

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 813: PROHIBIT CYBERSTALKING
(G.S. 14-277.5)

DATA ANALYSIS:

G.S. 14-275 - Cyberstalking

This bill creates a new offense entitled cyberstalking, G.S. 14-277.5.

Subsection (b)(1)
This subsection would make it unlawful for anyone to use email with the intent to harass any person. A first time violation of this subsection would be punishable as a Class 1 misdemeanor except where, at the time of the offense, there is an order in effect prohibiting the defendant from contacting the victim. In such cases, a violation of this subsection would be a Class A1 misdemeanor. All second and subsequent violations of this subsection would be treated as Class A1 misdemeanors.

This is a new offense for which there is no information available on the number of offenders who would be convicted each year. If there were 400 offenders convicted of Class 1 Cyberstalking, there would be approximately 29 active prison sentences per year which would require an additional 10 prison beds the first year. By the second year, probation revocations would likely add an additional three prison beds (for a total of 13 prison beds per year). There would also be approximately 141 active jail sentences per year which would require an additional 12 jail beds the first year. By the second year, probation revocations would likely add an additional three jail beds (for a total of 16 jail beds per year).

If there are 30 additional convictions per year for this offense that are sentenced as A1 convictions, approximately three offenders would receive an active prison sentence of 4.6 months. This would require one additional prison bed the first year. By the second year, probation revocations would likely add an additional six prison beds (for a total of seven prison beds per year). No additional jail beds would be added from these A1 offenses. These estimates are based on the AOC and DOC FY 97/98 databases.

G.S. 14-196, Harassing and Threatening Phone Calls is a similar offense that is a Class 2 misdemeanor. There were 759 convictions for this offense in FY 97/98.

Subsection (b)(2)

This subsection would make it unlawful for anyone to introduce into email any virus or other program designed to damage a system that transmits or receives email. A violation of subsection (b)(2) would be punishable as a Class H felony. This is similar to G.S. 14-454 which includes "introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network".

There were three offenders convicted of the felony level of this offense and three offenders convicted of the misdemeanor level of this offense. The proposed legislation is specifically directed toward using email to commit such offenses.

If, for example, this proposed legislation adds 10 new convictions, there would be approximately three offenders who would receive an active prison sentence of 8.3 months which would require approximately two additional prison beds the first year. By the second year, probation revocations would likely add an additional two prison beds (for a total of four prison beds per year).

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Raleigh, NC 27602

May 22, 2000

TO: Sen. Cooper and Rep. Hensley

FR: Anne R. Winner

RE: Comm. Sub. HB 813: Prohibit Cyberstalking

The N.C. Coalition Against Domestic Violence and the Governor's Commission on Domestic Violence are requesting that language be attached to HB 813: Prohibit Cyberstalking, to assure that those found guilty of domestic violence in criminal court and who are referred to an abuser treatment program are referred to a Council for Women approved program. Currently abusers convicted in criminal court can be referred to treatment programs that use counterproductive methods that can literally cause more harm than good. This amendment to the probation statute, NCGS §15A-1343, is necessary to require judges to refer abusers to an approved program as the vast majority of referrals (estimated 90%) are from criminal court. Identical language already appears in chapter 50B for referrals to abuser treatment programs in civil domestic violence matters. N.C.G.S. § 50B-3 (12).

Efforts are underway by the Council for Women to set standards in North Carolina that are in accordance with the "Duluth Model" of abuser treatment. The Duluth program has had up to 40% success rate with abusers and focuses on education and behavioral change. This is the most successful model known. Sen. Perdue will file a bill this session that gives the Department of Administration temporary rulemaking authority to adopt these standards and give the Council for Women more discretion to determine which programs are approved or removed from their list.

The nexis of the abuser treatment language to the cyberstalking bill is that these electronic methods of stalking are often used in domestic violence cases.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1125*

Short Title: Motorcycle Safety Act. (Public)

Sponsors: Senator East.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES AND TO INCREASE THE TAX ON PRIVATE MOTORCYCLE REGISTRATIONS THAT IS USED TO PROVIDE FUNDS FOR MOTORCYCLE SAFETY PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-140.4(a) reads as rewritten:

"(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.

(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor ~~Vehicles.~~ Vehicles, except that:

a. If the operator is 21 years of age or older and has had a motorcycle license or a motorcycle endorsement for more than 12 months, then the operator may operate the motorcycle without a helmet; and

b. If the operator is allowed to operate a motorcycle without a helmet pursuant to sub-subdivision a. of this subdivision and the passenger is 21 years of age or older, then the passenger may ride without a helmet."

Section 2. G.S. 20-87(6) reads as rewritten:

"**§ 20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

. . .

(6) Private Motorcycles. -- The base tax on private passenger motorcycles shall be nine dollars ($9.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base tax shall be sixteen dollars ($16.00). A tax of ~~three dollars ($3.00)~~ five dollars ($5.00) is imposed on each private motorcycle registered under this subdivision in addition to the base tax. The revenue from the additional tax shall be deposited in the General ~~Fund.~~ Fund and shall be used to fund the Motorcycle Safety Instruction Program established pursuant to G.S. 115D-72."

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

SENATE BILL 1125:
Motorcycle Safety Act.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator East
Date:	May 23, 2000	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 1125 eliminates the requirement for motorcycle operators and passengers, age 21 or older, to wear safety helmets. The bill also increases the private motorcycle registration tax from $3 to $5 per year and directs that these taxes be used for the Motorcycle Safety Instruction Program.***

CURRENT LAW: G.S. 20-140.4(a) requires that the operator and passenger on a motorcycle, regardless of age, wear a safety helmet of a type approved by the Commissioner of Motor Vehicles. G.S. 20-87 requires that a tax be imposed on each private motorcycle registered in addition to the base tax, a registration tax of $3 per year. The requirements for a motorcycle license and motorcycle endorsement are set forth in G.S. 20-7(a1) and (a2), a copy of which is attached.

BILL ANALYSIS: Section 1 of the bill would amend G.S. 20-140.4(a) to permit the operator of a motorcycle, 21 years of age or older, who has had a motorcycle license or motorcycle endorsement for more than 12 months, to operate the motorcycle without a helmet. The bill also permits the passenger, 21 years of age or older, to ride a motorcycle without a helmet when the operator is not required to wear a helmet. Persons under the age of 21 and persons who have not have a motorcycle license or motorcycle endorsement for more than 12 months would still be required to wear an approved helmet as would passengers on motorcycles operated by these persons.

Section 2 of the bill increases the private motorcycle registration tax from $3 to $5 a year and directs that the funds from the motorcycle registration tax be used to fund the Motorcycle Safety Instruction Program offered by the Community College System.

EFFECTIVE DATE: The current effective date in the bill of October 1, 1999 needs to be amended, probably to October 1, 2000.

G.S. 20-7 Issuance and renewal of drivers licenses.

.....

(a1) Motorcycles and Mopeds. - To drive a motorcycle, a person shall have:

(1) A full provisional license with a motorcycle learner's permit;

(2) A regular drivers license with a motorcycle learner's permit; or

(3) Either:

a. A full provisional license; or

b. A regular drivers license, with a motorcycle endorsement.

Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit.

To obtain a motorcycle endorsement, a person shall demonstrate competence to drive a motorcycle by:

(1) Passing a road test;

(2) Passing a written or oral test concerning motorcycles; and

(3) Paying the fee for a motorcycle endorsement.

Neither a drivers license nor a motorcycle endorsement is required to drive a moped.

(a2) Motorcycle Learner's Permit. - The following persons are eligible for a motorcycle learner's permit:

(1) A person who is at least 16 years old but less than 18 years old and has a full provisional license issued by the Division.

(2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant shall pass a vision test, a road sign test, and a written test specified by the Division. A motorcycle learner's permit expires 18 months after it is issued. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit.

L

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1125 (First Edition)

SHORT TITLE: Motorcycle Safety Act

SPONSOR(S): **Senator East**

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund	**$182,152***	**$182,152**	**$182,152**	**$182,152**	**$182,152**
EXPENDITURES					
General Fund					
Community Colleges	**$182,152***	**$182,152**	**$182,152**	**$182,152**	**$182,152**
Highway Fund	$18,400				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: DOT Division of Motor Vehicles, Department of Community Colleges

EFFECTIVE DATE: October 1, 1999*

*See Technical Considerations

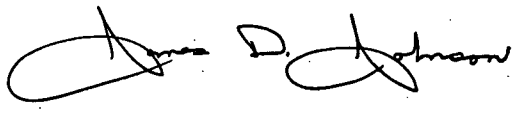
BILL SUMMARY: Modifies the requirement for the use of helmets by operators and passengers on motorcycles and increases the tax on private motorcycle registrations that is used to provide funds for motorcycle safety courses at Community Colleges.

ASSUMPTIONS AND METHODOLOGY: There are 91,076 licensed motorcycles in the State. This bill would amend G.S. 20-87(6), to increase the annual tax imposed on each private motorcycle from $3.00 to $5.00. The increased annual revenues to the General Fund would be 91,076 multiplied by the increased tax per motorcycle of $2.00 per year for an annual total of $182,152. The additional funds would be used to fund the Motorcycle Safety Instruction Program established pursuant to G.S. 115D-72. (There is also a base tax on motorcycles of $9.00 per year that goes to the Highway Fund.)

DMV notes that several computer programs of the State Titling and Registration System (STARS) must be revised to implement this change. DMV estimates the cost of this programming at $18,400, based on 160 hours of programming at $100 per hour plus ITS charges.
TECHNICAL CONSIDERATIONS: The effective date of SB 1125 (First Edition) is October 1, 1999. If the effective date is amended to October 1, 2000, the General Fund revenue increase and the amount available for the motorcycle safety program for FY 2000-01 would be three quarters of the amount shown above for FY2000-01, or $136,614.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Bob Weiss

APPROVED BY: James D. Johnson



DATE: May 16, 2000

NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

H. Martin Lancaster, President

May 22, 2000

MEMORANDUM

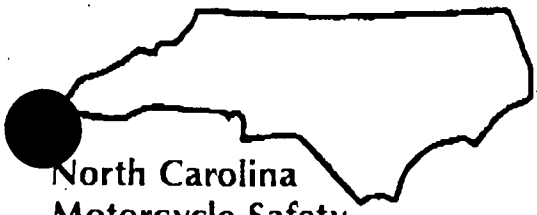
TO: Judiciary 1 (J-1) Committee

FROM: Charles E. Meacham

SUBJECT: SB-1125 (Helmet Repeal)

Due to scheduling conflicts, the North Carolina Community College System Office (NCCCS) will not be represented at the meeting on Tuesday, May 23, 2000. However, the packets that have been provided reflect the position of the NCCCS on this issue.

MAILING ADDRESS: 5020 MAIL SERVICE CENTER ~ RALEIGH, NC 27699-5020
Street Address: 200 West Jones ~ Raleigh, NC 27603-1379 ~ 919-733-7051 ~ Fax 919-733-0680
AN EQUAL OPPORTUNITY EMPLOYER



North Carolina
Motorcycle Safety
Education Program

Lenoir Community College
602 West Harper Street • Snow Hill, N.C. 28580
(252) 747-7093 • Fax: (252) 747-8063 • 800-428-7433 (in NC)

May 11, 2000

Charles E. Meacham
Program Coordinator
Engineering/Transporation Technologies
The North Carolina Community College System
200 West Jones Street
Raleigh, NC 27603-1379

Dear Eldon:

Once again I am writing to address the issue of a new Bill presented to the North Carolina Legislative Body regarding the modification of the motorcycle helmet law. It is our understanding that part of this Bill is requesting additional funding for North Carolina Motorcycle Safety Education Program.

Although we appreciate anyone's effort to help support our program because of its value to the safety of the citizens of North Carolina, I would like to clarify the fact that the North Carolina Motorcycle Safety Education Program operates under the guidelines of the Motorcycle Safety Foundation. These guidelines require that all students wear helmets at any time they are on a motorcycle during the course and also recommends the use of DOT approved helmets anytime while riding. These requirements and recommendations are based on accident data surveys that show unhelmented riders increase their risk of injury or death by as much as 500%. As an educational program we agree with the statement that safety education and protective riding gear is a key in the reduction of accidents and injuries among motorcyclists.

We fully respect any individual or organization's right to promote or oppose any Legislation in the state of North Carolina, but as an educational program under the North Carolina Community College System, it is our policy to not take a political stance on such issues.

Thank you for your support of the North Carolina Motorcycle Safety Education Program and of our continued success in providing quality training for motorcyclists.

Sincerely,

John Stokes, Director
North Carolina Motorcycle Safety Education Program
JS:cp

NORTH CAROLINA
MOTORCYCLE SAFETY EDUCATION PROGRAM

BACKGROUND INFORMATION
March 22, 2000

Introduction

The North Carolina Motorcycle Safety Education Program (NCMSEP) is a program of the North Carolina Community College System (NCCCS). The staff consists of a Project Director, a Communication/Maintenance Specialist, and an Administrative Assistant.

The NCMSEP is currently funded by a three-dollar addition to each motorcycle registration fee per General Statute 115-72 and 20-87(6). There are no general tax revenue dollars involved. The program establishes training locations near the majority of the residents requesting the training so their travel is less than fifty miles. Colleges offer the program through the continuing education division. The instructors are hired by the Colleges to schedule and teach the classes. Curriculum matters are the responsibility of the Project Director.

NCMSEP and Motorcycle Safety Foundation (MSF) standards require that two instructors must be available during riding training if there are seven to twelve students in the class. The NCMSEP pays an instructor at each location to act as **lead** instructor. The lead instructor helps the sponsoring College with the daily management of the program at the College. Some Colleges leave the class scheduling and instructor scheduling to the lead instructor. This instructor is also an on-site representative of the Project Director and insures that NCMSEP policies are followed. Some Colleges hire an assistant lead instructor so that the sponsoring College can run two locations from the same sponsoring College.

The standard training range is 260' x 160'. This range will accommodate twelve riders. MSF guidelines dictate that some modifications can occur. Markings are mostly four inch circles and squares used to identify the location of cones.

The NCMSEP offers the basic Motorcycle Rider Course: Riding and Street Skills (MRC:RSS), the Experienced Rider Course (ERC), and the Instructor Preparation Course (IPC). The curriculum adopted was developed by the MSF.

Students in the MRC:RSS practice and develop the four fundamental riding skills: straight line riding, shifting, turning, and stopping. Then, they are taught street riding strategies and how to control their motorcycles in special situations. The evasive maneuvers taught include advanced turning techniques, maximum braking techniques, and how to swerve. In order to successfully complete the course, the

students must pass a skill test and knowledge test. Motorcycles and limited insurance coverage are provided by the program. A graduate of the MRC:RSS course receives a MSF Completion Card and a NCMSEP Graduate Card.

Students in the ERC are taught motorcycle dynamics, traction control, survival strategies, motorcycle loading, emergency braking, countersteering, counterbalancing, and accessory selection. Exercises on the range include precise steering techniques and correct braking methods under controlled conditions. No skill test or knowledge test is required for this course. The class is offered to provide important information that can help riders reduce their chance of becoming involved in crashes. ERC students must ride their motorcycle, have a motorcycle endorsement on their driver's license, insurance on their motorcycle, and are covered by a limited insurance policy. Instructors in both classes explain the exercise, demonstrate the exercise, and then coach students until they are able to perform the exercise correctly.

Individuals that take the IPC training will become certified instructors who can teach the MRC:RSS and ERC. Instructor candidates must pass a knowledge test, a motorcycle riding skills test, and demonstrate teaching skills in order to successfully complete the course.

The Governor's Highway Safety Program (GHSP) has provided the program with funds to conduct motorcycle safety campaigns for the general public. The campaigns are designed to increase motorists' awareness of motorcycles and to remind motorcyclists of the importance of proper protective gear.

Training Locations

The NCMSEP program is offered at seventeen **permanent** locations identified below:

Alamance Community College, Graham
Blue Ridge Community College, Hendersonville
Caldwell Community College, Lenoir
Cape Fear Community College, Wilmington
Central Piedmont Community College, Charlotte
Coastal Carolina Community College, Jacksonville
Fayetteville Technical Community College, Fayetteville
Forsyth Technical Community College, Winston-Salem
Guilford Technical Community College, Jamestown
Johnston Community College, Smithfield
Lenoir Community College, Kinston
Mitchell Community College, Statesville
Randolph Community College, Archdale
Randolph Community College, Asheboro

Robeson Community College, Lumberton
Rowan-Cabarrus Community College, Concord
Wilson Technical Community College, Wilson

The NCMSEP program is offered at four **mobile** locations identified below:

Davidson County Community College, Lexington
Halifax Community College, Weldon
South Piedmont Community College, Wadesboro
Vance-Granville Community College, Henderson

Budget and Enrollment History

The table below shows the budgets and student enrollment for the NCMSEP during the past five years.

	FY BUDGET $	ENROLLMENT
1995-1996	335,000	2,129
1996-1997	270,000	2,764
1997-1998	235,000	3,036
1998-1999	250,000	3,377
1999-2000	270,000	4,128

Future Growth

South Piedmont Community College and Halifax Community College are scheduled to become permanent training sites during 2000-2001. These two colleges are currently mobile training sites.

The ultimate test
of a nation's greatness
is not the might of its army
or its influence in world affairs
but the degree to which it
protects the basic freedoms
and rights of its people. . .

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1125*

Short Title: Motorcycle Safety Act. (Public)

Sponsors: Senator East.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES AND TO INCREASE THE TAX ON PRIVATE MOTORCYCLE REGISTRATIONS THAT IS USED TO PROVIDE FUNDS FOR MOTORCYCLE SAFETY PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-140.4(a) reads as rewritten:

"(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.

(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor ~~Vehicles.~~ Vehicles, except that:

a. If the operator is 21 years of age or older and has had a motorcycle license or a motorcycle endorsement for more than 12 months, then the operator may operate the motorcycle without a helmet; and

b. If the operator is allowed to operate a motorcycle without a helmet pursuant to sub-subdivision a. of this subdivision and the passenger is 21 years of age or older, then the passenger may ride without a helmet."

Section 2. G.S. 20-87(6) reads as rewritten:

"**§ 20-87. Passenger vehicle registration fees.**

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

. . .

(6) Private Motorcycles. -- The base tax on private passenger motorcycles shall be nine dollars ($9.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base tax shall be sixteen dollars ($16.00). A tax of ~~three dollars ($3.00)~~ five dollars ($5.00) is imposed on each private motorcycle registered under this subdivision in addition to the base tax. The revenue from the additional tax shall be deposited in the General ~~Fund.~~ Fund and shall be used to fund the Motorcycle Safety Instruction Program established pursuant to G.S. 115D-72."

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

SENATE BILL 1125
MOTORCYCLE SAFETY ACT
SENATOR DON EAST (sponsor)

The subject of helmet use by motorcyclists evokes emotional debate among various groups. Now that Federal Regulations no longer "require" states to enact mandatory statutes, the subject is being revisited in many state legislatures.

The debate is principally between the groups who claim that helmets save lives and save the public from having to pay the medical costs of uninsured victims, and groups that claim helmets cause deaths and mandatory helmet use is a government intrusion in freedom of choice of helmet use by the motorcyclist.

Much of the confusion on the efficacy of helmets stems from a lack of understanding of the real issues. Virtually all "safety" experts and medical personnel view the issue from the perspective of automobile safety where the main thrust is ***injury prevention.*** In motorcycle safety, the main thrust must be ***accident prevention*** due to the level of un-protection provided by the vehicle.

In the U.S., there are 25 states with mandatory helmet laws (similar to N.C.) and 25 states with a choice helmet law (generally with an age under which helmets are mandatory) including three states with no helmet law. There are approximately four million motorcycles registered in the U.S..

Over the last six years, the 25 mandatory helmet states have accounted for ***61.3%*** of registrations, ***65.1%*** of accidents, and ***63.5*** of fatalities. An analysis of the statistics shows that, in each of the last six years, the mandatory helmet law states have experienced a significantly greater incidence of accidents per 10,000 registrations as compared to the choice states.

The statistics also show that the fatality rate (per 100 accidents) of the choice states has actually been ***lower*** in two of the last six years when compared with the mandatory states.

The net result of the incidence of accidents plus the fatality rate shows that in five of the last six years, the fatality rate per 10,000 registrations has been lower in the choice states.

Why is this? Don't these facts fly in the face of the argument that helmets save lives? We believe the answer lies in arguments that motorcycle riders have made.

1. **Helmets impair vision, especially peripheral vision.**
2. **Helmets interfere with the ability to hear what is going on around you.**
3. **Helmets provide as exaggerated perception of protection and the cyclist takes chances that would otherwise not be taken.**

Over the last six years, North Carolina had averaged 65 fatalities per year. It has been estimated that if North Carolina could have achieved the accident and fatality rates of the last six years for the choice states, we would have averaged only 34 fatalities per year or a saving of 31 lives per year.

No one has ever been hurt in an accident that did not happen. Clearly accident prevention should be our objective.

The other issue often raised is the "public" costs associated with the treatment of injured motorcyclists

The UNC Highway Safety Research Center (publication HSRC-MP70) has addressed the issue of "public" costs. Excerpts follow:

1. "Motorcyclists.... are just as likely as other road trauma patients to be commercially or privately insured." (abstract)
2. Mean hospital charges are less for motorcyclists as compared with other road trauma patients.(Page 6, Table1)
3. "Helmet use was not found to be associated with overall injury severity..."(Page 12)
4. "Based on just the evidence regarding hospital charges, discharge facility, and insurance status, it would seem inappropriate to label motorcyclists "disproportionate consumers of public funds"." (Page 15)

Additionally, data from the North Carolina Trauma Registry for 13 major hospitals (including nine trauma centers) shows that the number of major head injuries to occupants of automobiles have been over 13 times greater than those for motorcycle operators and passengers during the 1994-1996 period. (Please note that these statistics do not cover all the hospitals in North Carolina.)

With the significant multiples of head injury for automobiles versus motorcycles, we have not heard a single suggestion that we make helmet use mandatory for auto occupants.

It is clear to us that mandatory helmet use by motorcyclists, in view of accident and fatality statistics and findings on public and societal costs, represents an unjustified, discriminatory, and deadly example of well-intended legislation.

The time has come to modify the North Carolina helmet law to allow motorcyclist the option of whether or not to utilize helmets.

To that end, legislation has been introduced that would allow motorcyclists who are 21 years of age and over who have had at least one year of licensed riding experience the option of helmet use. Additionally, the legislation would increase the special tag tax paid by motorcyclist from $3.00 to $5.00. These fees go to fund the Motorcycle Safety Instruction Programs in the community colleges.

MOTORCYCLE HELMET DATA

Selected Statistics

	Helmet States		Choice States		National	
	Accidents	Fatalities	Accidents	Fatalities	Accidents	Fatalities
1992	215.47	2.97	190.93	2.79	206.00	2.91
1993	222.21	2.98	194.02	2.90	211.24	2.95
1994	201.19	2.93	189.78	3.28	196.93	3.06
1995	195.77	2.95	169.89	3.17	185.89	3.03
1996	187.48	2.88	149.33	3.53	172.74	3.10
1997	193.13	2.93	138.42	3.44	171.14	3.10
TOTALS	202.45	2.94	171.59	3.16	190.51	3.02

Notes: Accidents are per 10,000 Registrations
Fatalities are per 100 Accidents

Source: American Motorcyclist Association

SELECTED STATISTICS

MOTORCYCLE HELMET DATA

	Helmet States			Choice States			Total-National		
	Reg.*	Acc.	Fat.	Reg.*	Acc.	Fat.	Reg*.	Acc..	Fat.
1992	2,458	52,955	1,575	1,544	29,473	823	4,001	82,428	2,398
1993	2,352	52,270	1,557	1,498	29,062	844	3,850	81,332	2,401
1994	2,413	48,539	1,425	1,494	28,349	929	3,907	76,906	2,354
1995	2,441	47,795	1,410	1,509	25,637	812	3,950	73,432	2,221
1996	2,458	46,091	1,327	1,550	23,144	818	4,008	69,235	2,145
1997	2,417	46,675	1,369	1,594	22,060	759	4,011	68,735	2,128
6yr.av.	2,423	49,054	1,444	1,532	26,288	831	3,955	75,345	2,275
Acc./10M reg.		202.45			171.59			190.51	
Fatalities/100Acc.			2.94			3.16			3.02
%of National:		61.3	65.1			63.5			

*Registrations in Thousands

Source: American Motorcyclist Association

NORTH CAROLINA MOTORCYCLE STATISTICS
RIDER EDUCATION GRADUATES

YEAR	Number of Graduates
1983	182
1984	224
1985	172
1986	171
1987	439
1988	516
1989	602
1990	997
1991	2095
1992	1958
1993	2214
1994	1566
1995	2404
1996	2835
1997	3210

Note: The increase in the tag fee is estimated to generate approximately $150,000 additional annual funding to the Safety Instruction Program. This additional money will allow the Community College System to expand the instruction programs.

Rider Safety Instruction is one of the keys to reducing fatalities.

SELECTED STATISTICS
MOTORCYCLES NORTH CAROLINA

Year	Reg.	Acc.	Fat.	Fat/100acc.	Acc/10Mreg.
1992	59,219	1,822	62	3.40	307.67
1993	61,374	2,106	74	3.51	343.14
1994	65,247	2,049	60	2.93	314.04
1995	65,546	2,004	72	3.59	305.74
1996	68,533	2,015	62	3.08	294.02
1997	75,022	2,005	60	2.99	267.25
Average	**65,824**	**2,000**	**65**	**3.25**	**303.84**

*** Automobile accidents account for 45.5% of all head injured patients and are responsible for 37.1% of all fatalities involving head injury.**
(The Journal of Trauma, 1989)

*** There are no appreciable differences found; relative to fatality rate, severity of injury, hospital stay, and discharge status between motorcycle accident victims who wore helmets and those who did not.**
(Arizona Governor's Office of Highway Safety Study, 1990)

*** Over the 6 year period 1992 through 1997, twenty-five mandatory helmet states accounted for 61.3% of registrations, 65.1% of accidents and 63.5% of fatalities. Analysis of the statistics shows that, in each of the 6 years, the mandatory helmet law states experienced a significantly greater incidence of accidents per 10,000 registrations, as compared to the choice states.**
(American Motorcyclist Association, 1997)

*** The National Highway Traffic Safety Administration has shown that tested helmets, have a failure rate of 64%.**
(National Highway Traffic Safety Administration WEB Page, Research 1999)

*** Of the top 12 states with the best motorcycle safety records (fatalities per 10,000 registrations), only one has a helmet law. On the other hand, fully half of the worst safety records are helmet law states.**
(Motorcycle Safety Foundation & Motorcycle Industry Council, data from 1986)

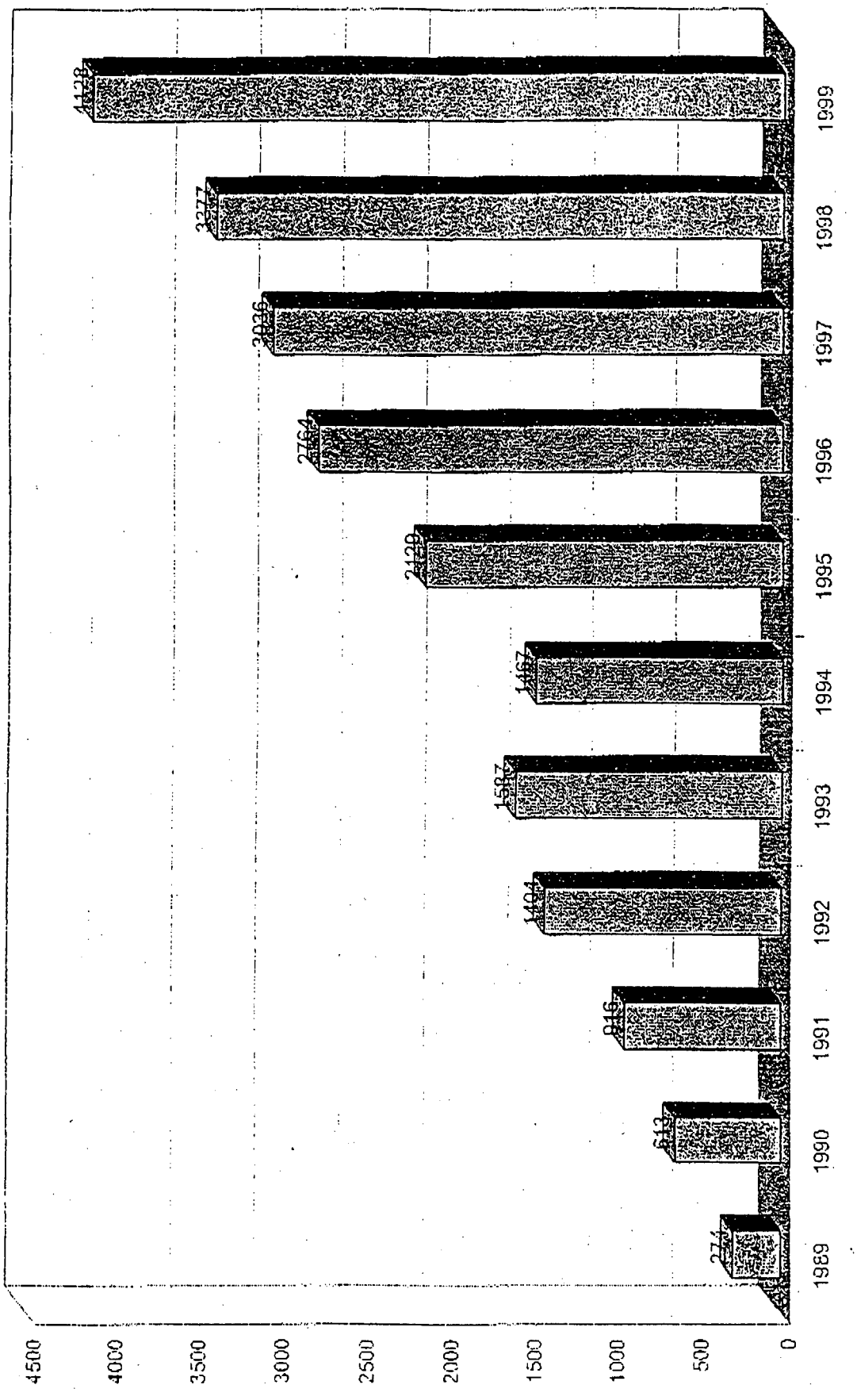
*** Motorcyclists are no more dependent upon public sources for medical costs, than motor vehicle operators.**
(National Highway Traffic Safety Administration, CODES Study, 1995)

*** The Department of Transportation tests helmets by a 6-foot vertical drop, impacting at 13.66 mph. Even at those low impacts, 52% of all helmets tested by the DOT have failed.**
(Department of Transportation Helmet Test Reports, 1974-1980)

*** A Kansas Health and Environment report to the National Highway Traffic Safety Administration stated, ".....we have found no evidence that the death rate for motorcycle accidents has increased in Kansas, as a result of the repeal of the helmet law. We also have found no such evidence on a national basis."**

*** As of ~~March 13~~ May 15, 2000, there were ~~90,227~~ 93,213 motorcycles registered with the N.C. Department of Motor Vehicles. The proposed increase in motorcycle registrations; will add an additional $18~~0~~,~~4~~86.00 to the fund for Rider Education Courses, totaling an annual contribution of $451,135.00.**

GROWTH OF PROGRAM 1989 - 1999



Susan Moore (Sen. Cooper)

From: David McGowan [DM3@esn.net]
Sent: Tuesday, May 23, 2000 6:48 AM
To: Royc@ncleg.net
Subject: S1125

DEAR MR. COOPER,
I WOULD LIKE TO SPEAK IN THE J-1 COMMITTEE MEETING ON S1125 "THE MOTORCYCLE SAFETY ACT".
THANK YOU,

David McGowan
1320 HEMLOCK DRIVE
GREENVILLE NC 27858

VISITOR REGISTRATION SHEET

Judiciary #1 — Name of Committee

5-23-00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Mike Olsen	NC State AFL CIO
Mark Benson	NC Motorcycle Dealers' Assn.
Zeb Alley	Alley Associates
J. B. McCants	AOC
Doris Treaur	NC CWA Political Council
Glenn Lamm	UTU
Richard Westbrook	UTU
Alicia Gruenebaum	YAIO
Anne Wimsatt	NCCADV
Patty Neal Dorian	NCCADV
Joan Carroll	NCCFW
FRED Dixon	CBA - Charlotte NC
Charles E McGhee	Independent
Cynthia Howell Christensen	CBA/ABATE - Charlotte
George Schoenberger	CBA/Abate - Randolph

VISITOR REGISTRATION SHEET

Judiciary # 1 — 5-23-00

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Michael Allred	CBA/ABATE-Randolph County Asheboro N.C.
Buddy Brannigan	CBA/ABATE-Randolph Co. Asheboro N.C.
Mike Hodge	CBA/ABATE - Raleigh
Terry Brown	CBA - Charlotte
Debra Knox	CBA/ABATE- Brunswick County
Deborah Sweat	C.BA/ABATE- Brunswick County
Sharon Hand	CBA/ABATE Brunswick Cty
Lee Winn	CBA - Charlotte
Ogle McLeod	Scenic NC, Inc.
Hank Hobbs	CBA Carteret-Craven Cty.
Ron Dolyer	CBA CARTERET - CRAVEN CTY
J.R "Jim" Barker	CBA CARTERET - CRAVEN Cty.
MARK Seiler	CARTERET/CRAVEN CBA
Ray J. Vinson	CARTERET/CRAVEN CBA "GUEST"
Honeybath) W. Harrison III	CARTERET/CRAVEN CBA "Guest"

VISITOR REGISTRATION SHEET

Judiciary #1 — Name of Committee

23 MAY 00 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Michael Hindle	CBA/ABATE Chatham Co.
Steve Steen	(Counderland County) CBA ABATE
Martin F. Beaver III	N.C. CBA. Carteret-Craven Chapter
John Darrell Latham	N.C. CBA CARTERET CRAVEN CHAPTER
Roger Roger	CBA/ABATE of NC. Rowan County Chapter
Charles Cromer	NCATL
Dbbral Ross	ACLU
JIM EVERHART	DAVIDSON CO. CBA/ABATE RETREADS MILES OF NC AMA MRF AIM/NCOM
SUSAN EVERHART	DAVIDSON CO. CBA/ABATE, RETREADS, MILES OF NC 445 N. Co. HOME RD. LEXINGTON NC 27292
Brian K. Davis	Motorcyclist Introducing Legislation Education and Safety, American Motorcyclist Association, Concerned Bikers Association /ABATE of North Carolina
Warren Payne	Davidson Co
MIKE McGHEE	N.C. ABATE 422 GASTON AVE BELMONT N.C.
Bill Revel	NCJCDC
Earl Johnson	Raleigh CBA
David Cole	Raleigh CBA

VISITOR REGISTRATION SHEET

JUDICIARY #1 — Name of Committee

23 MAY 02 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
ED LAVOIE	CHATHAM COUNTY CBA/AGATE
Elizabeth A. Bondurant	Intern- Sen Foxx
James P. Coates	intern - Sen. FoxX
STEVE PRUETT	OMEGA BETA GAMMA
KEVIN J PIONKE	715 TAMPA DR. FUQUAY VARINA NC OMEGA BETA GAMMA
Shannon Bullock	Governor's Highway Safety Program
Hal Miller	DIC NCCT
Jeff Moore	NCDPI
Andy Ellen	NC Retail Merchants Assoc.
David Ferrell	NC College of Emergency Physicians
Steve Keene	NC Medical Society

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 15, 2000

The Senate Judiciary I Committee met on June 15, 2000 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Soles, Vice Chair (and acting Chair), called the meeting to order and recognized Senator Clodfelter to discuss **Senate Bill 1290** – AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY BOARD OF ELECTIONS MEMBERS.

Senator Gulley moved to adopt a Proposed Committee Substitute for Senate Bill 1290 for discussion. The motion carried by a majority voice vote.

After discussion by the Committee, Senator Cooper asked that Senator Clodfelter take all pending amendments and combine them into a new Proposed Committee Substitute which will be heard at a future meeting.

Senator Cooper announced that **Senate Bill 760** – AN ACT TO MAKE CHANGES IN THE CAMPAIGN FINANCE LAWS will be heard at the next meeting.

Senator Cooper recognized Senator Hartsell to explain **Senate Bill 1305** – AN ACT TO ENACT REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE, AND CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES AND TO INCREASE CERTAIN FEES UNDER CURRENT ARTICLE 9, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

William Scoggins, with the American Bar Association, was recognized to answer questions from the Committee.

Paul Stock, representing the N. C. Bankers Association, was recognized to comment on the bill.

Floyd Lewis, with the General Statutes Commission, was recognized to comment on the bill.

Professor Caroline Brown, UNC School of Law, was recognized to comment on the bill and to answer questions from the Committee.

Due to time constraints, discussion of Senate Bill 1305 will continue at the next meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

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

DATE: Thursday, June 15, 2000
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 760	Campaign Finance Changes	Gulley
SB 1290	Election Board Conduct	Clodfelter
SB 1305	Revise Article 9 of UCC	Hartsell

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - June 15, 2000

SB 760	Campaign Finance Changes	Gulley
SB 1290	Election Board Conduct	Clodfelter
SB 1305	Revise Article 9 of UCC	Hartsell

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1290*

Short Title: Election Bd. Conduct. (Public)

Sponsors: Senators Clodfelter and Gulley.

Referred to: Judiciary I.

May 31, 2000

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY BOARD OF ELECTIONS MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Political Activities by Board of Elections Members.

"**§ 163-38. Applicability of Article.**

This Article applies to members of the State Board of Elections and of each county and municipal board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board.

"**§ 163-39. Limitation on political activities.**

No person subject to this Article shall:

(1) Make public statements supporting or opposing the nomination or election of one or more clearly identified candidates for public office.

(2) Make public statements supporting or opposing the passage of one or more clearly identified referendum proposals.

(3) Solicit contributions for a candidate, political committee, or referendum committee.

Nothing in this section shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member from making a contribution.

"**§ 163-40. No person to engage in prohibited act as alter ego.**

No person acting as the alter ego of a board member subject to this Article shall engage in any act prohibited by this Article.

"**§ 163-40.1. Violation is ground for removal.**

A violation of this Article is a ground to remove a State Board of Elections member under G.S. 143B-16, a county board of elections member under G.S. 163-22(c), or a municipal board of elections member under G.S. 163-280(i).

"**§ 163-40.2. Definitions.**

The provisions of Article 22A of this Chapter apply to the definition and proof of terms used in this Article."

Section 2. This act becomes effective January 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1290*
Proposed Committee Substitute -- S1290-PCSRR-001

Short Title: Election Bd. Conduct. (Public)

Sponsors:

Referred to: Judiciary I.

May 31, 2000

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY BOARD OF ELECTIONS MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

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"**§ 163-40.1. Violation is ground for removal.**

A violation of this Article is a ground to remove a State Board of Elections member under G.S. 143B-16, a county board of elections member under G.S. 163-22(c), or a municipal board of elections member under G.S. 163-280(i). No criminal penalty shall be imposed for a violation of this Article.

"**§ 163-40.2. Definitions.**

The provisions of Article 22A of this Chapter apply to the definition and proof of terms used in this Article."

Section 2. This act becomes effective January 1, 2001.

SENATE BILL 1290:
Election Board Conduct.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senators Clodfelter and Gulley
Date:	June 15, 2000	**Summary by:**	William R. Gilkeson
Version:	S1290-PCSRR-001		Staff Attorney

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1290 would prohibit members of county, municipal, and State boards of elections from making public statements supporting or opposing the nomination or election of candidates on the ballot within the territory covered by the board. The same would apply for statements by board members supporting or opposing the passage of referendum proposals. The bill was recommended by the Election Laws Revision Commission.***

CURRENT LAW: Current law takes party affiliation into account in the process by which members of State, county, and municipal boards of elections are appointed. The law places campaign-related limitations on board members in terms of their qualifications. But current law does not prohibit board members from endorsing candidates or soliciting contributions.

Appointment. Currently, State and county board of elections members are appointed from lists of nominees put forth by the State Chairs of the political parties. State Board members are appointed by the Governor. County board members are appointed by the State Board. Municipal board members are appointed by the city council. No more than a simply majority of any of the three kinds of boards may be of the same party. Municipal boards, however, may only exist in cities that have nonpartisan city elections, and the appointment process of municipal boards does not have a formal role for the party Chairs. In all three kinds of boards, the members are appointed for a set term.

Qualifications. Current law says State and county board members may not be elected officials, candidates for elective office, an officer in a political party organization, or a campaign manager or political treasurer. County board of elections members have the additional requirement of not being related to a candidate for office in the county as spouse, son, son-in-law, daughter, daughter-in-law, parent-in-law, sister-in-law, brother-in-law, aunt, uncle, niece, or nephew. The county board statute has a proviso that serving as a party convention delegate is permitted. Municipal board of elections members may not hold or be candidates for elective office or be campaign manager for a candidate, but nothing is said about being a treasurer and nothing is said about party activity. All those limitations are stated as qualifications for the office rather than as limitations on activity. The county board statute actually says that if a member fails to meet one of those qualifications, the office becomes vacant.

Removal. There are roughly parallel provisions in the statutes for all three kinds of boards giving the appointing authority the right to remove a board member for good cause.

BILL ANALYSIS: Senate Bill 1290 would create a new Article in Chapter 163, the Election Law, setting out uniform limitations on the political activity of members of State, county, and municipal boards of elections. None would be able to make public statements supporting or

opposing the nomination or election of candidates or the passage of referendum proposals. This would apply only to candidates or referenda on the ballot in the territory covered by the board. Board members would also be prohibited from soliciting contributions for those candidates or referendum proposals, or for committees supporting them. The prohibitions would not apply to serving as a delegate to a political convention, or to ***making*** contributions, as opposing to ***soliciting*** them.

A violation of the Article would be grounds for removal under the current statutes that allow removal for cause. It would not involve any criminal liability.

The bill provides that no person may do what the board member is prohibited from doing if that person is acting as the board member's alter ego.

The bill says terms in the new Article, such as "candidate," "support or oppose the nomination or election of a candidate," and "contribution" have the same meaning as in Article 22A, the Campaign Finance Act.

The bill would become effective January 1, 2001.

BACKGROUND: The Election Laws Revision Commission voted to endorse this Legislative Proposal at its April 13, 2000, meeting after hearing from Sen. Daniel Clodfelter of Mecklenburg County. Sen. Clodfelter recounted an incident in which a member of the Mecklenburg County Board of Elections wrote and signed letters and articles published in *The Charlotte Observer* advocating the defeat of members of the Charlotte-Mecklenburg School Board. When a citizen complained about this to the State Board of Elections, she was told that nothing prohibited the board member's statements. Sen. Clodfelter noted that the N.C. Code of Judicial Conduct prohibits such conduct by judges as being inappropriate to their office, and he noted that boards of elections sit in a quasi-judicial capacity. The initial draft of a bill Sen. Clodfelter presented to the Commission was patterned closely after the Code of Judicial Conduct, but members of the Commission suggested changes before they endorsed the proposal. Notably, the Commission removed from the draft a prohibition against board members making contributions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1305*

Short Title: Revise Article 9 of the UCC. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO ENACT REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE, AND CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES AND TO INCREASE CERTAIN FEES UNDER CURRENT ARTICLE 9, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE.

Section 1. Article 9 of Chapter 25 of the General Statutes is rewritten to read:

"ARTICLE 9.

"Secured Transactions.

"PART 1.

"GENERAL PROVISIONS.

"SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS.

"**§ 25-9-101. Short title.**

This Article may be cited as Uniform Commercial Code-Secured Transactions.

"**§ 25-9-102. Definitions and index of definitions.**

(a) Article 9 definitions. -- In this Article:

(1) 'Accession' means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) 'Account', except as used in 'account for', means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) 'Account debtor' means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) 'Accounting', except as used in 'accounting for', means a record:

a. Authenticated by a secured party;

b. Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

c. Identifying the components of the obligations in reasonable detail.

(5) 'Agricultural lien' means an interest, other than a security interest, in farm products:

a. Which secures payment or performance of an obligation for:

1. Goods or services furnished in connection with a debtor's farming operation; or

2. Rent on real property leased by a debtor in connection with its farming operation;

b. Which is created by statute in favor of a person that:

1. In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

2. Leased real property to a debtor in connection with the debtor's farming operation; and

c. Whose effectiveness does not depend on the person's possession of the personal property.

(6) 'As-extracted collateral' means:

a. Oil, gas, or other minerals that are subject to a security interest that:

1. Is created by a debtor having an interest in the minerals before extraction; and

2. Attaches to the minerals as extracted; or

b. Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) 'Authenticate' means:

a. To sign; or

b. To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) 'Bank' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) 'Cash proceeds' means proceeds that are money, checks, deposit accounts, or the like.

(10) 'Certificate of title' means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) 'Chattel paper' means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, 'monetary obligation' means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) 'Collateral' means the property subject to a security interest or agricultural lien. The term includes:

a. Proceeds to which a security interest attaches;
b. Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
c. Goods that are the subject of a consignment.

(13) 'Commercial tort claim' means a claim arising in tort with respect to which:
a. The claimant is an organization; or
b. The claimant is an individual and the claim:
1. Arose in the course of the claimant's business or profession; and
2. Does not include damages arising out of personal injury to or the death of an individual.

(14) 'Commodity account' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) 'Commodity contract' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
a. Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
b. Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) 'Commodity customer' means a person for which a commodity intermediary carries a commodity contract on its books.

(17) 'Commodity intermediary' means a person that:
a. Is registered as a futures commission merchant under federal commodities law; or
b. In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) 'Communicate' means:
a. To send a written or other tangible record;
b. To transmit a record by any means agreed upon by the persons sending and receiving the record; or
c. In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) 'Consignee' means a merchant to which goods are delivered in a consignment.

(20) 'Consignment' means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

a. The merchant:
1. Deals in goods of that kind under a name other than the name of the person making delivery;
2. Is not an auctioneer; and
3. Is not generally known by its creditors to be substantially engaged in selling the goods of others;
b. With respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery;
c. The goods are not consumer goods immediately before delivery; and
d. The transaction does not create a security interest that secures an obligation.

(21) 'Consignor' means a person that delivers goods to a consignee in a consignment.

(22) 'Consumer debtor' means a debtor in a consumer transaction.

(23) 'Consumer goods' means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) 'Consumer-goods transaction' means a consumer transaction in which:
a. An individual incurs an obligation primarily for personal, family, or household purposes; and
b. A security interest in consumer goods secures the obligation.

(25) 'Consumer obligor' means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) 'Consumer transaction' means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) 'Continuation statement' means an amendment of a financing statement which:
a. Identifies, by its file number, the initial financing statement to which it relates; and
b. Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) 'Debtor' means:
a. A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

b. A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

c. A consignee.

(29) 'Deposit account' means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) 'Document' means a document of title or a receipt of the type described in G.S. 25-7-201(2).

(31) 'Electronic chattel paper' means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) 'Encumbrance' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) 'Equipment' means goods other than inventory, farm products, or consumer goods.

(34) 'Farm products' means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

a. Crops grown, growing, or to be grown, including:

1. Crops produced on trees, vines, and bushes; and

2. Aquatic goods produced in aquacultural operations;

b. Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

c. Supplies used or produced in a farming operation; or

d. Products of crops or livestock in their unmanufactured states.

(35) 'Farming operation' means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) 'File number' means the number assigned to an initial financing statement pursuant to G.S. 25-9-519(a).

(37) 'Filing office' means an office designated in G.S. 25-9-501 as the place to file a financing statement.

(38) 'Filing-office rule' means a rule adopted pursuant to G.S. 25-9-526.

(39) 'Financing statement' means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) 'Fixture filing' means the filing of a financing statement covering goods that are or are to become fixtures and satisfying G.S. 25-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) 'Fixtures' means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) 'General intangible' means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) 'Good faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) 'Goods' means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) 'Governmental unit' means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) 'Health-care-insurance receivable' means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) 'Instrument' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that

evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) 'Inventory' means goods, other than farm products, which:

a. Are leased by a person as lessor;

b. Are held by a person for sale or lease or to be furnished under a contract of service;

c. Are furnished by a person under a contract of service; or

d. Consist of raw materials, work in process, or materials used or consumed in a business.

(49) 'Investment property' means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) 'Jurisdiction of organization', with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) 'Letter-of-credit right' means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) 'Lien creditor' means:

a. A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

b. An assignee for benefit of creditors from the time of assignment;

c. A trustee in bankruptcy from the date of the filing of the petition; or

d. A receiver in equity from the time of appointment.

(53) 'Manufactured home' means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) 'Manufactured-home transaction' means a secured transaction:

a. That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

b. In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) 'Mortgage' means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) 'New debtor' means a person that becomes bound as debtor under G.S. 25-9-203(d) by a security agreement previously entered into by another person.

(57) 'New value' means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) 'Noncash proceeds' means proceeds other than cash proceeds.

(59) 'Obligor' means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) 'Original debtor', except as used in G.S. 25-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under G.S. 25-9-203(d).

(61) 'Payment intangible' means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) 'Person related to', with respect to an individual, means:

a. The spouse of the individual;

b. A brother, brother-in-law, sister, or sister-in-law of the individual;

c. An ancestor or lineal descendant of the individual or the individual's spouse; or

d. Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) 'Person related to', with respect to an organization, means:

a. A person directly or indirectly controlling, controlled by, or under common control with the organization;

b. An officer or director of, or a person performing similar functions with respect to, the organization;

c. An officer or director of, or a person performing similar functions with respect to, a person described in sub-subdivision a. of this subdivision;
d. The spouse of an individual described in sub-subdivision a., b., or c. of this subdivision; or
e. An individual who is related by blood or marriage to an individual described in sub-subdivision a., b., c., or d. of this subdivision and shares the same home with the individual.

(64) 'Proceeds', except as used in G.S. 25-9-609(b), means the following property:
a. Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
b. Whatever is collected on, or distributed on account of, collateral;
c. Rights arising out of collateral;
d. To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
e. To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) 'Production-money crops' means crops that secure a production-money obligation incurred with respect to the production of those crops.

(66) 'Production-money obligation' means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(67) 'Production of crops' includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting, gathering, and curing crops, and protecting them from damage or disease.

(68) 'Promissory note' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(69) 'Proposal' means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to G.S. 25-9-620, 25-9-621, and 25-9-622.

(70) 'Public-finance transaction' means a secured transaction in connection with which:
a. Debt securities are issued;

b. All or a portion of the securities issued have an initial stated maturity of at least 20 years; and

c. The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(71) 'Pursuant to commitment', with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(72) 'Record', except as used in 'for record', 'of record', 'record or legal title', and 'record owner', 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.

(73) 'Registered organization' means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(74) 'Secondary obligor' means an obligor to the extent that:

a. The obligor's obligation is secondary; or

b. The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(75) 'Secured party' means:

a. A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

b. A person that holds an agricultural lien;

c. A consignor;

d. A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

e. A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

f. A person that holds a security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), 25-2A-508(5), 25-4-208, or 25-5-118.

(76) 'Security agreement' means an agreement that creates or provides for a security interest.

(77) 'Send', in connection with a record or notification, means:

a. To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or

cost of transmission provided for, addressed to any address reasonable under the circumstances; or

b. To cause the record or notification to be received within the time that it would have been received if properly sent under sub-subdivision a. of this subdivision.

(78) 'Software' means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(79) '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.

(80) 'Supporting obligation' means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(81) 'Tangible chattel paper' means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(82) 'Termination statement' means an amendment of a financing statement which:

a. Identifies, by its file number, the initial financing statement to which it relates; and

b. Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(83) 'Transmitting utility' means a person primarily engaged in the business of:

a. Operating a railroad, subway, street railway, or trolley bus;

b. Transmitting communications electrically, electromagnetically, or by light;

c. Transmitting goods by pipeline or sewer; or

d. Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) Definitions in other articles. -- The following definitions in other Articles of this Chapter apply to this Article:

'Applicant'	G.S. 25-5-102.
'Beneficiary'	G.S. 25-5-102.
'Broker'	G.S. 25-8-102.
'Certificated security'	G.S. 25-8-102.
'Check'	G.S. 25-3-104.
'Clearing corporation'	G.S. 25-8-102.
'Contract for sale'	G.S. 25-2-106.
'Customer'	G.S. 25-4-104.
'Entitlement holder'	G.S. 25-8-102.

'Financial asset'	G.S. 25-8-102.
'Holder in due course'	G.S. 25-3-302.
'Issuer' (with respect to a letter of credit or letter-of-credit right)	G.S. 25-5-102.
'Issuer' (with respect to a security)	G.S. 25-8-201.
'Lease'	G.S. 25-2A-103.
'Lease agreement'	G.S. 25-2A-103.
'Lease contract'	G.S. 25-2A-103.
'Leasehold interest'	G.S. 25-2A-103.
'Lessee'	G.S. 25-2A-103.
'Lessee in ordinary course of business'	G.S. 25-2A-103.
'Lessor'	G.S. 25-2A-103.
'Lessor's residual interest'	G.S. 25-2A-103.
'Letter of credit'	G.S. 25-5-102.
'Merchant'	G.S. 25-2-104.
'Negotiable instrument'	G.S. 25-3-104.
'Nominated person'	G.S. 25-5-102.
'Note'	G.S. 25-3-104.
'Proceeds of a letter of credit'	G.S. 25-5-114.
'Prove'	G.S. 25-3-103.
'Sale'	G.S. 25-2-106.
'Securities account'	G.S. 25-8-501.
'Securities intermediary'	G.S. 25-8-102.
'Security'	G.S. 25-8-102.
'Security certificate'	G.S. 25-8-102.
'Security entitlement'	G.S. 25-8-102.
'Uncertificated security'	G.S. 25-8-102.

(c) Article 1 definitions and principles. -- Article 1 of this Chapter contains general definitions and principles of construction and interpretation applicable throughout this Article.

"§ 25-9-103. Purchase-money security interest; application of payments; burden of establishing.

(a) Definitions. -- In this section:

(1) 'Purchase-money collateral' means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) 'Purchase-money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods. -- A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;
(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) Purchase-money security interest in software. -- A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:
(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) Consignor's inventory purchase-money security interest. -- The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) Application of payment in non-consumer-goods transaction. -- In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:
(1) In accordance with any reasonable method of application to which the parties agree;
(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or
(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:
a. To obligations that are not secured; and
b. If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) No loss of status of purchase-money security interest in non-consumer-goods transaction. -- In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:
(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;
(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) Burden of proof in non-consumer-goods transaction. -- In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) Non-consumer-goods transactions; no inference. -- The limitation of the rules in subsections (e), (f), and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

"§ 25-9-103.1. Production-money crops; production-money obligation; production-money security interest; burden of establishing.

(a) Production-money crops. -- A security interest in crops is a production-money security interest to the extent that the crops are production-money crops.

(b) Production-money obligation. -- If the extent to which a security interest is a production-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

a. To obligations that are not secured; and

b. If more than one obligation is secured, to obligations secured by production-money security interests in the order in which those obligations were incurred.

(c) Production-money security interest. -- A production-money security interest does not lose its status as such, even if:

(1) The production-money crops also secure an obligation that is not a production-money obligation;

(2) Collateral that is not production-money crops also secures the production-money obligation; or

(3) The production-money obligation has been renewed, refinanced, or restructured.

(d) Burden of proof. -- A secured party claiming a production-money security interest has the burden of establishing the extent to which the security interest is a production-money security interest.

"§ 25-9-104. Control of deposit account.

(a) Requirements for control. -- A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) Debtor's right to direct disposition. -- A secured party that has satisfied subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

"**§ 25-9-105. Control of electronic chattel paper.**

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subdivisions (4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

"**§ 25-9-106. Control of investment property.**

(a) Control under G.S. 25-8-106. -- A person has control of a certificated security, uncertificated security, or security entitlement as provided in G.S. 25-8-106.

(b) Control of commodity contract. -- A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) Effect of control of securities account or commodity account. -- A secured party having control of all security entitlements or commodity contracts carried in a

securities account or commodity account has control over the securities account or commodity account.

"§ 25-9-107. Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under G.S. 25-5-114(c) or otherwise applicable law or practice.

"§ 25-9-108. Sufficiency of description.

(a) Sufficiency of description. -- Except as otherwise provided in subsections (c), (d), and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Examples of reasonable identification. -- Except as otherwise provided in subsection (d) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in this Chapter;

(4) Quantity;

(5) Computational or allocational formula or procedure; or

(6) Except as otherwise provided in subsection (c) of this section, any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient. -- A description of collateral as 'all the debtor's assets' or 'all the debtor's personal property' or using words of similar import does not reasonably identify the collateral.

(d) Investment property. -- Except as otherwise provided in subsection (e) of this section, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) When description by type insufficient. -- A description only by type of collateral defined in this Chapter is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

"SUBPART 2. APPLICABILITY OF ARTICLE.

"§ 25-9-109. Scope.

(a) General scope of Article. -- Except as otherwise provided in subsections (c) and (d) of this section, this Article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
(4) A consignment;
(5) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5), as provided in G.S. 25-9-110; and
(6) A security interest arising under G.S. 25-4-208 or G.S. 25-5-118.

(b) Security interest in secured obligation. -- The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

(c) Extent to which Article does not apply. -- This Article does not apply to the extent that:
(1) A statute, regulation, or treaty of the United States preempts this Article;
(2) Another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;
(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under G.S. 25-5-114.

(d) Inapplicability of Article. -- This Article does not apply to:
(1) A landlord's lien, other than an agricultural lien;
(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but G.S. 25-9-333 applies with respect to priority of the lien;
(3) An assignment of a claim for wages, salary, or other compensation of an employee;
(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but G.S. 25-9-315

and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or setoff, but:

a. G.S. 25-9-340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

b. G.S. 25-9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

a. Liens on real property in G.S. 25-9-203 and G.S. 25-9-308;

b. Fixtures in G.S. 25-9-334;

c. Fixture filings in G.S. 25-9-501, 25-9-502, 25-9-512, 25-9-516, and 25-9-519; and

d. Security agreements covering personal and real property in G.S. 25-9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds; or

(13) An assignment of a deposit account in a consumer transaction, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds.

"§ 25-9-110. Security interests arising under Article 2 or 2A of this Chapter.

A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5) is subject to this Article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if G.S. 25-9-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A of this Chapter; and

(4) The security interest has priority over a conflicting security interest created by the debtor.

"PART 2.

"EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT.

"SUBPART 1. EFFECTIVENESS AND ATTACHMENT.

"§ 25-9-201. General effectiveness of security agreement.

(a) General effectiveness. -- Except as otherwise provided in this Chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) Applicable consumer laws and other law. -- A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers Modernization Act of 1989 (Chapter 91A of the General Statutes).

(c) Other applicable law controls. -- In case of conflict between this Article and a rule of law, statute, or regulation described in subsection (b) of this section, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

(d) Further deference to other applicable law. -- This Article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

"§ 25-9-202. Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

"§ 25-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) Attachment. -- A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Enforceability. -- Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

a. The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

b. The collateral is not a certificated security and is in the possession of the secured party under G.S. 25-9-313 pursuant to the debtor's security agreement;

c. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under G.S. 25-8-301 pursuant to the debtor's security agreement; or

d. The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107 pursuant to the debtor's security agreement.

(c) Other UCC provisions. -- Subsection (b) of this section is subject to G.S. 25-4-208 on the security interest of a collecting bank, G.S. 25-5-118 on the security interest of a letter-of-credit issuer or nominated person, G.S. 25-9-110 on a security interest arising under Article 2 or 2A of this Chapter, and G.S. 25-9-206 on security interests in investment property.

(d) When person becomes bound by another person's security agreement. -- A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound. -- If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subdivision (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. -- The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by G.S. 25-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) Lien securing right to payment. -- The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) Security entitlement carried in securities account. -- The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) Commodity contracts carried in commodity account. -- The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

"**§ 25-9-204. After-acquired property; future advances.**

(a) After-acquired collateral. -- Except as otherwise provided in subsection (b) of this section, a security agreement may create or provide for a security interest in after-acquired collateral.

(b) When after-acquired property clause not effective. -- A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) A commercial tort claim.

(c) Future advances and other value. -- A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to commitment.

"**§ 25-9-205. Use or disposition of collateral permissible.**

(a) When security interest not invalid or fraudulent. -- A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

a. Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

b. Collect, compromise, enforce, or otherwise deal with collateral;

c. Accept the return of collateral or make repossessions; or

d. Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) Requirements of possession not relaxed. -- This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

"**§ 25-9-206. Security interest arising in purchase or delivery of financial asset.**

(a) Security interest when person buys through securities intermediary. -- A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) Security interest secures obligation to pay for financial asset. -- The security interest described in subsection (a) of this section secures the person's obligation to pay for the financial asset.

(c) Security interest in payment against delivery transaction. -- A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

a. In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

b. Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) Security interest secures obligation to pay for delivery. -- The security interest described in subsection (c) of this section secures the obligation to make payment for the delivery.

"SUBPART 2. RIGHTS AND DUTIES.

"§ 25-9-207. Rights and duties of secured party having possession or control of collateral.

(a) Duty of care when secured party in possession. -- Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties, and rights when secured party in possession. -- Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

a. For the purpose of preserving the collateral or its value;

b. As permitted by an order of a court having competent jurisdiction; or

c. Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Rights and duties when secured party in possession or control. -- Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) Buyer of certain rights to payment. -- If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

a. To charge back uncollected collateral; or

b. Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

"**§ 25-9-208. Additional duties of secured party having control of collateral.**

(a) Applicability of section. -- This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. -- Within 10 days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under G.S. 25-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under G.S. 25-9-104(a)(3) shall:

a. Pay the debtor the balance on deposit in the deposit account; or

b. Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under G.S. 25-9-105 shall:

a. Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

b. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

c. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified

assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under G.S. 25-8-106(d)(2) or G.S. 25-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under G.S. 25-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

"§ 25-9-209. Duties of secured party if account debtor has been notified of assignment.

(a) Applicability of section. -- Except as otherwise provided in subsection (c) of this section, this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. -- Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under G.S. 25-9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) Inapplicability to sales. -- This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

"§ 25-9-210. Request for accounting; request regarding list of collateral or statement of account.

(a) Definitions. -- In this section:

(1) 'Request' means a record of a type described in subdivision (2), (3), or (4) of this subsection.

(2) 'Request for an accounting' means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) 'Request regarding a list of collateral' means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) 'Request regarding a statement of account' means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. -- Subject to subsections (c), (d), (e), and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. -- A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) Request regarding list of collateral; no interest claimed. -- A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. -- A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. -- A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response.

"PART 3.

"PERFECTION AND PRIORITY.

"SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY.

"§ 25-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in G.S. 25-9-303 through G.S. 25-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subdivision (4) of this section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

a. Perfection of a security interest in the goods by filing a fixture filing;

b. Perfection of a security interest in timber to be cut; and

c. The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

"§ 25-9-302. Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

"§ 25-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

(a) Applicability of section. -- This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) When goods covered by certificate of title. -- Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law. -- The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or

nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

"§ 25-9-304. Law governing perfection and priority of security interests in deposit accounts.

(a) Law of bank's jurisdiction governs. -- The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) Bank's jurisdiction. -- The following rules determine a bank's jurisdiction for purposes of this Part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this Part, this Article, or this Chapter, that jurisdiction is the bank's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of subdivisions (1), (2), and (3) of this subsection applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of subdivisions (1), (2), (3), and (4) of this subsection applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

"§ 25-9-305. Law governing perfection and priority of security interests in investment property.

(a) Governing law: general rules. -- Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in G.S. 25-8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in G.S. 25-8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) Commodity intermediary's jurisdiction. -- The following rules determine a commodity intermediary's jurisdiction for purposes of this Part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this Part, this Article, or this Chapter, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of subdivisions (1), (2), and (3) of this subsection applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of subdivisions (1), (2), (3), and (4) of this subsection applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) When perfection governed by law of jurisdiction where debtor located. -- The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

"§ 25-9-306. Law governing perfection and priority of security interests in letter-of-credit rights.

(a) Governing law: issuer's or nominated person's jurisdiction. -- Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) Issuer's or nominated person's jurisdiction. -- For purposes of this Part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in G.S. 25-5-116.

(c) When section not applicable. -- This section does not apply to a security interest that is perfected only under G.S. 25-9-308(d).

"**§ 25-9-307. Location of debtor.**

(a) 'Place of business.' -- In this section, 'place of business' means a place where a debtor conducts its affairs.

(b) Debtor's location: general rules. -- Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Limitation of applicability of subsection (b). -- Subsection (b) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) Continuation of location: cessation of existence, etc. -- A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) Location of registered organization organized under state law. -- A registered organization that is organized under the law of a state is located in that state.

(f) Location of registered organization organized under federal law; bank branches and agencies. -- Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither subdivision (1) nor subdivision (2) of this subsection applies.

(g) Continuation of location; change in status of registered organization. -- A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) Location of United States. -- The United States is located in the District of Columbia.

(i) Location of foreign bank branch or agency if licensed in only one state. -- A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) Location of foreign air carrier. -- A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) Section applies only to this Part. -- This section applies only for purposes of this Part.

"SUBPART 2. PERFECTION.

"§ 25-9-308. When security interest or agricultural lien is perfected; continuity of perfection.

(a) Perfection of security interest. -- Except as otherwise provided in this section and G.S. 25-9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in G.S. 25-9-310 through G.S. 25-9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) Perfection of agricultural lien. -- An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in G.S. 25-9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) Continuous perfection; perfection by different methods. -- A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

(d) Supporting obligation. -- Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Lien securing right to payment. -- Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Security entitlement carried in securities account. -- Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Commodity contract carried in commodity account. -- Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

"**§ 25-9-309. Security interest perfected upon attachment.** The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in G.S. 25-9-311(b) with respect to consumer goods that are subject to a statute or treaty described in G.S. 25-9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under G.S. 25-4-208;

(8) A security interest of an issuer or nominated person arising under G.S. 25-5-118;

(9) A security interest arising in the delivery of a financial asset under G.S. 25-9-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

"**§ 25-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.**

(a) General rule; perfection by filing. -- Except as otherwise provided in subsection (b) of this section and G.S. 25-9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) Exceptions; filing not necessary. -- The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under G.S. 25-9-308(d), (e), (f), or (g);

(2) That is perfected under G.S. 25-9-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in G.S. 25-9-311(a);

(4) In goods in possession of a bailee which is perfected under G.S. 25-9-312(d)(1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under G.S. 25-9-312(e), (f), or (g);

(6) In collateral in the secured party's possession under G.S. 25-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under G.S. 25-9-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under G.S. 25-9-314;

(9) In proceeds which is perfected under G.S. 25-9-315;

(10) That is perfected under G.S. 25-9-316; or

(11) Created in connection with the issuance of any bond, note, or other evidence of indebtedness for borrowed money by this State or any political subdivision or agency thereof, except as provided in G.S. 63A-11(e), 143B-456.1(f), 159C-28, and 159D-23.

(c) Assignment of perfected security interest. -- If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

"§ 25-9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) Security interest subject to other law. -- Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt G.S. 25-9-310(a);

(2) A certificate-of-title statute of this State covering automobiles or other goods that provides for a security interest to be indicated on the certificate as a condition to or result of perfection of the security interest, including G.S. 20-58 and G.S. 75A-41; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law. -- Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) of this section and G.S. 25-9-313 and G.S. 25-9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Duration and renewal of perfection. -- Except as otherwise provided in subsection (d) of this section and G.S. 25-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) Inapplicability to certain inventory. -- During any period in which collateral subject to a statute specified in subdivision (a)(2) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

"§ 25-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) Perfection by filing permitted. -- A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Control or possession of certain collateral. -- Except as otherwise provided in G.S. 25-9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under G.S. 25-9-314;

(2) And except as otherwise provided in G.S. 25-9-308(d), a security interest in a letter-of-credit right may be perfected only by control under G.S. 25-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under G.S. 25-9-313.

(c) Goods covered by negotiable document. -- While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. -- While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) Temporary perfection: new value. -- A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) Temporary perfection: goods or documents made available to debtor. -- A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor. -- A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. -- After the 20-day period specified in subsection (e), (f), or (g) of this section expires, perfection depends upon compliance with this Article.

"§ 25-9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) Perfection by possession or delivery. -- Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under G.S. 25-8-301.

(b) Goods covered by certificate of title. -- With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest

in the goods by taking possession of the goods only in the circumstances described in G.S. 25-9-316(d).

(c) Collateral in possession of person other than debtor. -- With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) Time of perfection by possession; continuation of perfection. -- If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) Time of perfection by delivery; continuation of perfection. -- A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under G.S. 25-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) Acknowledgment not required. -- A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) Effectiveness of acknowledgment; no duties or confirmation. -- If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or G.S. 25-8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) Secured party's delivery to person other than debtor. -- A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) Effect of delivery under subsection (h); no duties or confirmation. -- A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is

not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

"**§ 25-9-314. Perfection by control.**

(a) Perfection by control. -- A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107.

(b) Specified collateral: time of perfection by control; continuation of perfection. -- A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under G.S. 25-9-104, 25-9-105, or 25-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. -- A security interest in investment property is perfected by control under G.S. 25-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

a. If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

b. If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

c. If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

"**§ 25-9-315. Secured party's rights on disposition of collateral and in proceeds.**

(a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds. -- Except as otherwise provided in this Article and in G.S. 25-2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. -- Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by G.S. 25-9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

(c) Perfection of security interest in proceeds. -- A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) Continuation of perfection. -- A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

a. A filed financing statement covers the original collateral;

b. The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

c. The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within 20 days thereafter.

(e) When perfected security interest in proceeds becomes unperfected. -- If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subdivision (d)(1) of this section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under G.S. 25-9-515 or is terminated under G.S. 25-9-513; or

(2) The twenty-first day after the security interest attaches to the proceeds.

"§ 25-9-316. Continued perfection of security interest following change in governing law.

(a) General rule: effect on perfection of change in governing law. -- A security interest perfected pursuant to the law of the jurisdiction designated in G.S. 25-9-301(1) or G.S. 25-9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) Security interest perfected or unperfected under law of new jurisdiction. -- If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction. -- A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
(2) Thereafter the collateral is brought into another jurisdiction; and
(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from this State. -- Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interest becomes unperfected against purchasers. -- A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under G.S. 25-9-311(b) or G.S. 25-9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or
(2) The expiration of four months after the goods had become so covered.

(f) Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary. -- A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or
(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) Subsection (f) security interest perfected or unperfected under law of new jurisdiction. -- If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

"SUBPART 3. PRIORITY.

"§ 25-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) Conflicting security interests and rights of lien creditors. -- A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under G.S. 25-9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

a. The security interest or agricultural lien is perfected; or

b. One of the conditions specified in G.S. 25-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. -- Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. -- Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. -- A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. -- Except as otherwise provided in G.S. 25-9-320 and G.S. 25-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

"§ 25-9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

(a) Seller retains no interest. -- A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected. -- For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

"§ 25-9-319. Rights and title of consignee with respect to creditors and purchasers.

(a) Consignee has consignor's rights. -- Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession

of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) Applicability of other law. -- For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee's possession if, under this Part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

"**§ 25-9-320. Buyer of goods.**

(a) Buyer in ordinary course of business. -- Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Buyer of consumer goods. -- Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family, or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) Effectiveness of filing for subsection (b). -- To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by G.S. 25-9-316(a) and (b).

(d) Buyer in ordinary course of business at wellhead or minehead. -- A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Possessory security interest not affected. -- Subsections (a) and (b) of this section do not affect a security interest in goods in the possession of the secured party under G.S. 25-9-313.

"**§ 25-9-321. Licensee of general intangible and lessee of goods in ordinary course of business.**

(a) 'Licensee in ordinary course of business'. -- In this section, 'licensee in ordinary course of business' means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) Rights of licensee in ordinary course of business. -- A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security

interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) Rights of lessee in ordinary course of business. -- A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

"§ 25-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.

(a) General priority rules. -- Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection; proceeds and supporting obligations. -- For the purposes of subdivision (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules; proceeds and supporting obligations. -- Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under G.S. 25-9-327, 25-9-328, 25-9-329, 25-9-330, or 25-9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

a. The security interest in proceeds is perfected;

b. The proceeds are cash proceeds or of the same type as the collateral; and

c. In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. -- Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d). -- Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Limitations on subsections (a) through (e). -- Subsections (a) through (e) of this section are subject to:

(1) Subsection (g) of this section and the other provisions of this Part;

(2) G.S. 25-4-208 with respect to a security interest of a collecting bank;

(3) G.S. 25-5-118 with respect to a security interest of an issuer or nominated person; and

(4) G.S. 25-9-110 with respect to a security interest arising under Article 2 or 2A of this Chapter.

(g) Priority under agricultural lien statute. -- A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

"**§ 25-9-323. Future advances.**

(a) When priority based on time of advance. -- Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under G.S. 25-9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

a. Under G.S. 25-9-309 when it attaches; or

b. Temporarily under G.S. 25-9-312(e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under G.S. 25-9-309 or G.S. 25-9-312(e), (f), or (g).

(b) Lien creditor. -- Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables. -- Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Buyer of goods. -- Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) 45 days after the purchase.

(e) Advances made pursuant to commitment: priority of buyer of goods. -- Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) Lessee of goods. -- Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) 45 days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment: priority of lessee of goods. -- Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

"§ 25-9-324. Priority of purchase-money security interests.

(a) General rule: purchase-money priority. -- Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in G.S. 25-9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) Inventory purchase-money priority. -- Subject to subsection (c) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in G.S. 25-9-330, and, except as otherwise provided in G.S. 25-9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Holders of conflicting inventory security interests to be notified. -- Subdivisions (b)(2) through (b)(4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under G.S. 25-9-312(f), before the beginning of the 20-day period thereunder.

(d) Livestock purchase-money priority. -- Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in G.S. 25-9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Holders of conflicting livestock security interests to be notified. -- Subdivisions (d)(2) through (d)(4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under G.S. 25-9-312(f), before the beginning of the 20-day period thereunder.

(f) Software purchase-money priority. -- Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in G.S. 25-9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. -- If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f) of this section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, G.S. 25-9-322(a) applies to the qualifying security interests.

"**§ 25-9-324.1. Priority of production-money security interests and agricultural liens.**

(a) Priority over conflicting security interests. -- Except as otherwise provided in subsections (c), (d), and (e) of this section, if the requirements of subsection (b) of this section are satisfied, a perfected production-money security interest in production-money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in G.S. 25-9-327, also has priority in their identifiable proceeds.

(b) Requirements for priority. -- A production-money security interest has priority under subsection (a) of this section if:

(1) The production-money security interest is perfected by filing when the production-money secured party first gives new value to enable the debtor to produce the crops;

(2) The production-money secured party sends an authenticated notification to the holder of the conflicting security interest not less than 10 or more than 30 days before the production-money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production-money secured party; and

(3) The notification states that the production-money secured party has or expects to acquire a production-money security interest in the debtor's crops and provides a description of the crops.

(c) Multiple production-money security interests. -- Except as otherwise provided in subsection (d) or (e) of this section, if more than one security interest qualifies for priority in the same collateral under subsection (a) of this section, the security interests rank according to priority in time of filing under G.S. 25-9-322(a).

(d) New value to produce production-money crops. -- To the extent that a person holding a perfected security interest in production-money crops that are the subject of a production-money security interest gives new value to enable the debtor to produce the production-money crops and the value is in fact used for the production of the production-money crops, the security interests rank according to priority in time of filing under G.S. 25-9-322(a).

(e) Holder of agricultural lien and production-money security interest. -- To the extent that a person holds both an agricultural lien and a production-money security

interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

(f) Creating or perfecting production-money security interest not to operate as default or accelerating event. -- Creating or perfecting a production-money security interest shall not operate under any circumstances as a default on, an accelerating event under, or otherwise as a breach of any note or other instrument or agreement of any kind or nature to pay debt, any loan or credit agreement, or any security agreement or arrangement of any kind or nature where the collateral is real or personal property.

"**§ 25-9-325. Priority of security interests in transferred collateral.**

(a) Subordination of security interest in transferred collateral. -- Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination. -- Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under G.S. 25-9-322(a) or G.S. 25-9-324; or

(2) Arose solely under G.S. 25-2-711(3) or G.S. 25-2A-508(5).

"**§ 25-9-326. Priority of security interests created by new debtor.**

(a) Subordination of security interest created by new debtor. -- Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under G.S. 25-9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under G.S. 25-9-508.

(b) Priority under other provisions; multiple original debtors. -- The other provisions of this Part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under G.S. 25-9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

"**§ 25-9-327. Priority of security interests in deposit account.**

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under G.S. 25-9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in subdivisions (3) and (4) of this section, security interests perfected by control under G.S. 25-9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in subdivision (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under G.S. 25-9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

"**§ 25-9-328. Priority of security interests in investment property.**

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under G.S. 25-9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subdivisions (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under G.S. 25-9-106 rank according to priority in time of:

a. If the collateral is a security, obtaining control;

b. If the collateral is a security entitlement carried in a securities account and:

1. If the secured party obtained control under G.S. 25-8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

2. If the secured party obtained control under G.S. 25-8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

3. If the secured party obtained control through another person under G.S. 25-8-106(d)(3), the time on which priority would be based under this subdivision if the other person were the secured party; or

c. If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in G.S. 25-9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under G.S. 25-9-313(a) and not by control under G.S. 25-9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under G.S. 25-9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by G.S. 25-9-322 and G.S. 25-9-323.

"§ 25-9-329. Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under G.S. 25-9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under G.S. 25-9-314 rank according to priority in time of obtaining control.

"§ 25-9-330. Priority of purchaser of chattel paper or instrument.

(a) Purchaser's priority: security interest claimed merely as proceeds. -- A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under G.S. 25-9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. -- A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under G.S. 25-9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Chattel paper purchaser's priority in proceeds. -- Except as otherwise provided in G.S. 25-9-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

(1) G.S. 25-9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. -- Except as otherwise provided in G.S. 25-9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. -- For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. -- For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

"§ 25-9-331. Priority of rights of purchasers of instruments, documents, and securities under other Articles; priority of interests in financial assets and security entitlements under Article 8.

(a) Rights under Articles 3, 7, and 8 not limited. -- This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8 of this Chapter.

(b) Protection under Article 8. -- This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 of this Chapter.

(c) Filing not notice. -- Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section.

"§ 25-9-332. Transfer of money; transfer of funds from deposit account.

(a) Transferee of money. -- A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account. -- A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

"§ 25-9-333. Priority of certain liens arising by operation of law.

(a) 'Possessory lien.' -- In this section, 'possessory lien' means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) Priority of possessory lien. -- A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

"§ 25-9-334. Priority of security interests in fixtures and crops.

(a) Security interest in fixtures under this Article. -- A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real-property law. -- This Article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures. -- In cases not governed by subsections (d) through (h) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. -- Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) Priority of security interest in fixtures over interests in real property. -- A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

a. Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

b. Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable;

a. Factory or office machines;
b. Equipment that is not primarily used or leased for use in the operation of the real property; or
c. Replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article; or

(4) The security interest is:
a. Created in a manufactured home in a manufactured-home transaction; and
b. Perfected pursuant to a statute described in G.S. 25-9-311(a)(2).

(f) Priority based on consent, disclaimer, or right to remove. -- A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of subdivision (f)(2) priority. -- The priority of the security interest under subdivision (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. -- A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. -- Except as provided in G.S. 42-15, a perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

"§ 25-9-335. Accessions.

(a) Creation of security interest in accession. -- A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. -- If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Priority of security interest. -- Except as otherwise provided in subsection (d) of this section, the other provisions of this Part determine the priority of a security interest in an accession.

(d) Compliance with certificate-of-title statute. -- A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under G.S. 25-9-311(b).

(e) Removal of accession after default. -- After default, subject to Part 6 of this Article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) Reimbursement following removal. -- A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

"**§ 25-9-336. Commingled goods.**

(a) 'Commingled goods.' -- In this section, 'commingled goods' means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) No security interest in commingled goods as such. -- A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) Attachment of security interest to product or mass. -- If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest. -- If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) Priority of security interest. -- Except as otherwise provided in subsection (f) of this section, the other provisions of this Part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) Conflicting security interests in product or mass. -- If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

"**§ 25-9-337. Priority of security interests in goods covered by certificate of title.**

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under G.S. 25-9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

"**§ 25-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.**

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

"**§ 25-9-339. Priority subject to subordination.**

This Article does not preclude subordination by agreement by a person entitled to priority.

"SUBPART 4. RIGHTS OF BANK.

"**§ 25-9-340. Effectiveness of right of recoupment or setoff against deposit account.**

(a) Exercise of recoupment or setoff. -- Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

(b) Recoupment or setoff not affected by security interest. -- Except as otherwise provided in subsection (c) of this section, the application of this Article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

(c) When setoff ineffective. -- The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the

deposit account which is perfected by control under G.S. 25-9-104(a)(3), if the setoff is based on a claim against the debtor.

"§ 25-9-341. Bank's rights and duties with respect to deposit account.

Except as otherwise provided in G.S. 25-9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

"§ 25-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

This Article does not require a bank to enter into an agreement of the kind described in G.S. 25-9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

"PART 4.

"RIGHTS OF THIRD PARTIES.

"§ 25-9-401. Alienability of debtor's rights.

(a) Other law governs alienability; exceptions. -- Except as otherwise provided in subsection (b) of this section and G.S. 25-9-406, 25-9-407, 25-9-408, and 25-9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

(b) Agreement does not prevent transfer. -- An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

"§ 25-9-402. Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

"§ 25-9-403. Agreement not to assert defenses against assignee.

(a) 'Value.' -- In this section, 'value' has the meaning provided in G.S. 25-3-303(a).

(b) Agreement not to assert claim or defense. -- Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under G.S. 25-3-305(a).

(c) When subsection (b) not applicable. -- Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under G.S. 25-3-305(b).

(d) Omission of required statement in consumer transaction. -- In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Other law not displaced. -- Except as otherwise provided in subsection (d) of this section, this section does not displace law other than this Article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

"**§ 25-9-404. Rights acquired by assignee; claims and defenses against assignee.**

(a) Assignee's rights subject to terms, claims, and defenses; exceptions. -- Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e) of this section, the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Account debtor's claim reduces amount owed to assignee. -- Subject to subsection (c) of this section and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Omission of required statement in consumer transaction. -- In a consumer transaction, if a record evidences the account debtor's obligation, law other than this

Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable. -- This section does not apply to an assignment of a health-care-insurance receivable.

"**§ 25-9-405. Modification of assigned contract.**

(a) Effect of modification on assignee. -- A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d) of this section.

(b) Applicability of subsection (a). -- Subsection (a) of this section applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under G.S. 25-9-406(a).

(c) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Inapplicability to health-care-insurance receivable. -- This section does not apply to an assignment of a health-care-insurance receivable.

"**§ 25-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.**

(a) Discharge of account debtor; effect of notification. -- Subject to subsections (b) through (i) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. -- Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to

pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

a. Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

b. A portion has been assigned to another assignee; or

c. The account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. -- Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (e) of this section and G.S. 25-2A-303 and G.S. 25-9-407 and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. -- Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffective. -- Except as otherwise provided in G.S. 25-2A-303 and G.S. 25-9-407 and subject to subsections (h) and (i) of this section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may

give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subdivision (b)(3) not waivable. -- Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subdivision (b)(3) of this section.

(h) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. -- This section does not apply to an assignment of a health-care-insurance receivable. Subsection (f) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (f) of this section: North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes); North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes); North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes); North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes); Employment Security Law (Chapter 96 of the General Statutes); North Carolina Workers' Compensation Act (Article 1 of Chapter 97 of the General Statutes); and Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).

(j) Section prevails over specified inconsistent law. -- Except to the extent otherwise provided in subsection (i) of this section, this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

"§ 25-9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

(a) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Effectiveness of certain terms. -- Except as otherwise provided in G.S. 25-2A-303(7), a term described in subdivision (a)(2) of this section is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) Security interest not material impairment. -- The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of G.S. 25-2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

"§ 25-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

(a) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. -- Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) Legal restrictions on assignment generally ineffective. -- A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). -- To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Section prevails over specified inconsistent law. -- Except to the extent otherwise provided in subsection (f) of this section, this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(f) Inapplicability. -- Subsection (c) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (c) of

this section: North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes); North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes); North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes); North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes); Employment Security Law (Chapter 96 of the General Statutes); North Carolina Workers' Compensation Act (Article 1 of Chapter 97 of the General Statutes); and Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).

"**§ 25-9-409. Restrictions on assignment of letter-of-credit rights ineffective.**

(a) Term or law restricting assignment generally ineffective. -- A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) Limitation on ineffectiveness under subsection (a). -- To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

"PART 5.

"FILING.

"SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT.

"**§ 25-9-501. Filing offices.**

(a) Filing offices. -- Except as otherwise provided in subsection (b) of this section, if the local law of this State governs perfection of a security interest or agricultural

lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

a. The collateral is as-extracted collateral or timber to be cut; or

b. The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. -- The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

"**§ 25-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.**

(a) Sufficiency of financing statement. -- Subject to subsection (b) of this section, a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Real-property-related financing statements. -- Except as otherwise provided in G.S. 25-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed in the real property records;

(3) Provide a description of the real property to which the collateral is related; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement. -- A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is duly recorded.

(d) Filing before security agreement or attachment. -- A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

"**§ 25-9-503. Name of debtor and secured party.**

(a) Sufficiency of debtor's name. -- A financing statement sufficiently provides the name of the debtor:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

a. Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

b. Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) In other cases:

a. If the debtor has a name, only if it provides the individual or organizational name of the debtor; and

b. If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) Additional debtor-related information. -- A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under sub-subdivision (a)(4)b. of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) Debtor's trade name insufficient. -- A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Representative capacity. -- Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) Multiple debtors and secured parties. -- A financing statement may provide the name of more than one debtor and the name of more than one secured party.

"**§ 25-9-504. Indication of collateral.**

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to G.S. 25-9-108; or

(2) An indication that the financing statement covers all assets or all personal property.

"**§ 25-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.**

(a) Use of terms other than 'debtor' and 'secured party.' -- A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in G.S. 25-9-311(a), using the terms 'consignor', 'consignee', 'lessor', 'lessee', 'bailor', 'bailee', 'licensor', 'licensee', 'owner', 'registered owner', 'buyer', 'seller', or words of similar import, instead of the terms 'secured party' and 'debtor'.

(b) Effect of financing statement under subsection (a). -- This Part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under G.S. 25-9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

"**§ 25-9-506. Effect of errors or omissions.**

(a) Minor errors and omissions. -- A financing statement substantially satisfying the requirements of this Part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Financing statement seriously misleading. -- Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with G.S. 25-9-503(a) is seriously misleading.

(c) Financing statement not seriously misleading. -- If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with G.S. 25-9-503(a), the name provided does not make the financing statement seriously misleading.

(d) 'Debtor's correct name.' -- For purposes of G.S. 25-9-508(b), the 'debtor's correct name' in subsection (c) of this section means the correct name of the new debtor.

"**§ 25-9-507. Effect of certain events on effectiveness of financing statement.**

(a) Disposition. -- A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. -- Except as otherwise provided in subsection (c) of this section and G.S. 25-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under G.S. 25-9-506.

(c) Change in debtor's name. -- If a debtor so changes its name that a filed financing statement becomes seriously misleading under G.S. 25-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

"§ 25-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.

(a) Financing statement naming original debtor. -- Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) Financing statement becoming seriously misleading. -- If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under G.S. 25-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under G.S. 25-9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under G.S. 25-9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) When section not applicable. -- This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under G.S. 25-9-507(a).

"§ 25-9-509. Persons entitled to file a record.

(a) Person entitled to file record. -- A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) Security agreement as authorization. -- By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under G.S. 25-9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. -- By acquiring collateral in which a security interest or agricultural lien continues under G.S. 25-9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under G.S. 25-9-315(a)(2).

(d) Person entitled to file certain amendments. -- A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by G.S. 25-9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. -- If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section.

"**§ 25-9-510. Effectiveness of filed record.**

(a) Filed record effective if authorized. -- A filed record is effective only to the extent that it was filed by a person that may file it under G.S. 25-9-509.

(b) Authorization by one secured party of record. -- A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. -- A continuation statement that is not filed within the six-month period prescribed by G.S. 25-9-515(d) is ineffective.

"**§ 25-9-511. Secured party of record.**

(a) Secured party of record. -- A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under G.S. 25-9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) Amendment naming secured party of record. -- If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a

secured party of record. If an amendment is filed under G.S. 25-9-514(b), the assignee named in the amendment is a secured party of record.

(c) Amendment deleting secured party of record. -- A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

"**§ 25-9-512. Amendment of financing statement.**

(a) Amendment of information in financing statement. -- Subject to G.S. 25-9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed in a filing office described in G.S. 25-9-501(a)(1), provides the name of the debtor and the information specified in G.S. 25-9-502(b).

(b) Period of effectiveness not affected. -- Except as otherwise provided in G.S. 25-9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) Effectiveness of amendment adding collateral. -- A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) Effectiveness of amendment adding debtor. -- A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) Certain amendments ineffective. -- An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

"**§ 25-9-513. Termination statement.**

(a) Consumer goods. -- A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a). -- To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment

to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) Other collateral. -- In cases not governed by subsection (a) of this section, within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. -- Except as otherwise provided in G.S. 25-9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in G.S. 25-9-510, for purposes of G.S. 25-9-519(g), 25-9-522(a), and 25-9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

"**§ 25-9-514. Assignment of powers of secured party of record.**

(a) Assignment reflected on initial financing statement. -- Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement. -- Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage. -- An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under G.S. 25-9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than this Chapter.

"**§ 25-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.**

(a) Five-year effectiveness. -- Except as otherwise provided in subsections (b), (e), (f), and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) Public-finance or manufactured-home transaction. -- Except as otherwise provided in subsections (e), (f), and (g) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) Lapse and continuation of financing statement. -- The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) When continuation statement may be filed. -- A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the 30-year period specified in subsection (b) of this section, whichever is applicable.

(e) Effect of filing continuation statement. -- Except as otherwise provided in G.S. 25-9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) Transmitting utility financing statement. -- If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) Record of mortgage as financing statement. -- A record of a mortgage that is effective as a financing statement filed as a fixture filing under G.S. 25-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is

released or satisfied of record or its effectiveness otherwise terminates as to the real property.

"**§ 25-9-516. What constitutes filing; effectiveness of filing.**

(a) What constitutes filing. -- Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Refusal to accept record; filing does not occur. -- Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

a. In the case of an initial financing statement, the record does not provide a name for the debtor;

b. In the case of an amendment or correction statement, the record:

1. Does not identify the initial financing statement as required by G.S. 25-9-512 or G.S. 25-9-518, as applicable; or

2. Identifies an initial financing statement whose effectiveness has lapsed under G.S. 25-9-515;

c. In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

d. In the case of a record filed in the filing office described in G.S. 25-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

a. Provide a mailing address for the debtor;

b. Indicate whether the debtor is an individual or an organization; or

c. If the financing statement indicates that the debtor is an organization, provide:

1. A type of organization for the debtor;

2. A jurisdiction of organization for the debtor; or
3. An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under G.S. 25-9-514(a) or an amendment filed under G.S. 25-9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by G.S. 25-9-515(d).

(c) Rules applicable to subsection (b). -- For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by G.S. 25-9-512, 25-9-514, or 25-9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. -- A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

"§ 25-9-517. Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

"§ 25-9-518. Claim concerning inaccurate or wrongfully filed record.

(a) Correction statement. -- A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) Sufficiency of correction statement. -- A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) Record not affected by correction statement. -- The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

"SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

"**§ 25-9-519. Numbering, maintaining, and indexing records; communicating information provided in records.**

(a) Filing office duties. -- For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d), and (e) of this section.

(b) File number. -- Except as otherwise provided in subsection (i) of this section, a file number assigned after January 1, 2003, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Indexing; general. -- Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) Indexing; real-property-related financing statement. -- If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this State provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) Indexing; real-property-related assignment. -- If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under G.S. 25-9-514(a) or an amendment filed under G.S. 25-9-514(b):

(1) Under the name of the assignor as grantor; and
(2) To the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) Retrieval and association capability. -- The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and
(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) Removal of debtor's name. -- The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under G.S. 25-9-515 with respect to all secured parties of record.

(h) Timeliness of filing office performance. -- The filing office shall perform the acts required by subsections (a) through (e) of this section at the time and in the manner prescribed by filing-office rule, but after January 1, 2003, not later than three business days after the filing office receives the record in question.

(i) Inapplicability to real-property-related filing office. -- Subsection (b) of this section does not apply to a filing office described in G.S. 25-9-501(a)(1).

"**§ 25-9-520. Acceptance and refusal to accept record.**

(a) Mandatory refusal to accept record. -- A filing office shall refuse to accept a record for filing for a reason set forth in G.S. 25-9-516(b) and may refuse to accept a record for filing only for a reason set forth in G.S. 25-9-516(b).

(b) Communication concerning refusal. -- If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than three business days after the filing office receives the record.

(c) When filed financing statement effective. -- A filed financing statement satisfying G.S. 25-9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a) of this section. However, G.S. 25-9-338 applies to a filed financing statement providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) Separate application to multiple debtors. -- If a record communicated to a filing office provides information that relates to more than one debtor, this Part applies as to each debtor separately.

"**§ 25-9-521.** Reserved.

"**§ 25-9-522. Maintenance and destruction of records.**

(a) Post-lapse maintenance and retrieval of information. -- The filing office shall maintain a record of the information provided in a filed financing statement for at

least one year after the effectiveness of the financing statement has lapsed under G.S. 25-9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records. -- Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section.

"§ 25-9-523. Information from filing office.

(a) Acknowledgment of filing written record. -- If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to G.S. 25-9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to G.S. 25-9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) Acknowledgment of filing other record. -- If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to G.S. 25-9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) Communication of requested information. -- Except as otherwise provided in subsection (g) of this section, the filing office shall communicate or otherwise make available in a record, for which it shall not be liable, the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

a. Designates a particular debtor;

b. Has not lapsed under G.S. 25-9-515 with respect to all secured parties of record; and

c. If the request so states, has lapsed under G.S. 25-9-515 and a record of which is maintained by the filing office under G.S. 25-9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) Medium for communicating information. -- In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by

issuing a record that can be admitted into evidence in the courts of this State without extrinsic evidence of its authenticity.

(e) Timeliness of filing office performance. -- The filing office shall perform the acts required by subsections (a) through (d) of this section at the time and in the manner prescribed by filing-office rule, but after January 1, 2003, for a filing office described in G.S. 25-9-501(a)(2), not later than three business days after the filing office receives the request.

(f) Reserved.

(g) Inapplicability to real-property-related filing office. -- Subsection (c) of this section does not apply to a filing office described in G.S. 25-9-501(a)(1) with respect to financing statements filed on or after the effective date of this act.

"**§ 25-9-524. Delay by filing office.**

Delay by the filing office beyond a time limit prescribed by this Part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances.

"**§ 25-9-525. Fees.**

(a) Initial financing statement or other record; general rule. -- Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this Part is:

(1) Thirty dollars ($30.00) if the record is communicated in writing and consists of one or two pages;

(2) Forty-five dollars ($45.00) if the record is communicated in writing and consists of more than two pages, plus two dollars ($2.00) for each page over 10 pages; and

(3) Thirty dollars ($30.00) if the record is communicated by another medium authorized by filing-office rule.

(b) Reserved.

(c) Number of names. -- The number of names required to be indexed does not affect the amount of the fee in subsection (a) of this section.

(d) Response to information request. -- The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(1) Thirty dollars ($30.00) if the request is communicated in writing; and

(2) Thirty dollars ($30.00) if the request is communicated by another medium authorized by filing-office rule.

Upon request the filing office shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of two dollars ($2.00) per page. This subsection does not require that a fee be charged for remote access searching of the filing office database.

(e) Record of mortgage. -- This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under G.S. 25-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

"**§ 25-9-526. Filing-office rules.**

(a) Adoption of filing-office rules. -- The Secretary of State shall adopt and publish rules to implement the Secretary of State's responsibilities under this Part. The filing-office rules must be consistent with this Article.

(b) Harmonization of rules. -- To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this Part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this Part, the Secretary of State, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, may:

(1) Consult with filing offices in other jurisdictions that enact substantially this Part; and

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this Part.

"PART 6.

"DEFAULT.

"SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST.

"**§ 25-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.**

(a) Rights of secured party after default. -- After default, a secured party has the rights provided in this Part and, except as otherwise provided in G.S. 25-9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. -- A secured party in possession of collateral or control of collateral under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107 has the rights and duties provided in G.S. 25-9-207.

(c) Rights cumulative; simultaneous exercise. -- The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. -- Except as otherwise provided in subsection (g) of this section and G.S. 25-9-605, after default, a debtor and an obligor have the rights provided in this Part and by agreement of the parties.

(e) Lien of levy after judgment. -- If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. -- A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) Consignor or buyer of certain rights to payment. -- Except as otherwise provided in G.S. 25-9-607(c), this Part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

"**§ 25-9-602. Waiver and variance of rights and duties.**

Except as otherwise provided in G.S. 25-9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) G.S. 25-9-207(b)(4)c., which deals with use and operation of the collateral by the secured party;

(2) G.S. 25-9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) G.S. 25-9-607(c), which deals with collection and enforcement of collateral;

(4) G.S. 25-9-608(a) and G.S. 25-9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) G.S. 25-9-608(a) and G.S. 25-9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) G.S. 25-9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) G.S. 25-9-610(b), 25-9-611, 25-9-613, and 25-9-614, which deal with disposition of collateral;

(8) G.S. 25-9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) G.S. 25-9-616, which deals with explanation of the calculation of a surplus or deficiency;
(10) G.S. 25-9-620, 25-9-621, and 25-9-622, which deal with acceptance of collateral in satisfaction of obligation;
(11) G.S. 25-9-623, which deals with redemption of collateral;
(12) G.S. 25-9-624, which deals with permissible waivers; and
(13) G.S. 25-9-625 and G.S. 25-9-626, which deal with the secured party's liability for failure to comply with this Article.

"**§ 25-9-603. Agreement on standards concerning rights and duties.**

(a) Agreed standards. -- The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in G.S. 25-9-602 if the standards are not manifestly unreasonable.

(b) Agreed standards inapplicable to breach of peace. -- Subsection (a) of this section does not apply to the duty under G.S. 25-9-609 to refrain from breaching the peace.

"**§ 25-9-604. Procedure if security agreement covers real property or fixtures.**

(a) Enforcement: personal and real property. -- If a security agreement covers both personal and real property, a secured party may proceed:
(1) Under this Part as to the personal property without prejudicing any rights with respect to the real property; or
(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this Part do not apply.

(b) Enforcement: fixtures. -- Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:
(1) Under this Part; or
(2) In accordance with the rights with respect to real property, in which case the other provisions of this Part do not apply.

(c) Removal of fixtures. -- Subject to the other provisions of this Part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal. -- A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

"**§ 25-9-605. Unknown debtor or secondary obligor.**

A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:
a. That the person is a debtor or obligor;
b. The identity of the person; and
c. How to communicate with the person; or
(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
a. That the person is a debtor; and
b. The identity of the person.

"**§ 25-9-606. Time of default for agricultural lien.**

For purposes of this Part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

"**§ 25-9-607. Collection and enforcement by secured party.**

(a) Collection and enforcement generally. -- If so agreed, and in any event after default, a secured party:
(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
(2) May take any proceeds to which the secured party is entitled under G.S. 25-9-315;
(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
(4) If it holds a security interest in a deposit account perfected by control under G.S. 25-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and
(5) If it holds a security interest in a deposit account perfected by control under G.S. 25-9-104(a)(2) or (a)(3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) Nonjudicial enforcement of mortgage. -- If necessary to enable a secured party to exercise under subdivision (a)(3) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:
(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
(2) The secured party's sworn affidavit in recordable form stating that:
a. A default has occurred; and

b. The secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement. -- A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) Expenses of collection and enforcement. -- A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. -- This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

"§ 25-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

(a) Application of proceeds, surplus, and deficiency if obligation secured. -- If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under G.S. 25-9-607 in the following order to:

a. The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

b. The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

c. The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under sub-subdivision (a)(1)c. of this section.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under G.S. 25-9-607 unless the failure to do so would be commercially

unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. -- If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

"**§ 25-9-609. Secured party's right to take possession after default.**

(a) Possession; rendering equipment unusable; disposition on debtor's premises. -- After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under G.S. 25-9-610.

(b) Judicial and nonjudicial process. -- A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) Assembly of collateral. -- If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

"**§ 25-9-610. Disposition of collateral after default.**

(a) Disposition after default. -- After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Commercially reasonable disposition. -- Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) Purchase by secured party. -- A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) Warranties on disposition. -- A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) Disclaimer of warranties. -- A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) Record sufficient to disclaim warranties. -- A record is sufficient to disclaim warranties under subsection (e) of this section if it indicates 'There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition' or uses words of similar import.

"**§ 25-9-611. Notification before disposition of collateral.**

(a) 'Notification date.' -- In this section, 'notification date' means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. -- Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under G.S. 25-9-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

(c) Persons to be notified. -- To comply with subsection (b) of this section, the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

a. Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

b. Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

1. Identified the collateral;

2. Was indexed under the debtor's name as of that date; and

3. Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

c. Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in G.S. 25-9-311(a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. -- Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with sub-subdivision (c)(3)b. -- A secured party complies with the requirement for notification prescribed by sub-subdivision (c)(3)b. of this section if:

(1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in sub-subdivision (c)(3)b. of this section; and

(2) Before the notification date, the secured party:

a. Did not receive a response to the request for information; or

b. Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

"§ 25-9-612. Timeliness of notification before disposition of collateral.

(a) Reasonable time is question of fact. -- Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) Ten-day period sufficient in nonconsumer transaction. -- In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

"§ 25-9-613. Contents and form of notification before disposition of collateral: general.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

a. Describes the debtor and the secured party;

b. Describes the collateral that is the subject of the intended disposition;

c. States the method of intended disposition;

d. States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

e. States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in subdivision (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in subdivision (1) of this section are sufficient, even if the notification includes:

a. Information not specified by that subdivision; or
b. Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in G.S. 25-9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]
From: [Name, address, and telephone number of secured party]
Name of Debtor(s): [Include only if debtor(s) is/are not an addressee]
[For a public disposition:]
We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:
Day and Date: _____
Time: _____
Place: _____
[For a private disposition:]
We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].
You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $_____].
You may request an accounting by calling us at [telephone number]

"**§ 25-9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.**

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:
a. The information specified in G.S. 25-9-613(1);
b. A description of any liability for a deficiency of the person to which the notification is sent;
c. A telephone number from which the amount that must be paid to the secured party to redeem the collateral under G.S. 25-9-623 is available; and
d. A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]
[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] or write us at [secured party's address] and request a written explanation. [We will charge you $_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

(4) A notification in the form of subdivision (3) of this section is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of subdivision (3) of this section is sufficient, even if it includes errors in information not required by subdivision (1) of this section, unless the error is misleading with respect to rights arising under this Article.

(6) If a notification under this section is not in the form of subdivision (3) of this section, law other than this Article determines the effect of including information not required by subdivision (1) of this section.

"§ 25-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) Application of proceeds. -- A secured party shall apply or pay over for application the cash proceeds of disposition under G.S. 25-9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

a. The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

b. In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. -- If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subdivision (a)(3) of this section.

(c) Application of noncash proceeds. -- A secured party need not apply or pay over for application noncash proceeds of disposition under G.S. 25-9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured. -- If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subdivision (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment. -- If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) Calculation of surplus or deficiency in disposition to person related to secured party. -- The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this Part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) Cash proceeds received by junior secured party. -- A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

"**§ 25-9-616. Explanation of calculation of surplus or deficiency.**

(a) Definitions. -- In this section:

(1) 'Explanation' means a writing that:

a. States the amount of the surplus or deficiency;

b. Provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;

c. States, if applicable, that future debits, credits, charges, including additional credit service charges or interest,

rebates, and expenses may affect the amount of the surplus or deficiency; and

d. Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) 'Request' means a record:

a. Authenticated by a debtor or consumer obligor;

b. Requesting that the recipient provide an explanation; and

c. Sent after disposition of the collateral under G.S. 25-9-610.

(b) Explanation of calculation. -- In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under G.S. 25-9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

a. Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

b. Within 14 days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required information. -- To comply with sub-subdivision (a)(1)b. of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

a. If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

b. If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the

obligor is known to be entitled and which are not reflected in the amount in subdivision (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) Substantial compliance. -- A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) Charges for responses. -- A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subdivision (b)(1) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response.

"**§ 25-9-617. Rights of transferee of collateral.**

(a) Effects of disposition. -- A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) Rights of good-faith transferee. -- A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

(c) Rights of other transferee. -- If a transferee does not take free of the rights and interests described in subsection (a) of this section, the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien.

"**§ 25-9-618. Rights and duties of certain secondary obligors.**

(a) Rights and duties of secondary obligor. -- A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer, or subrogation. -- An assignment, transfer, or subrogation described in subsection (a) of this section:

(1) Is not a disposition of collateral under G.S. 25-9-610; and

(2) Relieves the secured party of further duties under this Article.

"§ 25-9-619. Transfer of record or legal title.

(a) 'Transfer statement.' -- In this section, 'transfer statement' means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its postdefault remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) Effect of transfer statement. -- A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party's duties. -- A transfer of the record or legal title to collateral to a secured party under subsection (b) of this section or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article.

"§ 25-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

(a) Conditions to acceptance in satisfaction. -- Except as otherwise provided in subsection (g) of this section, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;

(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:

a. A person to which the secured party was required to send a proposal under G.S. 25-9-621; or

b. Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) of this section of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to G.S. 25-9-624.

(b) Purported acceptance ineffective. -- A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) Debtor's consent. -- For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

a. Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

b. In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

c. Does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(d) Effectiveness of notification. -- To be effective under subdivision (a)(2) of this section, a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to G.S. 25-9-621, within 20 days after notification was sent to that person; and

(2) In other cases:

a. Within 20 days after the last notification was sent pursuant to G.S. 25-9-621; or

b. If a notification was not sent, before the debtor consents to the acceptance under subsection (c) of this section.

(e) Mandatory disposition of consumer goods. -- A secured party that has taken possession of collateral shall dispose of the collateral pursuant to G.S. 25-9-610 within the time specified in subsection (f) of this section if:

(1) Sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) Compliance with mandatory disposition requirement. -- To comply with subsection (e) of this section, the secured party shall dispose of the collateral:

(1) Within 90 days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) No partial satisfaction in consumer transaction. -- In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

"**§ 25-9-621. Notification of proposal to accept collateral.**

(a) Persons to which proposal to be sent. -- A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

a. Identified the collateral;

b. Was indexed under the debtor's name as of that date; and

c. Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in G.S. 25-9-311(a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. -- A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section.

"**§ 25-9-622. Effect of acceptance of collateral.**

(a) Effect of acceptance. -- A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) Discharge of subordinate interest notwithstanding noncompliance. -- A subordinate interest is discharged or terminated under subsection (a) of this section, even if the secured party fails to comply with this Article.

"**§ 25-9-623. Right to redeem collateral.**

(a) Persons that may redeem. -- A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) Requirements for redemption. -- To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in G.S. 25-9-615(a)(1).

(c) When redemption may occur. -- A redemption may occur at any time before a secured party:

(1) Has collected collateral under G.S. 25-9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under G.S. 25-9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under G.S. 25-9-622.

"**§ 25-9-624. Waiver.**

(a) Waiver of disposition notification. -- A debtor or secondary obligor may waive the right to notification of disposition of collateral under G.S. 25-9-611 only by an agreement to that effect entered into and authenticated after default.

(b) Waiver of mandatory disposition. -- A debtor may waive the right to require disposition of collateral under G.S. 25-9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Waiver of redemption right. -- Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under G.S. 25-9-623 only by an agreement to that effect entered into and authenticated after default.

"SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

"**§ 25-9-625. Remedies for secured party's failure to comply with Article.**

(a) Judicial orders concerning noncompliance. -- If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. -- Subject to subsections (c), (d), and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages in consumer-goods transaction. -- Except as otherwise provided in G.S. 25-9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this Part may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

(d) Recovery when deficiency eliminated or reduced. -- A debtor whose deficiency is eliminated under G.S. 25-9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under G.S. 25-9-626 may not otherwise recover under subsection (b) of this section for noncompliance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance.

(e) Statutory damages: noncompliance with specified provisions. -- In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars ($500.00) in each case from a person that:

(1) Fails to comply with G.S. 25-9-208;

(2) Fails to comply with G.S. 25-9-209;

(3) Files a record that the person is not entitled to file under G.S. 25-9-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by G.S. 25-9-513(a) or (c);

(5) Fails to comply with G.S. 25-9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with G.S. 25-9-616(b)(2).

(f) Statutory damages: noncompliance with G.S. 25-9-210. -- A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, five hundred dollars ($500.00) in each case from a person that, without reasonable cause, fails to comply with a request under G.S. 25-9-210. A recipient of a request under G.S. 25-9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) Limitation of security interest: noncompliance with G.S. 25-9-210. -- If a secured party fails to comply with a request regarding a list of collateral or a statement of account under G.S. 25-9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

"§ 25-9-626. Action in which deficiency or surplus is in issue.

(a) Applicable rules if amount of deficiency or surplus in issue. -- In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this Part.

(3) Except as otherwise provided in G.S. 25-9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

a. The proceeds of the collection, enforcement, disposition, or acceptance; or

b. The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of sub-subdivision (a)(3)b. of this section, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under G.S. 25-9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) Nonconsumer transactions; no inference. -- The limitation of the rules in subsection (a) of this section to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

"§ 25-9-627. Determination of whether conduct was commercially reasonable.

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. -- The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself

sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) Dispositions that are commercially reasonable. -- A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) Approval by court or on behalf of creditors. -- A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) of this section not necessary; absence of approval has no effect. -- Approval under subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

"§ 25-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.

(a) Limitation of liability of secured party for noncompliance with Article. -- Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

(2) The secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. -- A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

a. That the person is a debtor or obligor;

b. The identity of the person; and

c. How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

a. That the person is a debtor; and

b. The identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. -- A secured party is not liable to any

person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. -- A secured party is not liable to any person under G.S. 25-9-625(c)(2) for its failure to comply with G.S. 25-9-616.

(e) Limitation of multiple liability for statutory damages. -- A secured party is not liable under G.S. 25-9-625(c)(2) more than once with respect to any one secured obligation.

"PART 7.

"TRANSITION.

"**§ 25-9-701. Effective date.**

This act takes effect on July 1, 2001. References in this Part to 'this act' refer to the session law by which this Part is added to Article 9 of Chapter 25 of the General Statutes. References in this Part to 'former Article 9' are to Article 9 of Chapter 25 of the General Statutes as in effect immediately before the effective date of this act.

"**§ 25-9-702. Savings clause.**

(a) Pre-effective-date transactions or liens. -- Except as otherwise provided in this Part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the effective date of this act.

(b) Continuing validity. -- Except as otherwise provided in subsection (c) of this section and G.S. 25-9-703 through G.S. 25-9-709:

(1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before the effective date of this act, and would be subject to this act if they had been entered into or created after the effective date of this act, and the rights, duties, and interests flowing from those transactions and liens remain valid after the effective date of this act; and

(2) The transactions and liens described in subdivision (1) of this subsection may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. -- This act does not affect an action, case, or proceeding commenced before the effective date of this act.

"**§ 25-9-703. Security interest perfected before effective date.**

(a) Continuing priority over lien creditor; perfection requirements satisfied. -- A security interest that is enforceable immediately before the effective date of this act and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act if, on the effective date of this

act, the applicable requirements for enforceability and perfection under this act are satisfied without further action.

(b) Continuing priority over lien creditor; perfection requirements not satisfied. -- Except as otherwise provided in G.S. 25-9-705, if, immediately before the effective date of this act, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this act are not satisfied on the effective date of this act, the security interest:

(1) Is a perfected security interest for one year after the effective date of this act;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under G.S. 25-9-203 before the year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under this act are satisfied before the year expires.

"**§ 25-9-704. Security interest unperfected before effective date.**

A security interest that is enforceable immediately before the effective date of this act but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one year after the effective date of this act;

(2) Remains enforceable thereafter if the security interest becomes enforceable under G.S. 25-9-203 on the effective date of this act or within one year thereafter; and

(3) Becomes perfected:

a. Without further action, on the effective date of this act if the applicable requirements for perfection under this act are satisfied before or at that time; or

b. When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

"**§ 25-9-705. Effectiveness of action taken before effective date.**

(a) Pre-effective-date action; one-year perfection period unless reperfected. -- If action, other than the filing of a financing statement, is taken before the effective date of this act and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before the effective date of this act, the action is effective to perfect a security interest that attaches under this act within one year after the effective date of this act. An attached security interest becomes unperfected one year after the effective date of this act unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) Pre-effective-date filing. -- The filing of a financing statement before the effective date of this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) Pre-effective-date filing in jurisdiction formerly governing perfection. -- This act does not render ineffective an effective financing statement that, before the effective date of this act, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9. However, except as otherwise provided in subsections (d) and (e) of this section and G.S. 25-9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; and

(2) June 30, 2006.

(d) Continuation statement. -- The filing of a continuation statement after the effective date of this act does not continue the effectiveness of the financing statement filed before the effective date of this act. However, upon the timely filing of a continuation statement after the effective date of this act and in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this Article, the effectiveness of a financing statement filed in the same office in that jurisdiction before the effective date of this act continues for the period provided by the law of that jurisdiction.

(e) Application of subdivision (c)(2) to transmitting utility financing statement. -- Subdivision (c)(2) of this section applies to a financing statement that, before the effective date of this act, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9 only to the extent that Part 3 of this Article provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Application of Part 5. -- A financing statement that includes a financing statement filed before the effective date of this act and a continuation statement filed after the effective date of this act is effective only to the extent that it satisfies the requirements of Part 5 of this Article for an initial financing statement.

"**§ 25-9-706. When initial financing statement suffices to continue effectiveness of financing statement.**

(a) Initial financing statement in lieu of continuation statement. -- The filing of an initial financing statement in the office specified in G.S. 25-9-501 continues the effectiveness of a financing statement filed before the effective date of this act if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this act;

(2) The pre-effective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) Period of continued effectiveness. -- The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before the effective date of this act, for the period provided in G.S. 25-9-403 of former Article 9 with respect to a financing statement; and

(2) If the initial financing statement is filed after the effective date of this act, for the period provided in G.S. 25-9-515 with respect to an initial financing statement.

(c) Requirement for initial financing statement under subsection (a). -- To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of Part 5 of this Article for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

"**§ 25-9-707. Amendment of pre-effective-date financing statement.**

(a) 'Pre-effective-date financing statement'. -- In this section, 'pre-effective-date financing statement' means a financing statement filed before the effective date of this act.

(b) Applicable law. -- After the effective date of this act, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this Article. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. -- Except as otherwise provided in subsection (d) of this section, if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the effective date of this act only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in G.S. 25-9-501;

(2) An amendment is filed in the office specified in G.S. 25-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies G.S. 25-9-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies G.S. 25-9-706(c) is filed in the office specified in G.S. 25-9-501.

(d) Method of amending: continuation. -- If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under G.S. 25-9-705(d) and (f) or G.S. 25-9-706.

(e) Reserved.

(f) Method of amending; termination. -- If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be terminated after the effective date of this act only if:

(1) The pre-effective-date financing statement and a termination statement are filed in the office specified in G.S. 25-9-501; or

(2) A termination statement is filed in the office specified in G.S. 25-9-501 concurrently with the filing in that office of an initial financing statement that satisfies G.S. 25-9-706(c). Under this subsection, no separate fee shall be charged for the filing or indexing of the termination statement.

"§ 25-9-708. Persons entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this Part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this Part:

a. To continue the effectiveness of a financing statement filed before the effective date of this act; or

b. To perfect or continue the perfection of a security interest.

"§ 25-9-709. Priority.

(a) Law governing priority. -- This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the effective date of this act, former Article 9 determines priority.

(b) Priority if security interest becomes enforceable under G.S. 25-9-203. -- For purposes of G.S. 25-9-322(a), the priority of a security interest that becomes enforceable under G.S. 25-9-203 dates from the effective date of this act if the security interest is perfected under this act by the filing of a financing statement before the effective date of this act which would not have been effective to perfect the security interest under former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

"§ 25-9-710. Special transitional provision for maintaining and searching local filing office records.

(a) In this section:

(1) 'Former-Article-9 records' means:

a. Financing statements and other records that have been filed in the local-filing office before July 1, 2001, and that are, or upon processing and indexing will be, reflected in the index maintained, as of June 30, 2001, by the local-filing office for financing statements and other records filed in the local-filing office before July 1, 2001; and

b. The index as of June 30, 2001.

The term does not include records presented to a local-filing office for filing after June 30, 2001, whether or not the records relate to financing statements filed in the local-filing office before July 1, 2001.

(2) 'Local-filing office' means a filing office, other than the office of the Secretary of State, that is designated as the proper place to file a financing statement under G.S. 25-9-401(1) of former Article 9. The term applies only with respect to a record that covers a type of collateral as to which the filing office is designated in that section as the proper place to file.

(b) A local-filing office must not accept for filing a record presented after June 30, 2001, whether or not the record relates to a financing statement filed in the local-filing office before July 1, 2001.

(c) Until July 1, 2008, each local-filing office must maintain all former Article 9 records in accordance with former Article 9. A former Article 9 record that is not reflected on the index maintained at June 30, 2001, by the local-filing office must be processed and indexed, and reflected on the index as of June 30, 2001, as soon as practicable but in any event no later than July 30, 2001.

(d) Until at least June 30, 2008, each local-filing office must respond to requests for information with respect to former Article 9 records relating to a debtor and issue certificates, in accordance with former Article 9. The fees charged for responding to requests for information relating to a debtor and issuing certificates with respect to former-Article-9 records must be the fees in effect under former Article 9 on June 30, 2001.

(e) After June 30, 2008, each local-filing office may remove and destroy, in accordance with any then applicable record retention law of this State, all former-Article-9 records, including the related index.

(f) This section does not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:

(1) The collateral is timber to be cut or as-extracted collateral, or

(2) The record is or relates to a financing statement filed as a fixture and the collateral is goods that are or are to become fixtures."

Section 2.(a) Article 9 of Chapter 25 of the General Statutes, as enacted by Section 1 of this act, is amended by adding the following new section to read:

"**§ 25-9-521. Uniform form of written financing statement and amendment.**

(a) Initial financing statement form. -- A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in G.S. 25-9-516(b):

(b) Amendment form. -- A filing office that accepts written records may not refuse to accept a written record in the form and format except for a reason set forth in G.S. 25-9-516(b):"

Section 2.(b) The Revisor of Statutes shall cause to be printed in G.S. 25-9-521(a), as enacted by subsection (a) of this section, the "National UCC

Financing Statement (Form UCC1) (Rev. 07/29/98)" and the "National UCC Financing Statement Addendum (Form UCC1 Ad) (Rev. 07/29/98)" as reproduced in the official text of U.C.C. Article 9 (1999), which are hereby incorporated by reference into G.S. 25-9-521(a).

Section 2.(c) The Revisor of Statutes shall cause to be printed in G.S. 25-9-521(b), as enacted by subsection (a) of this section, the "National UCC Financing Statement Amendment (Form UCC3) (Rev. 07/29/98)" and the "National UCC Financing Statement Amendment Addendum (Form UCC3 Ad) (Rev. 07/29/98)" as reproduced in the official text of U.C.C. Article 9 (1999), which are hereby incorporated by reference into G.S. 25-9-521(b).

PART II. CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE.

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

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

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

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

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

Letters of Credit. (G.S. 25-5-116).

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

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

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

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. (G.S. 25-9-301 through G.S. 25-9-307).

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

~~Letters of Credit. (G.S. 25-5-116).~~"

Section 4. G.S. 25-1-109 reads as rewritten:

"**§ 25-1-109. Section captions.**

Section captions are parts of this chapter. The subsection headings in Article 9 of this Chapter are not parts of this Chapter."

Section 5. G.S. 25-1-201(9) reads as rewritten:

"(9) 'Buyer in ordinary course of business' means a person ~~who~~ that buys goods in good ~~faith and~~ faith, without knowledge that the sale ~~to him is in violation of~~ violates the ~~ownership~~ rights ~~or security interest~~ of ~~a third party~~ another person in the ~~goods~~ goods, and ~~buys~~ in the ordinary course from a ~~person~~ person, other than a pawnbroker, in the business of selling goods of that ~~kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons~~ kind. A person buys goods in the ordinary

course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. ~~"Buying"~~ A buyer in ordinary course of business may ~~be~~ buy for ~~cash~~ cash, ~~or~~ by exchange of other ~~property~~ property, or on secured or unsecured ~~credit~~ credit, and ~~includes receiving~~ may acquire goods or documents of title under a preexisting contract for ~~sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.~~ sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this Chapter may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business."

Section 6. G.S. 25-1-201(32) reads as rewritten:

"(32) 'Purchase' includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or re-issue, gift or any other voluntary transaction creating an interest in property."

Section 7. G.S. 25-1-201(37) reads as rewritten:

"(37) 'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. ~~The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation of a "security interest".~~ The term also includes any interest of a consignor and a buyer of ~~accounts or~~ accounts, chattel ~~paper which~~ paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9 of this Chapter. The special property interest of a buyer of goods on identification of those goods to a contract for sale under G.S. 25-2-401 is not a 'security interest,' but a buyer may also acquire a 'security interest' by complying with Article 9 of this Chapter. ~~Unless a consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (G.S. 25-2-326).~~ Except as otherwise provided in G.S. 25-2-505, the right of a seller or lessor of goods under Article 2 or 2A of this Chapter to retain or acquire possession of the goods is not a 'security interest', but a seller or lessor may also acquire a 'security interest' by complying with Article 9 of this Chapter. The retention or reservation of title by a seller of goods notwithstanding shipment or

delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation of a 'security interest'.

(a) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest ~~if:~~ if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods, or

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods, or

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) The lessee has an option to renew the lease or to become the owner of the goods,

(iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(ii) 'Reasonably predictable' and 'remaining economic life of the goods' are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) 'Present value' means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into."

Section 8. G.S. 25-2-103(3) reads as rewritten:

"(3) The following definitions in other articles apply to this article:

'Check.' G.S. 25-3-104.

'Consignee.' G.S. 25-7-102.

'Consignor.' G.S. 25-7-102.

'Consumer goods.' ~~G.S. 25-9-109.~~ G.S. 25-9-102.

'Dishonor.' ~~G.S. 25-3-507.~~ G.S. 25-3-502.

'Draft.' G.S. 25-3-104."

Section 9. G.S. 25-2-210 reads as rewritten:

"**§ 25-2-210. Delegation of performance; assignment of rights.**

~~(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.~~

~~(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach~~

~~of the whole contract, or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.~~

~~(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.~~

~~(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.~~

~~(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee.~~

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in G.S. 25-9-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of 'the contract' is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of 'the contract' or of 'all my rights under the contract' or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the

assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee."

Section 10. G.S. 25-2-326 reads as rewritten:

"**§ 25-2-326. Sale on approval and sale or return; ~~consignment sales and~~ rights of creditors.**

~~(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is~~

~~(a) a "sale on approval" if the goods are delivered primarily for use, and~~

~~(b) a "sale or return" if the goods are delivered primarily for resale.~~

~~(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.~~

~~(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery~~

~~(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or~~

~~(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or~~

~~(c) complies with the filing provisions of the article on secured transactions (article 9).~~

~~(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (G.S. 25-2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (G.S. 25-2-202).~~

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a 'sale on approval' if the goods are delivered primarily for use, and

(b) a 'sale or return' if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any 'or return' term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (G.S. 25-2-201) and

as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (G.S. 25-2-202)."

Section 11. G.S. 25-2-502 reads as rewritten:

"**§ 25-2-502. Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.**

~~(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section [G.S. 25-2-501] may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.~~

~~(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.~~

(1) Subject to subsections (2) and (3) of this section and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he has a special property under G.S. 25-2-501 may, on making and keeping good a tender of any unpaid portion of their price, recover them from the seller if:

a. in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

b. in all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subdivision (1)a. of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer, he acquires the right to recover the goods only if they conform to the contract for sale."

Section 12. G.S. 25-2-716(3) reads as rewritten:

"(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver."

Section 13. G.S. 25-2A-103(3) reads as rewritten:

"(3) The following definitions in other Articles apply to this Article:

'Account'. ~~G.S. 25-9-106.~~ G.S. 25-9-102(a)(2).

'Between merchants'. G.S. 25-2-104(3).

'Buyer'. G.S. 25-2-103(1)(a).

'Chattel paper'. ~~G.S. 25-9-105(1)(b).~~ G.S. 25-9-102(a)(11).
'Consumer goods'. ~~G.S. 25-9-109(1).~~ G.S. 25-9-102(a)(23).
'Document'. ~~G.S. 25-9-105(1)(f).~~ G.S. 25-9-102(a)(30).
'Entrusting'. G.S. 25-2-403(3).
~~'General intangibles'. G.S. 25-9-106.~~
'General intangible'. G.S. 25-9-102(a)(42).
'Good faith'. G.S. 25-2-103(1)(b).
'Instrument'. ~~G.S. 25-9-105(1)(i).~~ G.S. 25-9-102(a)(47).
'Merchant'. G.S. 25-2-104(1).
'Mortgage'. ~~G.S. 25-9-105(1)(j).~~ G.S. 25-9-102(a)(55).
'Pursuant to commitment'. ~~G.S. 25-9-105(1)(k).~~ G.S. 25-9-102(a)(68).
'Receipt. G.S. 25-2-103(1)(c).
'Sale'. G.S. 25-2-106(1).
'Sale on approval'. G.S. 25-2-326.
'Sale or return'. G.S. 25-2-326.
'Seller'. G.S. 25-2-103(1)(d)."

Section 14. G.S. 25-2A-303 reads as rewritten:

"**§ 25-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.**

~~(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9 of this Chapter, Secured Transactions, by reason of G.S. 25-9-102(1)(b).~~

~~(2) Except as provided in subsections (3) and (4) of this section, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation, or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.~~

~~(3) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) of this section unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.~~

~~(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5) of this section.~~

~~(5) Subject to subsections (3) and (4) of this section:~~

~~(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in G.S. 25-2A-501(2);~~

~~(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.~~

~~(6) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.~~

~~(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.~~

~~(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.~~

(1) As used in this section, 'creation of a security interest' includes the sale of a lease contract that is subject to Article 9 of this Chapter, Secured Transactions, by reason of G.S. 25-9-109(a)(3).

(2) Except as provided in subsection (3) of this section and G.S. 25-9-407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation, or enforcement of a security

interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4) of this section.

(4) Subject to subsection (3) of this section and G.S. 25-9-407:

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in G.S. 25-2A-501(2);

(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of 'the lease' or of 'all my rights under the lease', or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous."

Section 15. G.S. 25-2A-307 reads as rewritten:

"**§ 25-2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.**

~~(1) Except as otherwise provided in G.S. 25-2A-306, a creditor of a lessee takes subject to the lease contract.~~

~~(2) Except as otherwise provided in subsections (3) and (4) of this section and in G.S. 25-2A-306 and G.S. 25-2A-308, a creditor of a lessor takes subject to the lease contract unless:~~

~~(a) the creditor holds a lien that attached to the goods before the lease contract became enforceable;~~

~~(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or~~

~~(c) the creditor holds a security interest in the goods which was perfected (G.S. 25-9-303) before the lease contract became enforceable.~~

~~(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (G.S. 25-9-303) and the lessee knows of its existence.~~

~~(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.~~

(1) Except as otherwise provided in G.S. 25-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) of this section and in G.S. 25-2A-306 and G.S. 25-2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in G.S. 25-9-317, 25-9-321, and 25-9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor."

Section 16. G.S. 25-2A-309(1)(b) reads as rewritten:

"(b) a 'fixture filing' is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of ~~G.S. 25-9-402(5);~~ G.S. 25-9-502(a) and (b);"

Section 17. G.S. 25-4-208(c) reads as rewritten:

"(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the

item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) No security agreement is necessary to make the security interest enforceable ~~(G.S. 25-9-203(1)(a);~~ (G.S. 25-9-203(b)(3)a.);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds."

Section 18. Article 5 of Chapter 25 of the General Statutes is amended by adding a new section to read:

"**§ 25-5-118. Security interest of issuer or nominated person.**

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Article 9 of this Chapter, but:

(1) A security agreement is not necessary to make the security interest enforceable under G.S. 25-9-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document."

Section 19. G.S. 25-6-102 reads as rewritten:

"**§ 25-6-102. 'Bulk transfers'; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.**

(1) A 'bulk transfer' is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory ~~(G.S. 25-9-109)~~ (G.S. 25-9-102) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment ~~(G.S. 25-9-109)~~ (G.S. 25-9-102) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by ~~the following section [G.S. 25-6-103]~~ G.S. 25-6-103 all bulk transfers of goods located within this State are subject to this article."

Section 20. G.S. 25-7-503(1) reads as rewritten:

"(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (G.S. 25-7-403) or with power of disposition under this chapter (G.S. 25-2-403 and ~~25-9-307)~~ G.S. 25-9-320) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title."

Section 21. G.S. 25-8-103(f) reads as rewritten:

"(f) A commodity contract, as defined in ~~G.S. 25-9-115,~~ G.S. 25-9-102(a)(15), is not a security or financial asset."

Section 22. G.S. 25-8-106 reads as rewritten:

"**§ 25-8-106. Control.**

(a) A purchaser has 'control' of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has 'control' of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) The certificate is endorsed to the purchaser or in blank by an effective endorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has 'control' of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has 'control' of a security entitlement if:

(1) The purchaser becomes the entitlement holder; ~~or~~

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement ~~holder.~~ holder; or

(3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of ~~subdivision (c) (2) or (d) (2)~~ subsection (c) or (d) of this section has ~~control~~ control, even if the registered owner in the case of ~~subdivision (c) (2)~~ subsection (c) of this section or the entitlement holder in the case of ~~subdivision (d) (2)~~ subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision (c) (2) or (d) (2) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder."

Section 23. G.S. 25-8-110(e) reads as rewritten:

"~~(e) The following rules determine a 'securities intermediary's jurisdiction' for purposes of this section:~~

~~(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~

~~(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subdivision (1) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~

~~(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.~~

~~(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in subdivision (3) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.~~

(e) The following rules determine a 'securities intermediary's jurisdiction' for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this Part, this Article, or this Chapter, that jurisdiction is the securities intermediary's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and an agreement between the securities intermediary and its entitlement

holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this section applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located."

Section 24. G.S. 25-8-301(a) reads as rewritten:

"(a) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and ~~has been~~ is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorse to the purchaser by an effective ~~indorsement.~~ indorsement and has not been indorsed to the securities intermediary or in blank."

Section 25. G.S. 25-8-302(a) reads as rewritten:

"(a) Except as otherwise provided in subsections (b) and (c) of this section, ~~upon delivery~~ a purchaser of a certificated or uncertificated security ~~to a purchaser, the purchaser~~ acquires all rights in the security that the transferor had or had power to transfer."

Section 26. G.S. 25-8-510 reads as rewritten:

"**§ 25-8-510. Rights of purchaser of security entitlement from entitlement holder.**

(a) ~~An~~ In a case not covered by the priority rules in Article 9 of this Chapter or the rules stated in subsection (c) of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under G.S. 25-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in ~~Article 9,~~ Article 9 of this Chapter, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. ~~Purchasers~~ Except as otherwise provided in subsection (d) of this section, purchasers who have control rank ~~equally, except that a~~ according to priority in time of:

(1) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under G.S. 25-8-106(d)(1);

(2) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under G.S. 25-8-106(d)(2); or

(3) If the purchaser obtained control through another person under G.S. 25-8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary."

PART III. CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES.

Section 27. G.S. 6-21.2(5) reads as rewritten:

"(5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor, account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the "outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.

Notwithstanding the foregoing, however, if debtor has defaulted or violated the terms of the security agreement and has refused, on

demand, to surrender possession of the collateral to the secured party as authorized by ~~§ 25-9-503,~~ G.S. 25-9-609, with the result that said secured party is required to institute an ancillary claim and delivery proceeding to secure possession of said collateral; no such written notice shall be required before enforcement of the provisions relative to payment of attorneys' fees in addition to the "outstanding balance."

Section 28. G.S. 20-28.2(f)(5) reads as rewritten:

"(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of ~~Part 5~~ Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder."

Section 29. G.S. 20-28.3(e3)(1) reads as rewritten:

"(1) A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

a. Default on the obligation secured by the motor vehicle has occurred;

b. As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

c. The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of ~~Part 5~~ Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

d. The lienholder agrees not to sell, give, or otherwise transfer possession of the seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle

after the forfeiture hearing, to the defendant or the motor vehicle owner; and

e. The seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or motor vehicle owner."

Section 30. G.S. 20-58.8 reads as rewritten:

"**§ 20-58.8. Applicability of §§ 20-58 to 20-58.8; use of term 'lien'.**

~~(a) The provisions of G.S. 20-58 through 20-58.8 apply to the perfection of security interests pursuant to G.S. 25-9-302.~~

(b) The provisions of G.S. 20-58 through 20-58.8 inclusive shall not apply to or affect:

(1) A lien given by statute or rule of law for storage of a motor vehicle or to a supplier of services or materials for a vehicle;

(2) A lien arising by virtue of a statute in favor of the United States, this State or any political subdivision of this State; or

(3) A security interest in a vehicle created by a manufacturer or by a dealer in new or used vehicles who holds the vehicle in his inventory. ~~Such security interests shall be perfected by filing a financing statement under Article 9 of the Uniform Commercial Code.~~

(c) When the term "lien" is used in other sections of this Chapter, or has been used prior to October 1, 1969, with reference to transactions governed by G.S. 20-58 through 20-58.8, to describe contractual agreements creating security interests in personal property, the term "lien" shall be construed to refer to a "security interest" as the term is used in G.S. 20-58 through 20-58.8 and the Uniform Commercial Code."

Section 31. G.S. 25A-16 reads as rewritten:

"**§ 25A-16. Transfer of equity.**

If a buyer voluntarily transfers his rights in collateral pursuant to ~~G.S. 25-9-311~~ applicable law and the seller agrees, the seller may impose a transfer fee not to exceed ten percent (10%) of the unpaid balance of the debt or thirty-five dollars ($35.00), whichever is less."

Section 32. G.S. 25A-22(b) reads as rewritten:

"(b) Upon the payment of all sums for which the buyer is obligated under a consumer credit sale, the seller shall promptly release any security interest in accordance with the terms of ~~G.S. 25-9-404~~ G.S. 25-9-513 or G.S. 20-58.4, whichever is applicable. In the event a security interest in real property is involved, the seller shall take such action as is necessary to enable the lien to be discharged of record under the provisions of G.S. 45-37."

Section 33. G.S. 44-68.14(a)(1) reads as rewritten:

"(1) The Secretary of State, he shall cause the notice to be ~~marked, held, and indexed~~ numbered, maintained, and indexed in

accordance with ~~the provisions of G.S. 25-9-403(4),~~ G.S. 25-9-519, as if the notice were a financing statement within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes; or".

Section 34. G.S. 44-68.14(b) reads as rewritten:

"(b) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the Secretary of State for filing he shall cause:

(1) A record of a certificate of release or nonattachment to be ~~marked, held, and indexed~~ numbered, maintained, and indexed as if a record of the certificate were a termination statement within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes, but the record of the notice of lien to which the certificate relates may not be removed from the files; and

(2) A record of a certificate of discharge or subordination to be ~~marked, held, and indexed~~ numbered, maintained, and indexed as if the record of the certificate were a release of collateral within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes."

Section 35. G.S. 47-20(b)(1) reads as rewritten:

"(1) 'Rents, issues, or profits' means all amounts payable by or on behalf of any lessee, tenant, or other person having a possessory interest in real estate on account of or pursuant to any written or oral lease or other instrument evidencing a possessory interest in real property or pursuant to any form of tenancy implied by law, and all amounts payable by or on behalf of any licensee or permittee or other person occupying or using real property under license or permission from the owner or person entitled to possession. The term shall not include farm products as defined in ~~G.S. 25-9-109(3),~~ G.S. 25-9-102(34), timber, the proceeds from the sale of farm products or timber, or the proceeds from the recovery or severance of any mineral deposits located on or under real property."

Section 36. G.S. 53-177 reads as rewritten:

"**§ 53-177. Recording fees.**

The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to ~~G.S. 25-9-302 et seq.~~ Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 **et seq.** Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the loan, or (iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument: Provided, however, the amount collected by the licensee from

the borrower for the purchase of a nonfiling or nonrecording insurance policy, or for self insurance, shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar ($1.00) less than the cost of recording or filing a security interest. Provided further, a licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose."

Section 37. G.S. 63A-11(e) reads as rewritten:

"(e) ~~The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, G.S. 25-9-101 to G.S. 25-9-607 inclusive, shall apply to transactions under this section, but not to transactions involving the issuance of bonds for airport projects, to the same extent the provisions of Article 9 would apply were G.S. 25-9-104(e) and G.S. 25-9-302(6) repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this section but not to transactions involving the issuance of bonds for airport projects."

Section 38. G.S. 75A-41 reads as rewritten:

"**§ 75A-41. Security interests subsequently created.**

~~Security interests, other than a security interest in inventory held for sale to be perfected only as provided in G.S. 25-9-301 to G.S. 25-9-408,~~ Except for security interests in watercraft that are inventory held for sale, security interests created in watercraft by the voluntary act of the owner after the original issue of title to the owner must be shown on the certificate of title. In such cases, the owner shall file an application with the Commission on a blank furnished for that purpose, setting forth the security interests and other information as the Commission requires. The Commission, if satisfied that it is proper that the same be recorded and upon surrender of the certificate of title covering the watercraft, shall thereupon issue a new certificate of title showing their security interests in the order of the priority according to the date of the filing of the application. For the purpose of recording the subsequent security interest, the Commission may require any secured party to deliver the certificate of title to the Commission. The newly issued certificate shall be sent or delivered to the secured party from whom the prior certificate was obtained."

Section 39. G.S. 75A-42 reads as rewritten:

"**§ 75A-42. Certificate as notice of security interest.**

A certificate of title, when issued by the Commission showing a security interest, shall be deemed adequate notice to the State, creditors, and purchasers that a security interest in the watercraft exists and the recording or filing of the creation or reservation of a security interest in the county or city wherein the purchaser or debtor resides or elsewhere is not necessary and shall not be required. Watercraft, other than those that are inventory held for sale, for which a certificate of title is currently in ~~effect,~~ effect shall be exempt from the provisions of ~~G.S. 25-9-302, 25-9-304, 25-9-307, 25-9-309, 25-9-312, 25-9-318, and 25-9-401 to 25-9-408~~ G.S. 25-9-

309, 25-9-310, 25-9-312, 25-9-320, 25-9-322, 25-9-323, 25-9-324, 25-9-331, 25-9-404, 25-9-405, 25-9-406, and 25-9-501 to 25-9-526 for so long as the certificate of title remains in effect."

Section 40. G.S. 75A-44 reads as rewritten:

"**§ 75A-44. Priority of security interests shown on certificates.**

~~The security interests, except security interests in watercraft which are inventory held for sale and which are perfected under G.S. 25-9-301 to 25-9-408,~~ Except for security interests in watercraft that are inventory held for sale, security interests shown upon the certificates of title issued by the Commission pursuant to applications for certificates shall have priority over any other liens or security interests against the watercraft however created and recorded, except for a mechanics lien for repairs, provided that the mechanic furnishes the holder of any recorded lien who may request it with an itemized sworn statement of the work done and materials supplied for which the lien is claimed."

Section 41. G.S. 143B-456.1(f) reads as rewritten:

"(f) ~~The provisions of G.S. 25-9-104(c) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, being G.S. 25-9-101 to G.S. 25-9-607, inclusive, shall apply to transactions under this section to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(c) and G.S. 25-9-302(6) hereby repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this section."

Section 42. G.S. 159C-28 reads as rewritten:

"**§ 159C-28. Application of the U.C.C.**

~~The provisions of G.S. 25-9-104(c) and 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply to transactions under Chapter 159C to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(c) and 25-9-302(6) hereby repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this Chapter."

Section 43. G.S. 159D-23 reads as rewritten:

"**§ 159D-23. Application of Article 9 of Chapter 25.**

~~The provisions of G.S. 25-9-104(c) and 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of North Carolina Uniform Commercial Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply [to] transactions under this Chapter 159D to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(c) and 25-9-302(6) hereby repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this Chapter."

Section 44. G.S. 161-10(a)(13) reads as rewritten:

"(13) Uniform Commercial Code. -- Such fees as are provided for in Chapter 25, Article 9, ~~Part 4,~~ Part 5, of the General Statutes."

PART IV. UCC ARTICLE 9 FILING FEES INCREASE.

Section 45. G.S. 25-9-403(5) reads as rewritten:

"(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00)."

Section 46. G.S. 25-9-405 reads as rewritten:

"**§ 25-9-405. Assignment of security interest; duties of filing officer; fees.**

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in G.S. 25-9-403(4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00).

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and also the most current file number if it has been continued and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the Uniform Commercial Code index of the financing statement, and in the case of a fixture filing, or a filing 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, he shall index in the real estate index the assignment under the name of the assignor as grantor and, to the extent that the law of this State provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00). Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of G.S. 25-9-402) may be made only by an assignment of the mortgage in the manner provided by the law of the State other than this Chapter.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

Section 47. G.S. 25-9-406 reads as rewritten:

"**§ 25-9-406. Release of collateral; duties of filing officer; fees.**

A secured party of record may, by his signed statement, release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and

address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release 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 presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00)."

Section 48. G.S. 25-9-407 reads as rewritten:

"**§ 25-9-407. Information from filing officer.**

(1) If the person filing any financing statement, termination statement, statement of assignment or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate for which he shall not be liable showing whether there is on file, on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00). Where the Uniform Commercial Code index has been automated, the filing officer shall issue a computer printout of the index entries for a particular debtor for a fee of ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00). Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of one dollar ($1.00) per page."

PART V. DIRECTIONS AND EFFECTIVE DATE.

Section 49. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Commercial Code, Revised Article 9 and conforming amendments to Articles 1, 2, 2A, 4, 5, 6, 7, and 8 and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

Section 50. Part IV of this act becomes effective September 1, 2000, and applies to fees paid on or after that date. Except as otherwise provided, this act becomes effective July 1, 2001.

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: June 14, 2000

RE: **Senate Bill 1305 (Revise Article 9 of the UCC)**

Senate Bill 1305 is based on Uniform Commercial Code Revised Article 9 (Secured Transactions), which was completed by the National Conference of Commissioners on Uniform State Laws in conjunction with the American Law Institute to update the statutory framework that governs security interests in personal property and fixtures. Revised Article 9 expands the scope of property and transactions covered by current Article 9, modifies as well as creates definitions, modernizes the filing system for financing statements, simplifies methods of perfection and increases the certainty of priority rules, formulates clearer rules for the enforcement of security interests, and provides specific transition rules. About 25 states have already enacted Revised Article 9 to become effective on the uniform effective date of July 1, 2001.

Senate Bill 1305 consists of five parts. Part I is based on Revised Article 9. Part II makes conforming amendments to other articles of the Uniform Commercial Code. Part III makes conforming and clarifying amendments to other sections of the General Statutes. Part IV increases certain fees in current Article 9 from $15.00 to $30.00 to provide revenue to help with the implementation of Revised Article 9. Part V authorizes the printing of drafters' comments, provides a delayed effective date of September 1, 2000, for the increases in current fees, and provides a delayed effective date of July 1, 2001, for Revised Article 9 and the conforming and clarifying amendments.

Revised Article 9 supports commerce by reducing costs and uncertainty of financing personal property, including the modern form of asset securitization. It accomplishes this by, among other things:

- Scope and definitional provisions that bring within Revised Article 9 several kinds of

collateral formerly left to the uncertainties of common law, e.g., health care receivables, deposit accounts in nonconsumer transactions, commercial tort claims, and proceeds which are stock dividends and licensing royalties. Revised Article 9 also applies to the perfection and priority of agricultural liens.

- Filing rules that require only one filing for each debtor in most financing transactions, no matter how many items or kinds of collateral are involved. Revised Article 9 provides for central filing in the Secretary of State's office for filings other than fixture filings and filings with respect to timber to be cut and "as-extracted collateral", which will continue to be filed in the register of deeds' office.

- Requiring most filings to be made at the location of the debtor, e.g., state of formation for a registered entity, rather than where the collateral is located. Thus the filer knows just where to file and the searcher knows exactly where to look.

- Timing standards for performance by filing offices.

- Vastly simplified rules that determine which state's law controls.

- Simplified formalities such as allowing electronic "signatures" on the security agreement and permitting very broad description of collateral in filings.

- Facilitation of electronic filing by providing uniform statutory forms for filing and eliminating the requirement that the debtor sign an authorized financing statement.

- Providing for perfection by "control" rather than filing or possession of collateral, for deposit accounts, letter of credit rights, and electronic chattel paper as well as investment property.

- Priority and foreclosure rules that settle existing uncertainties and enhance purchase money security.

- Elimination of North Carolina's nonuniform Part 6 (Public Sale Procedures) of current UCC Article 9 and providing a uniform "safe harbor" form for giving notice to the debtor of a private or public foreclosure sale.

- Additional protection of consumer debtors in foreclosure by additional disclosure requirements.

- Transition rules that provide detailed guidelines, including time frames, for creditors whose security interests are already perfected under existing law. Under these rules, creditors will be able to determine when and how they must act to continue, amend or terminate perfection.

These and other changes made by Revised Article 9 eliminate much risk and cost associated with secured financing. North Carolina's prestige as a major banking and financial center makes passage in time for the uniform effective date of July 1, 2001, extremely urgent.

The strategy of Revised Article 9 is to create a nationwide mechanism for secured transactions. For this reason, uniformity is more than usually important. However, some variations of a local nature have seemed advisable, which include:

- Incorporating Revised Article 9's optional set of model provisions for priority of production-money security interests in crops.

- Bringing forward the current exemption from filing provided for security interests created in connection with the issuance of bonds, notes, or other evidence of indebtedness for borrowed money by the State or its political subdivisions or agencies.

- Providing that Revised Article 9's provisions, which render ineffective any legal restrictions on the assignment of rights to payment, do not apply to certain specified statutory restrictions on assignments, e.g., structured settlement payment rights, workers' compensation claims, and crime victims award payments.

- Postponing to January 1, 2003, the date after which filings in the Secretary of State's office are required to have assigned file numbers that include a verification number, commonly known as a "check digit".

- Changing from two business days to three business days the time period in which filing offices are required to perform the duties imposed by §§ 25-9-519 and 25-9-523 and providing a delayed effective date of January 1, 2003, for compliance with the time period.

- Requiring a filing office to communicate its refusal to accept a record for filing within three business days rather than two business days after receipt of the record.

- Bringing forward the current nonliability provision for the information communicated by a filing office in responding to a request for information.

- Deleting the requirement that filing offices make copies of all filed records available to the public because the public records law already covers access to these records.

- Deleting the provision for an increased fee for filing and indexing a record of a mortgage as an initial financing statement where the financing statement indicates that it is filed in connection with either a public-finance transaction or a manufactured-home transaction.

- Deleting the requirement of an annual report to the Governor and the Legislature on filing office operations.

- Providing that a financing statement filed before July 1, 2001, may be terminated only by filing in the office specified in § 25-9-501. (§ 25-9-706(c)).

The following materials from the Uniform Law Commissioners' information kit on Revised Article 9 are attached for informational purposes: (1) a facts sheet stating Revised Article 9's purpose, origin, and legislative activity in other jurisdictions; (2) a statement of reasons why states should adopt Revised Article 9; and (3) a summary highlighting significant changes made by Revised Article 9. The Official Comments to Revised Article 9 are available and will be published in the General Statutes as annotations if Senate Bill 1305 is enacted.

Attachments

A Few Facts About
REVISED UCC ARTICLE 9, SECURED TRANSACTIONS (1999)

PURPOSE: Updates UCC Article 9, last revised in 1972 and adopted in every state. Article 9 provides a statutory framework that governs secured transactions—transactions which involve the granting of credit secured by personal property.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1999.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:

Alaska*
Arizona
California
Hawaii**
Illinois **
Indiana *
Iowa *
Kansas *
Kentucky *
Maine *
Maryland
Minnesota *
Montana
Nebraska
Nevada
Oklahoma *
Rhode Island **
South Dakota *
Tennessee *
Texas
Utah *
Vermont*
Virginia *
Washington *
West Virginia *

2000 INTRODUCTIONS:

Colorado
Delaware
District of Columbia
Florida
Idaho
Massachusetts
Michigan
Mississippi
Missouri
New Jersey
New Mexico
New York
North Carolina
South Carolina
Wyoming

For any further information regarding the Revision of UCC Article 9, Secured Transactions, please contact John McCabe or Katie Robinson at 312-915-0195.

** 2000 Enactment*
*** Awaiting Governor's Signature*

(6/8/00)

(Please note: this information can also be found on our Website at www.nccusl.org)

WHY STATES SHOULD ADOPT UNIFORM COMMERCIAL CODE ARTICLE 9 - SECURED TRANSACTIONS

Trillions of dollars of commercial and consumer credit are granted each year in secured transactions under Article 9 of the Uniform Commercial Code -- a manufacturer finances the acquisition of machinery and raw materials, a retailer finances inventory, a consumer finances furniture for a new house. The manufacturer, the retailer, and the consumer all depend upon Article 9 of the Uniform Commercial Code to make it possible for them to obtain the credit they need. Their creditors get assurance, in the form of the collateral that secures the granting of credit, that it will cushion the risk of default in the event the debtor does not pay the debt. Article 9 of the Uniform Commercial Code is absolutely necessary to economic function in the United States. It is the crankshaft for the American economic engine, and it is the envy of the rest of the world, which often struggles with the mechanics of credit granting and enforcement of creditor's rights.

Major revisions to Article 9 were completed in 1998. These revisions bring Article 9 into the 21st Century. There are many reasons that Revised Article 9 should be adopted in every state.

Technology. Paper-based transactions are giving way to electronic transactions. Revised Article 9 makes way for this revolution.

Volume. Article 9 was first proposed in 1951. Its last update was in 1972. Since 1972 the volume of commerce and the volume of credit has increased exponentially. Volume of secured transactions increases proportionately and directly with increase in economic activity in the United States. *The filing system revisions are particularly necessary to meet the problem of increased volume.*

New Collateral. New kinds of property and transactions have been developed since Article 9 was last amended. The *scope* of Article 9 expands to keep up and the 1998 revisions meet the needs for collateral into the new millennium. Examples of specific new collateral are deposit accounts and health insurance receivables.

Certainty of Perfection. Uncertainties about where to perfect a security interest under old Article 9 are overcome by the new basic rule in the 1998 revisions that makes the location of the debtor the place where the creditor will perfect the security interest.

New Liens. Statutory, non-possessory liens have proliferated since Article 9 was originally approved. Such liens represent a risk for creditors, and a potential conflict with security interests in collateral, if there is no public notice of their existence. Article 9 includes certain statutory, non-possessory liens for the purposes of providing public notice and setting priorities between creditors.

Clarification of Rules. Over time, provisions of Article 9 have been interpreted by courts, sometimes in conflicting ways. Some decisions deal with issues that were not expressly addressed in original Article 9. The result is ambiguity in the application of some rules. The revisions to Article 9 address and cure the accrued ambiguity problems.

Consumer Impact. Revised Article 9 addresses consumer issues that were not addressed in original Article 9.

Commitment to Uniformity. Amendments to Article 9 from state to state have created differences that impair interstate transactions. The revisions address specific kinds of secured transactions in oil and gas and agriculture in an effort to re-establish uniformity of law governing these kinds of transactions.

UNIFORM COMMERCIAL CODE
REVISED ARTICLE 9, SECURED TRANSACTIONS (1998)

- A Summary -

The Uniform Commercial Code has eleven substantive articles. Article 9, Secured Transactions, may be the most important of the eleven. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 appears deceptively simple. There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs—a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests easily found in the public record, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

The following numbered topics highlight Article 9 as revised in 1998. They are not a treatise on Revised Article 9, but are a schematic summary of its relevant changes.

1. **The Scope Issue.** The 1998 revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9. These are some of the kinds of collateral that are included in Revised Article 9 that are not in original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under it for those purposes.

2. **Perfection.** Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. "Control" is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased from ten days in old Article 9 to twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.

3. **Choice of Law.** In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1998 revisions to Article 9 make two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the collateral is found as the law that governs perfection, effect of perfection,

and a creditor's priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9. At the same time, the location of the debtor establishes a more certain place to perfect than the old rule does. Collateral shifts location much easier than the debtors do.

4. **The Filing System.** Improvements in the filing system in the 1998 revisions to Article 9 include a full commitment to centralized filing—one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Paper filing of financing statements is already disappearing in many states in 1998, as Revised Article 9 becomes available to them. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

5. **Consumer Transactions.** Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1998 revisions to Article 9 than it was pre-1998. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him

or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1998 revisions to Article 9.

6. **Default and Enforcement.** Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lienholders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership comprises more than 300 attorneys, judges, and law professors, who are appointed by each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft uniform and model state laws and work toward their enactment.

Negative Ramifications if Revised UCC Article 9 is not Enacted in North Carolina

The incompatibility of North Carolina's present Article 9 of the Uniform Commercial Code ("present Article 9") and Revised Article 9 of the Uniform Commercial Code ("Revised Article 9"), which most other states are adopting, leaves creditors with unanswerable questions about where to file and about which state's law will govern a transaction's outcome. To be protected, a creditor whose business might invoke North Carolina law may well have to file in many states AND counties, and often in different places for each of many debtors and items of collateral. The cost and confusion are huge. It is conceivable that the cost may range into thousands of dollars for one transaction.

There are other differences between present Article 9 and Revised Article 9. For example, in multi-state transactions, the following issues could arise:

- Some terms that were defined in present Article 9 have been re-defined in Revised Article 9 (e.g., "accounts"), which could create ambiguity regarding what collateral is covered.

- Revised Article 9 is much more expansive in coverage. The parties would be able to secure and perfect a security interest in a greater variety of assets in states that had enacted Revised Article 9, as opposed to those that had not enacted Revised Article 9. Therefore, the same security agreement could be applied and interpreted differently in different states.

- How collateral can be described in financing statements has been changed in Revised Article 9 (e.g., supergeneric descriptions of property are allowed). This again could result in inconsistent results from state to state.

Present Article 9 leaves uncertain and risky the position of those engaging in asset securitization--a major trend in modern financing. Revised Article 9 makes a real difference for securitization.

Revised Article 9 expressly provides for the use of electronic media. Present Article 9 leaves this huge issue unresolved and open to litigation.

When the debtor and the collateral are in a state that has enacted Revised Article 9, possible bankruptcy jurisdiction in a state that has not enacted Revised Article 9 makes even perfection of those security interests uncertain. A bankruptcy court in a state that has not enacted Revised Article 9 may have the ability to void the perfection that is valid in the state in which the interest is perfected under Revised Article 9. This uncertainty will also increase the cost of secured loans for all involved.

The bottom line is that North Carolina's commercial credibility and the welfare not only of its creditor population, but also of its debtors who ultimately pay, are greatly enhanced by enactment of Revised Article 9.

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

1c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

1d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION | 1f. JURISDICTION OF ORGANIZATION | 1g. ORGANIZATIONAL ID #, if any ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

2d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any ☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

3c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) | 7. ☐ Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) ADDITIONAL FEE | ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
				☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

12c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

[redacted]

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name: Give record name to be deleted in item 6a or 6b. ☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

7c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

7d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 7e. TYPE OF ORGANIZATION | 7f. JURISDICTION OF ORGANIZATION | 7g. ORGANIZATIONAL ID #, if any ☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

10. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME,SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

VISITOR REGISTRATION SHEET

Name of Committee

6-15-00
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Melissa Lovell	DOJ
Susan Nichols	DOJ
Johanne McLean	SBE
Gary O. Bartlett	SBE
[illegible]	SBE
Douglas Hallrods	Wake Board of Elec.
Floyd Lewis	General Statutes Commission
Caroline N. Brown	UCC R9 Drafting Comm (GSC)
THOMAS B. ANDERSON	UCC R9 Drafting Comm (GSC)
DON HERRING	A6
Mark Dixon	Capitol Group

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING

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

DATE: Tuesday, June 20, 2000
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 760	Campaign Finance Changes	Gulley
SB 1305	Revise Article 9 of UCC	Hartsell
SB 1483	Local Option Elderly Tax Relief	Hoyle
SB 1484	Local Option Homestead Relief	Hoyle

Senator Cooper, Chair

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 20, 2000

The Senate Judiciary I Committee met on June 20, 2000 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Hartsell to explain **Senate Bill 1305** – AN ACT TO ENACT REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE, AND CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES AND TO INCREASE CERTAIN FEES UNDER CURRENT ARTICLE 9, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Hartsell moved to amend Senate Bill 1305 on Page 77, Line 18; Page 92, Line 4; Page 98, Line 18; Page 99, Line 42; Page 100, Line 39; Page 102, Line 33 and Page 103, Line 41 (Amendment #1 – attached).

Walker Reagan, Committee Counsel, was recognized to explain the amendment.

Senator Hartsell's motion to amend Senate Bill 1305 carried by a majority voice vote.

Senator Hartsell moved to amend Senate Bill 1305 on Page 126, Lines 34-36 (Amendment #2 – attached). The motion carried by a majority voice vote.

Senator Gulley moved to give Senate Bill 1305 a favorable report as amended and that it be re-referred to the Committee on Finance. The motion carried by a majority voice vote.

Senator Gulley was recognized to explain **Senate Bill 760** – AN ACT TO MAKE CHANGES IN THE CAMPAIGN FINANCE LAWS.

Senator Gulley moved to adopt a Proposed Committee Substitute for Senate Bill 760 for discussion. The motion carried by a majority voice vote.

Bill Gilkeson, Legislative Bill Drafting Division, was recognized to answer questions from the Committee.

Senator Lucas moved to give the Proposed Committee Substitute for Senate Bill 760 a favorable report. The motion carried by a majority voice vote.

Senator Hoyle was recognized to explain **Senate Bill 1484** – AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA, IF APPROVED BY THE VOTERS IN THE 2000 GENERAL ELECTION, TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.

Ed Regan, with the County Commissioners Association, was recognized to comment on the bill.

Senator Gulley moved to give Senate Bill 1484 a favorable report and re-refer it to the Committee on Finance. The motion carried by a majority voice vote.

Senator Hoyle was recognized to explain **Senate Bill 1483** – AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA, IF APPROVED BY THE VOTERS IN THE 2000 GENERAL ELECTION, TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO PROVIDE PROPERTY TAX DEFERRAL AS AN ALTERNATIVE FORM OF PROPERTY TAX RELIEF FOR THE ELDERLY AND DISABLED.

Ed Regan, with the County Commissioners Association, was recognized to comment on the bill.

Due to time constraints, Senator Cooper asked that the discussion of Senate Bill 1483 be continued at a future meeting.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

SENATE JUDICIARY I COMMITTEE

AGENDA - June 20, 2000

SB 760	Campaign Finance Changes	Gulley
SB 1305	Revise Article 9 of UCC	Hartsell
SB 1483	Local Option Elderly Tax Relief	Hoyle
SB 1484	Local Option Homestead Relief	Hoyle

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1305*

Short Title: Revise Article 9 of the UCC. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO ENACT REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE, AND CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES AND TO INCREASE CERTAIN FEES UNDER CURRENT ARTICLE 9, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE.

Section 1. Article 9 of Chapter 25 of the General Statutes is rewritten to read:

"ARTICLE 9.

"Secured Transactions.

"PART 1.

"GENERAL PROVISIONS.

"SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS.

"**§ 25-9-101. Short title.**

This Article may be cited as Uniform Commercial Code-Secured Transactions.

"**§ 25-9-102. Definitions and index of definitions.**

(a) Article 9 definitions. -- In this Article:

(1) 'Accession' means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) 'Account', except as used in 'account for', means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) 'Account debtor' means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) 'Accounting', except as used in 'accounting for', means a record:

a. Authenticated by a secured party;

b. Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

c. Identifying the components of the obligations in reasonable detail.

(5) 'Agricultural lien' means an interest, other than a security interest, in farm products:

a. Which secures payment or performance of an obligation for:

1. Goods or services furnished in connection with a debtor's farming operation; or

2. Rent on real property leased by a debtor in connection with its farming operation;

b. Which is created by statute in favor of a person that:

1. In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

2. Leased real property to a debtor in connection with the debtor's farming operation; and

c. Whose effectiveness does not depend on the person's possession of the personal property.

(6) 'As-extracted collateral' means:

a. Oil, gas, or other minerals that are subject to a security interest that:

1. Is created by a debtor having an interest in the minerals before extraction; and

2. Attaches to the minerals as extracted; or

b. Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) 'Authenticate' means:

a. To sign; or

b. To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) 'Bank' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) 'Cash proceeds' means proceeds that are money, checks, deposit accounts, or the like.

(10) 'Certificate of title' means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) 'Chattel paper' means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, 'monetary obligation' means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) 'Collateral' means the property subject to a security interest or agricultural lien. The term includes:

a. Proceeds to which a security interest attaches;
b. Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
c. Goods that are the subject of a consignment.

(13) 'Commercial tort claim' means a claim arising in tort with respect to which:
a. The claimant is an organization; or
b. The claimant is an individual and the claim:
1. Arose in the course of the claimant's business or profession; and
2. Does not include damages arising out of personal injury to or the death of an individual.

(14) 'Commodity account' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) 'Commodity contract' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
a. Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
b. Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) 'Commodity customer' means a person for which a commodity intermediary carries a commodity contract on its books.

(17) 'Commodity intermediary' means a person that:
a. Is registered as a futures commission merchant under federal commodities law; or
b. In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) 'Communicate' means:
a. To send a written or other tangible record;
b. To transmit a record by any means agreed upon by the persons sending and receiving the record; or
c. In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) 'Consignee' means a merchant to which goods are delivered in a consignment.

(20) 'Consignment' means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

a. The merchant:
1. Deals in goods of that kind under a name other than the name of the person making delivery;
2. Is not an auctioneer; and
3. Is not generally known by its creditors to be substantially engaged in selling the goods of others;

b. With respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery;

c. The goods are not consumer goods immediately before delivery; and

d. The transaction does not create a security interest that secures an obligation.

(21) 'Consignor' means a person that delivers goods to a consignee in a consignment.

(22) 'Consumer debtor' means a debtor in a consumer transaction.

(23) 'Consumer goods' means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) 'Consumer-goods transaction' means a consumer transaction in which:

a. An individual incurs an obligation primarily for personal, family, or household purposes; and

b. A security interest in consumer goods secures the obligation.

(25) 'Consumer obligor' means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) 'Consumer transaction' means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) 'Continuation statement' means an amendment of a financing statement which:

a. Identifies, by its file number, the initial financing statement to which it relates; and

b. Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) 'Debtor' means:

a. A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

b. A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

c. A consignee.

(29) 'Deposit account' means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) 'Document' means a document of title or a receipt of the type described in G.S. 25-7-201(2).

(31) 'Electronic chattel paper' means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) 'Encumbrance' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) 'Equipment' means goods other than inventory, farm products, or consumer goods.

(34) 'Farm products' means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

a. Crops grown, growing, or to be grown, including:

1. Crops produced on trees, vines, and bushes; and

2. Aquatic goods produced in aquacultural operations;

b. Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

c. Supplies used or produced in a farming operation; or

d. Products of crops or livestock in their unmanufactured states.

(35) 'Farming operation' means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) 'File number' means the number assigned to an initial financing statement pursuant to G.S. 25-9-519(a).

(37) 'Filing office' means an office designated in G.S. 25-9-501 as the place to file a financing statement.

(38) 'Filing-office rule' means a rule adopted pursuant to G.S. 25-9-526.

(39) 'Financing statement' means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) 'Fixture filing' means the filing of a financing statement covering goods that are or are to become fixtures and satisfying G.S. 25-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) 'Fixtures' means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) 'General intangible' means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) 'Good faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) 'Goods' means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) 'Governmental unit' means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) 'Health-care-insurance receivable' means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) 'Instrument' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that

evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) 'Inventory' means goods, other than farm products, which:

a. Are leased by a person as lessor;

b. Are held by a person for sale or lease or to be furnished under a contract of service;

c. Are furnished by a person under a contract of service; or

d. Consist of raw materials, work in process, or materials used or consumed in a business.

(49) 'Investment property' means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) 'Jurisdiction of organization', with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) 'Letter-of-credit right' means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) 'Lien creditor' means:

a. A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

b. An assignee for benefit of creditors from the time of assignment;

c. A trustee in bankruptcy from the date of the filing of the petition; or

d. A receiver in equity from the time of appointment.

(53) 'Manufactured home' means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) 'Manufactured-home transaction' means a secured transaction:

a. That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

b. In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) 'Mortgage' means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) 'New debtor' means a person that becomes bound as debtor under G.S. 25-9-203(d) by a security agreement previously entered into by another person.

(57) 'New value' means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) 'Noncash proceeds' means proceeds other than cash proceeds.

(59) 'Obligor' means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) 'Original debtor', except as used in G.S. 25-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under G.S. 25-9-203(d).

(61) 'Payment intangible' means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) 'Person related to', with respect to an individual, means:

a. The spouse of the individual;

b. A brother, brother-in-law, sister, or sister-in-law of the individual;

c. An ancestor or lineal descendant of the individual or the individual's spouse; or

d. Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) 'Person related to', with respect to an organization, means:

a. A person directly or indirectly controlling, controlled by, or under common control with the organization;

b. An officer or director of, or a person performing similar functions with respect to, the organization;

c. An officer or director of, or a person performing similar functions with respect to, a person described in sub-subdivision a. of this subdivision;
d. The spouse of an individual described in sub-subdivision a., b., or c. of this subdivision; or
e. An individual who is related by blood or marriage to an individual described in sub-subdivision a., b., c., or d. of this subdivision and shares the same home with the individual.

(64) 'Proceeds', except as used in G.S. 25-9-609(b), means the following property:
a. Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
b. Whatever is collected on, or distributed on account of, collateral;
c. Rights arising out of collateral;
d. To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
e. To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) 'Production-money crops' means crops that secure a production-money obligation incurred with respect to the production of those crops.

(66) 'Production-money obligation' means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(67) 'Production of crops' includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting, gathering, and curing crops, and protecting them from damage or disease.

(68) 'Promissory note' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(69) 'Proposal' means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to G.S. 25-9-620, 25-9-621, and 25-9-622.

(70) 'Public-finance transaction' means a secured transaction in connection with which:
a. Debt securities are issued;

b. All or a portion of the securities issued have an initial stated maturity of at least 20 years; and

c. The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(71) 'Pursuant to commitment', with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(72) 'Record', except as used in 'for record', 'of record', 'record or legal title', and 'record owner', 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.

(73) 'Registered organization' means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(74) 'Secondary obligor' means an obligor to the extent that:

a. The obligor's obligation is secondary; or

b. The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(75) 'Secured party' means:

a. A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

b. A person that holds an agricultural lien;

c. A consignor;

d. A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

e. A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

f. A person that holds a security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), 25-2A-508(5), 25-4-208, or 25-5-118.

(76) 'Security agreement' means an agreement that creates or provides for a security interest.

(77) 'Send', in connection with a record or notification, means:

a. To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or

cost of transmission provided for, addressed to any address reasonable under the circumstances; or

b. To cause the record or notification to be received within the time that it would have been received if properly sent under sub-subdivision a. of this subdivision.

(78) 'Software' means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(79) '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.

(80) 'Supporting obligation' means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(81) 'Tangible chattel paper' means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(82) 'Termination statement' means an amendment of a financing statement which:

a. Identifies, by its file number, the initial financing statement to which it relates; and

b. Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(83) 'Transmitting utility' means a person primarily engaged in the business of:

a. Operating a railroad, subway, street railway, or trolley bus;

b. Transmitting communications electrically, electromagnetically, or by light;

c. Transmitting goods by pipeline or sewer; or

d. Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) Definitions in other articles. -- The following definitions in other Articles of this Chapter apply to this Article:

'Applicant'	G.S. 25-5-102.
'Beneficiary'	G.S. 25-5-102.
'Broker'	G.S. 25-8-102.
'Certificated security'	G.S. 25-8-102.
'Check'	G.S. 25-3-104.
'Clearing corporation'	G.S. 25-8-102.
'Contract for sale'	G.S. 25-2-106.
'Customer'	G.S. 25-4-104.
'Entitlement holder'	G.S. 25-8-102.

'Financial asset'	G.S. 25-8-102.
'Holder in due course'	G.S. 25-3-302.
'Issuer' (with respect to a letter of credit or letter-of-credit right)	G.S. 25-5-102.
'Issuer' (with respect to a security)	G.S. 25-8-201.
'Lease'	G.S. 25-2A-103.
'Lease agreement'	G.S. 25-2A-103.
'Lease contract'	G.S. 25-2A-103.
'Leasehold interest'	G.S. 25-2A-103.
'Lessee'	G.S. 25-2A-103.
'Lessee in ordinary course of business'	G.S. 25-2A-103.
'Lessor'	G.S. 25-2A-103.
'Lessor's residual interest'	G.S. 25-2A-103.
'Letter of credit'	G.S. 25-5-102.
'Merchant'	G.S. 25-2-104.
'Negotiable instrument'	G.S. 25-3-104.
'Nominated person'	G.S. 25-5-102.
'Note'	G.S. 25-3-104.
'Proceeds of a letter of credit'	G.S. 25-5-114.
'Prove'	G.S. 25-3-103.
'Sale'	G.S. 25-2-106.
'Securities account'	G.S. 25-8-501.
'Securities intermediary'	G.S. 25-8-102.
'Security'	G.S. 25-8-102.
'Security certificate'	G.S. 25-8-102.
'Security entitlement'	G.S. 25-8-102.
'Uncertificated security'	G.S. 25-8-102.

(c) Article 1 definitions and principles. -- Article 1 of this Chapter contains general definitions and principles of construction and interpretation applicable throughout this Article.

"§ 25-9-103. Purchase-money security interest; application of payments; burden of establishing.

(a) Definitions. -- In this section:

(1) 'Purchase-money collateral' means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) 'Purchase-money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods. -- A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;
(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) Purchase-money security interest in software. -- A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:
(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) Consignor's inventory purchase-money security interest. -- The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) Application of payment in non-consumer-goods transaction. -- In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:
(1) In accordance with any reasonable method of application to which the parties agree;
(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or
(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:
a. To obligations that are not secured; and
b. If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) No loss of status of purchase-money security interest in non-consumer-goods transaction. -- In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:
(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;
(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) Burden of proof in non-consumer-goods transaction. -- In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) Non-consumer-goods transactions; no inference. -- The limitation of the rules in subsections (e), (f), and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

"§ 25-9-103.1. Production-money crops; production-money obligation; production-money security interest; burden of establishing.

(a) Production-money crops. -- A security interest in crops is a production-money security interest to the extent that the crops are production-money crops.

(b) Production-money obligation. -- If the extent to which a security interest is a production-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

a. To obligations that are not secured; and

b. If more than one obligation is secured, to obligations secured by production-money security interests in the order in which those obligations were incurred.

(c) Production-money security interest. -- A production-money security interest does not lose its status as such, even if:

(1) The production-money crops also secure an obligation that is not a production-money obligation;

(2) Collateral that is not production-money crops also secures the production-money obligation; or

(3) The production-money obligation has been renewed, refinanced, or restructured.

(d) Burden of proof. -- A secured party claiming a production-money security interest has the burden of establishing the extent to which the security interest is a production-money security interest.

"§ 25-9-104. Control of deposit account.

(a) Requirements for control. -- A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) Debtor's right to direct disposition. -- A secured party that has satisfied subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

"§ 25-9-105. Control of electronic chattel paper.

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subdivisions (4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

"§ 25-9-106. Control of investment property.

(a) Control under G.S. 25-8-106. -- A person has control of a certificated security, uncertificated security, or security entitlement as provided in G.S. 25-8-106.

(b) Control of commodity contract. -- A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) Effect of control of securities account or commodity account. -- A secured party having control of all security entitlements or commodity contracts carried in a

securities account or commodity account has control over the securities account or commodity account.

"**§ 25-9-107. Control of letter-of-credit right.**

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under G.S. 25-5-114(c) or otherwise applicable law or practice.

"**§ 25-9-108. Sufficiency of description.**

(a) Sufficiency of description. -- Except as otherwise provided in subsections (c), (d), and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Examples of reasonable identification. -- Except as otherwise provided in subsection (d) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in this Chapter;

(4) Quantity;

(5) Computational or allocational formula or procedure; or

(6) Except as otherwise provided in subsection (c) of this section, any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient. -- A description of collateral as 'all the debtor's assets' or 'all the debtor's personal property' or using words of similar import does not reasonably identify the collateral.

(d) Investment property. -- Except as otherwise provided in subsection (e) of this section, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) When description by type insufficient. -- A description only by type of collateral defined in this Chapter is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

"SUBPART 2. APPLICABILITY OF ARTICLE.

"**§ 25-9-109. Scope.**

(a) General scope of Article. -- Except as otherwise provided in subsections (c) and (d) of this section, this Article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
(4) A consignment;
(5) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5), as provided in G.S. 25-9-110; and
(6) A security interest arising under G.S. 25-4-208 or G.S. 25-5-118.

(b) Security interest in secured obligation. -- The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

(c) Extent to which Article does not apply. -- This Article does not apply to the extent that:
(1) A statute, regulation, or treaty of the United States preempts this Article;
(2) Another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;
(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under G.S. 25-5-114.

(d) Inapplicability of Article. -- This Article does not apply to:
(1) A landlord's lien, other than an agricultural lien;
(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but G.S. 25-9-333 applies with respect to priority of the lien;
(3) An assignment of a claim for wages, salary, or other compensation of an employee;
(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but G.S. 25-9-315

and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or setoff, but:

a. G.S. 25-9-340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

b. G.S. 25-9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

a. Liens on real property in G.S. 25-9-203 and G.S. 25-9-308;

b. Fixtures in G.S. 25-9-334;

c. Fixture filings in G.S. 25-9-501, 25-9-502, 25-9-512, 25-9-516, and 25-9-519; and

d. Security agreements covering personal and real property in G.S. 25-9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds; or

(13) An assignment of a deposit account in a consumer transaction, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds.

"§ 25-9-110. Security interests arising under Article 2 or 2A of this Chapter.

A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5) is subject to this Article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if G.S. 25-9-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A of this Chapter; and

(4) The security interest has priority over a conflicting security interest created by the debtor.

"PART 2.

"EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT.

"SUBPART 1. EFFECTIVENESS AND ATTACHMENT.

"§ 25-9-201. General effectiveness of security agreement.

(a) General effectiveness. -- Except as otherwise provided in this Chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) Applicable consumer laws and other law. -- A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers Modernization Act of 1989 (Chapter 91A of the General Statutes).

(c) Other applicable law controls. -- In case of conflict between this Article and a rule of law, statute, or regulation described in subsection (b) of this section, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

(d) Further deference to other applicable law. -- This Article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

"§ 25-9-202. Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

"§ 25-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) Attachment. -- A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Enforceability. -- Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

a. The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

b. The collateral is not a certificated security and is in the possession of the secured party under G.S. 25-9-313 pursuant to the debtor's security agreement;

c. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under G.S. 25-8-301 pursuant to the debtor's security agreement; or

d. The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107 pursuant to the debtor's security agreement.

(c) Other UCC provisions. -- Subsection (b) of this section is subject to G.S. 25-4-208 on the security interest of a collecting bank, G.S. 25-5-118 on the security interest of a letter-of-credit issuer or nominated person, G.S. 25-9-110 on a security interest arising under Article 2 or 2A of this Chapter, and G.S. 25-9-206 on security interests in investment property.

(d) When person becomes bound by another person's security agreement. -- A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound. -- If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subdivision (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. -- The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by G.S. 25-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) Lien securing right to payment. -- The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) Security entitlement carried in securities account. -- The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) Commodity contracts carried in commodity account. -- The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

"**§ 25-9-204. After-acquired property; future advances.**

(a) After-acquired collateral. -- Except as otherwise provided in subsection (b) of this section, a security agreement may create or provide for a security interest in after-acquired collateral.

(b) When after-acquired property clause not effective. -- A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) A commercial tort claim.

(c) Future advances and other value. -- A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to commitment.

"**§ 25-9-205. Use or disposition of collateral permissible.**

(a) When security interest not invalid or fraudulent. -- A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

a. Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

b. Collect, compromise, enforce, or otherwise deal with collateral;

c. Accept the return of collateral or make repossessions; or

d. Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) Requirements of possession not relaxed. -- This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

"**§ 25-9-206. Security interest arising in purchase or delivery of financial asset.**

(a) Security interest when person buys through securities intermediary. -- A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) Security interest secures obligation to pay for financial asset. -- The security interest described in subsection (a) of this section secures the person's obligation to pay for the financial asset.

(c) Security interest in payment against delivery transaction. -- A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

a. In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

b. Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) Security interest secures obligation to pay for delivery. -- The security interest described in subsection (c) of this section secures the obligation to make payment for the delivery.

"SUBPART 2. RIGHTS AND DUTIES.

"§ 25-9-207. Rights and duties of secured party having possession or control of collateral.

(a) Duty of care when secured party in possession. -- Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties, and rights when secured party in possession. -- Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

a. For the purpose of preserving the collateral or its value;

b. As permitted by an order of a court having competent jurisdiction; or

c. Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Rights and duties when secured party in possession or control. -- Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) Buyer of certain rights to payment. -- If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

a. To charge back uncollected collateral; or

b. Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

"**§ 25-9-208. Additional duties of secured party having control of collateral.**

(a) Applicability of section. -- This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. -- Within 10 days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under G.S. 25-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under G.S. 25-9-104(a)(3) shall:

a. Pay the debtor the balance on deposit in the deposit account; or

b. Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under G.S. 25-9-105 shall:

a. Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

b. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

c. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified

assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under G.S. 25-8-106(d)(2) or G.S. 25-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under G.S. 25-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

"§ 25-9-209. Duties of secured party if account debtor has been notified of assignment.

(a) Applicability of section. -- Except as otherwise provided in subsection (c) of this section, this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. -- Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under G.S. 25-9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) Inapplicability to sales. -- This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

"§ 25-9-210. Request for accounting; request regarding list of collateral or statement of account.

(a) Definitions. -- In this section:

(1) 'Request' means a record of a type described in subdivision (2), (3), or (4) of this subsection.

(2) 'Request for an accounting' means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) 'Request regarding a list of collateral' means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) 'Request regarding a statement of account' means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. -- Subject to subsections (c), (d), (e), and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. -- A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) Request regarding list of collateral; no interest claimed. -- A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. -- A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. -- A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response.

"PART 3.

"PERFECTION AND PRIORITY.

"SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY.

"§ 25-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in G.S. 25-9-303 through G.S. 25-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subdivision (4) of this section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

a. Perfection of a security interest in the goods by filing a fixture filing;

b. Perfection of a security interest in timber to be cut; and

c. The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

"§ 25-9-302. Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

"§ 25-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

(a) Applicability of section. -- This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) When goods covered by certificate of title. -- Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law. -- The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or

nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

"§ 25-9-304. Law governing perfection and priority of security interests in deposit accounts.

(a) Law of bank's jurisdiction governs. -- The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) Bank's jurisdiction. -- The following rules determine a bank's jurisdiction for purposes of this Part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this Part, this Article, or this Chapter, that jurisdiction is the bank's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of subdivisions (1), (2), and (3) of this subsection applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of subdivisions (1), (2), (3), and (4) of this subsection applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

"§ 25-9-305. Law governing perfection and priority of security interests in investment property.

(a) Governing law: general rules. -- Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in G.S. 25-8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in G.S. 25-8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) Commodity intermediary's jurisdiction. -- The following rules determine a commodity intermediary's jurisdiction for purposes of this Part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this Part, this Article, or this Chapter, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of subdivisions (1), (2), and (3) of this subsection applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of subdivisions (1), (2), (3), and (4) of this subsection applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) When perfection governed by law of jurisdiction where debtor located. -- The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

"**§ 25-9-306. Law governing perfection and priority of security interests in letter-of-credit rights.**

(a) Governing law: issuer's or nominated person's jurisdiction. -- Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) Issuer's or nominated person's jurisdiction. -- For purposes of this Part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in G.S. 25-5-116.

(c) When section not applicable. -- This section does not apply to a security interest that is perfected only under G.S. 25-9-308(d).

"§ 25-9-307. Location of debtor.

(a) 'Place of business.' -- In this section, 'place of business' means a place where a debtor conducts its affairs.

(b) Debtor's location: general rules. -- Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Limitation of applicability of subsection (b). -- Subsection (b) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) Continuation of location: cessation of existence, etc. -- A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) Location of registered organization organized under state law. -- A registered organization that is organized under the law of a state is located in that state.

(f) Location of registered organization organized under federal law; bank branches and agencies. -- Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither subdivision (1) nor subdivision (2) of this subsection applies.

(g) Continuation of location; change in status of registered organization. -- A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) Location of United States. -- The United States is located in the District of Columbia.

(i) Location of foreign bank branch or agency if licensed in only one state. -- A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) Location of foreign air carrier. -- A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) Section applies only to this Part. -- This section applies only for purposes of this Part.

"SUBPART 2. PERFECTION.

"§ 25-9-308. When security interest or agricultural lien is perfected; continuity of perfection.

(a) Perfection of security interest. -- Except as otherwise provided in this section and G.S. 25-9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in G.S. 25-9-310 through G.S. 25-9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) Perfection of agricultural lien. -- An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in G.S. 25-9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) Continuous perfection; perfection by different methods. -- A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

(d) Supporting obligation. -- Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Lien securing right to payment. -- Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Security entitlement carried in securities account. -- Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Commodity contract carried in commodity account. -- Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

"**§ 25-9-309. Security interest perfected upon attachment.** The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in G.S. 25-9-311(b) with respect to consumer goods that are subject to a statute or treaty described in G.S. 25-9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under G.S. 25-4-208;

(8) A security interest of an issuer or nominated person arising under G.S. 25-5-118;

(9) A security interest arising in the delivery of a financial asset under G.S. 25-9-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

"**§ 25-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.**

(a) General rule; perfection by filing. -- Except as otherwise provided in subsection (b) of this section and G.S. 25-9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) Exceptions; filing not necessary. -- The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under G.S. 25-9-308(d), (e), (f), or (g);

(2) That is perfected under G.S. 25-9-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in G.S. 25-9-311(a);

(4) In goods in possession of a bailee which is perfected under G.S. 25-9-312(d)(1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under G.S. 25-9-312(e), (f), or (g);

(6) In collateral in the secured party's possession under G.S. 25-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under G.S. 25-9-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under G.S. 25-9-314;

(9) In proceeds which is perfected under G.S. 25-9-315;

(10) That is perfected under G.S. 25-9-316; or

(11) Created in connection with the issuance of any bond, note, or other evidence of indebtedness for borrowed money by this State or any political subdivision or agency thereof, except as provided in G.S. 63A-11(e), 143B-456.1(f), 159C-28, and 159D-23.

(c) Assignment of perfected security interest. -- If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

"§ 25-9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) Security interest subject to other law. -- Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt G.S. 25-9-310(a);

(2) A certificate-of-title statute of this State covering automobiles or other goods that provides for a security interest to be indicated on the certificate as a condition to or result of perfection of the security interest, including G.S. 20-58 and G.S. 75A-41; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law. -- Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) of this section and G.S. 25-9-313 and G.S. 25-9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Duration and renewal of perfection. -- Except as otherwise provided in subsection (d) of this section and G.S. 25-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) Inapplicability to certain inventory. -- During any period in which collateral subject to a statute specified in subdivision (a)(2) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

"§ 25-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) Perfection by filing permitted. -- A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Control or possession of certain collateral. -- Except as otherwise provided in G.S. 25-9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under G.S. 25-9-314;

(2) And except as otherwise provided in G.S. 25-9-308(d), a security interest in a letter-of-credit right may be perfected only by control under G.S. 25-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under G.S. 25-9-313.

(c) Goods covered by negotiable document. -- While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. -- While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) Temporary perfection; new value. -- A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) Temporary perfection; goods or documents made available to debtor. -- A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection; delivery of security certificate or instrument to debtor. -- A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. -- After the 20-day period specified in subsection (e), (f), or (g) of this section expires, perfection depends upon compliance with this Article.

"§ 25-9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) Perfection by possession or delivery. -- Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under G.S. 25-8-301.

(b) Goods covered by certificate of title. -- With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest

in the goods by taking possession of the goods only in the circumstances described in G.S. 25-9-316(d).

(c) Collateral in possession of person other than debtor. -- With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) Time of perfection by possession; continuation of perfection. -- If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) Time of perfection by delivery; continuation of perfection. -- A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under G.S. 25-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) Acknowledgment not required. -- A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) Effectiveness of acknowledgment; no duties or confirmation. -- If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or G.S. 25-8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) Secured party's delivery to person other than debtor. -- A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) Effect of delivery under subsection (h); no duties or confirmation. -- A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is

not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

"**§ 25-9-314. Perfection by control.**

(a) Perfection by control. -- A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107.

(b) Specified collateral: time of perfection by control; continuation of perfection. -- A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under G.S. 25-9-104, 25-9-105, or 25-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. -- A security interest in investment property is perfected by control under G.S. 25-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

a. If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

b. If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

c. If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

"**§ 25-9-315. Secured party's rights on disposition of collateral and in proceeds.**

(a) Disposition of collateral; continuation of security interest or agricultural lien; proceeds. -- Except as otherwise provided in this Article and in G.S. 25-2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. -- Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by G.S. 25-9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

(c) Perfection of security interest in proceeds. -- A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) Continuation of perfection. -- A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

a. A filed financing statement covers the original collateral;

b. The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

c. The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within 20 days thereafter.

(e) When perfected security interest in proceeds becomes unperfected. -- If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subdivision (d)(1) of this section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under G.S. 25-9-515 or is terminated under G.S. 25-9-513; or

(2) The twenty-first day after the security interest attaches to the proceeds.

"§ 25-9-316. Continued perfection of security interest following change in governing law.

(a) General rule: effect on perfection of change in governing law. -- A security interest perfected pursuant to the law of the jurisdiction designated in G.S. 25-9-301(1) or G.S. 25-9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) Security interest perfected or unperfected under law of new jurisdiction. -- If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction. -- A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
(2) Thereafter the collateral is brought into another jurisdiction; and
(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from this State. -- Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interest becomes unperfected against purchasers. -- A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under G.S. 25-9-311(b) or G.S. 25-9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or
(2) The expiration of four months after the goods had become so covered.

(f) Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary. -- A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or
(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) Subsection (f) security interest perfected or unperfected under law of new jurisdiction. -- If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

"SUBPART 3. PRIORITY.

"§ 25-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) Conflicting security interests and rights of lien creditors. -- A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under G.S. 25-9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

a. The security interest or agricultural lien is perfected; or

b. One of the conditions specified in G.S. 25-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. -- Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. -- Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. -- A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. -- Except as otherwise provided in G.S. 25-9-320 and G.S. 25-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

"§ 25-9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

(a) Seller retains no interest. -- A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected. -- For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

"§ 25-9-319. Rights and title of consignee with respect to creditors and purchasers.

(a) Consignee has consignor's rights. -- Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession

of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) Applicability of other law. -- For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee's possession if, under this Part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

"**§ 25-9-320. Buyer of goods.**

(a) Buyer in ordinary course of business. -- Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Buyer of consumer goods. -- Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family, or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) Effectiveness of filing for subsection (b). -- To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by G.S. 25-9-316(a) and (b).

(d) Buyer in ordinary course of business at wellhead or minehead. -- A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Possessory security interest not affected. -- Subsections (a) and (b) of this section do not affect a security interest in goods in the possession of the secured party under G.S. 25-9-313.

"**§ 25-9-321. Licensee of general intangible and lessee of goods in ordinary course of business.**

(a) 'Licensee in ordinary course of business'. -- In this section, 'licensee in ordinary course of business' means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) Rights of licensee in ordinary course of business. -- A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security

interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) Rights of lessee in ordinary course of business. -- A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

"**§ 25-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.**

(a) General priority rules. -- Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection; proceeds and supporting obligations. -- For the purposes of subdivision (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules; proceeds and supporting obligations. -- Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under G.S. 25-9-327, 25-9-328, 25-9-329, 25-9-330, or 25-9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

a. The security interest in proceeds is perfected;

b. The proceeds are cash proceeds or of the same type as the collateral; and

c. In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. -- Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d). -- Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Limitations on subsections (a) through (e). -- Subsections (a) through (e) of this section are subject to:

(1) Subsection (g) of this section and the other provisions of this Part;

(2) G.S. 25-4-208 with respect to a security interest of a collecting bank;

(3) G.S. 25-5-118 with respect to a security interest of an issuer or nominated person; and

(4) G.S. 25-9-110 with respect to a security interest arising under Article 2 or 2A of this Chapter.

(g) Priority under agricultural lien statute. -- A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

"**§ 25-9-323. Future advances.**

(a) When priority based on time of advance. -- Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under G.S. 25-9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

a. Under G.S. 25-9-309 when it attaches; or

b. Temporarily under G.S. 25-9-312(e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under G.S. 25-9-309 or G.S. 25-9-312(e), (f), or (g).

(b) Lien creditor. -- Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables. -- Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Buyer of goods. -- Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) 45 days after the purchase.

(e) Advances made pursuant to commitment: priority of buyer of goods. -- Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) Lessee of goods. -- Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) 45 days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment: priority of lessee of goods. -- Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

"**§ 25-9-324. Priority of purchase-money security interests.**

(a) General rule: purchase-money priority. -- Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in G.S. 25-9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) Inventory purchase-money priority. -- Subject to subsection (c) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in G.S. 25-9-330, and, except as otherwise provided in G.S. 25-9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Holders of conflicting inventory security interests to be notified. -- Subdivisions (b)(2) through (b)(4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under G.S. 25-9-312(f), before the beginning of the 20-day period thereunder.

(d) Livestock purchase-money priority. -- Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in G.S. 25-9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Holders of conflicting livestock security interests to be notified. -- Subdivisions (d)(2) through (d)(4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under G.S. 25-9-312(f), before the beginning of the 20-day period thereunder.

(f) Software purchase-money priority. -- Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in G.S. 25-9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. -- If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f) of this section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, G.S. 25-9-322(a) applies to the qualifying security interests.

"**§ 25-9-324.1. Priority of production-money security interests and agricultural liens.**

(a) Priority over conflicting security interests. -- Except as otherwise provided in subsections (c), (d), and (e) of this section, if the requirements of subsection (b) of this section are satisfied, a perfected production-money security interest in production-money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in G.S. 25-9-327, also has priority in their identifiable proceeds.

(b) Requirements for priority. -- A production-money security interest has priority under subsection (a) of this section if:

(1) The production-money security interest is perfected by filing when the production-money secured party first gives new value to enable the debtor to produce the crops;

(2) The production-money secured party sends an authenticated notification to the holder of the conflicting security interest not less than 10 or more than 30 days before the production-money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production-money secured party; and

(3) The notification states that the production-money secured party has or expects to acquire a production-money security interest in the debtor's crops and provides a description of the crops.

(c) Multiple production-money security interests. -- Except as otherwise provided in subsection (d) or (e) of this section, if more than one security interest qualifies for priority in the same collateral under subsection (a) of this section, the security interests rank according to priority in time of filing under G.S. 25-9-322(a).

(d) New value to produce production-money crops. -- To the extent that a person holding a perfected security interest in production-money crops that are the subject of a production-money security interest gives new value to enable the debtor to produce the production-money crops and the value is in fact used for the production of the production-money crops, the security interests rank according to priority in time of filing under G.S. 25-9-322(a).

(e) Holder of agricultural lien and production-money security interest. -- To the extent that a person holds both an agricultural lien and a production-money security

interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

(f) Creating or perfecting production-money security interest not to operate as default or accelerating event. -- Creating or perfecting a production-money security interest shall not operate under any circumstances as a default on, an accelerating event under, or otherwise as a breach of any note or other instrument or agreement of any kind or nature to pay debt, any loan or credit agreement, or any security agreement or arrangement of any kind or nature where the collateral is real or personal property.

"**§ 25-9-325. Priority of security interests in transferred collateral.**

(a) Subordination of security interest in transferred collateral. -- Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination. -- Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under G.S. 25-9-322(a) or G.S. 25-9-324; or

(2) Arose solely under G.S. 25-2-711(3) or G.S. 25-2A-508(5).

"**§ 25-9-326. Priority of security interests created by new debtor.**

(a) Subordination of security interest created by new debtor. -- Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under G.S. 25-9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under G.S. 25-9-508.

(b) Priority under other provisions; multiple original debtors. -- The other provisions of this Part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under G.S. 25-9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

"**§ 25-9-327. Priority of security interests in deposit account.**

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under G.S. 25-9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in subdivisions (3) and (4) of this section, security interests perfected by control under G.S. 25-9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in subdivision (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under G.S. 25-9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

"**§ 25-9-328. Priority of security interests in investment property.**

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under G.S. 25-9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subdivisions (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under G.S. 25-9-106 rank according to priority in time of:

a. If the collateral is a security, obtaining control;

b. If the collateral is a security entitlement carried in a securities account and:

1. If the secured party obtained control under G.S. 25-8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

2. If the secured party obtained control under G.S. 25-8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

3. If the secured party obtained control through another person under G.S. 25-8-106(d)(3), the time on which priority would be based under this subdivision if the other person were the secured party; or

c. If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in G.S. 25-9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under G.S. 25-9-313(a) and not by control under G.S. 25-9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under G.S. 25-9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by G.S. 25-9-322 and G.S. 25-9-323.

"§ 25-9-329. Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under G.S. 25-9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under G.S. 25-9-314 rank according to priority in time of obtaining control.

"§ 25-9-330. Priority of purchaser of chattel paper or instrument.

(a) Purchaser's priority; security interest claimed merely as proceeds. -- A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under G.S. 25-9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority; other security interests. -- A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under G.S. 25-9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Chattel paper purchaser's priority in proceeds. -- Except as otherwise provided in G.S. 25-9-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

(1) G.S. 25-9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. -- Except as otherwise provided in G.S. 25-9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. -- For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. -- For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

"§ 25-9-331. Priority of rights of purchasers of instruments, documents, and securities under other Articles; priority of interests in financial assets and security entitlements under Article 8.

(a) Rights under Articles 3, 7, and 8 not limited. -- This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8 of this Chapter.

(b) Protection under Article 8. -- This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 of this Chapter.

(c) Filing not notice. -- Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section.

"§ 25-9-332. Transfer of money; transfer of funds from deposit account.

(a) Transferee of money. -- A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account. -- A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

"§ 25-9-333. Priority of certain liens arising by operation of law.

(a) 'Possessory lien.' -- In this section, 'possessory lien' means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) Priority of possessory lien. -- A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

"§ 25-9-334. Priority of security interests in fixtures and crops.

(a) Security interest in fixtures under this Article. -- A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real-property law. -- This Article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures. -- In cases not governed by subsections (d) through (h) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. -- Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) Priority of security interest in fixtures over interests in real property. -- A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

a. Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

b. Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

a. Factory or office machines;
b. Equipment that is not primarily used or leased for use in the operation of the real property; or
c. Replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article; or

(4) The security interest is:
a. Created in a manufactured home in a manufactured-home transaction; and
b. Perfected pursuant to a statute described in G.S. 25-9-311(a)(2).

(f) Priority based on consent, disclaimer, or right to remove. -- A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of subdivision (f)(2) priority. -- The priority of the security interest under subdivision (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. -- A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. -- Except as provided in G.S. 42-15, a perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

"**§ 25-9-335. Accessions.**

(a) Creation of security interest in accession. -- A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. -- If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Priority of security interest. -- Except as otherwise provided in subsection (d) of this section, the other provisions of this Part determine the priority of a security interest in an accession.

(d) Compliance with certificate-of-title statute. -- A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under G.S. 25-9-311(b).

(e) Removal of accession after default. -- After default, subject to Part 6 of this Article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) Reimbursement following removal. -- A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

"**§ 25-9-336. Commingled goods.**

(a) 'Commingled goods.' -- In this section, 'commingled goods' means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) No security interest in commingled goods as such. -- A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) Attachment of security interest to product or mass. -- If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest. -- If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) Priority of security interest. -- Except as otherwise provided in subsection (f) of this section, the other provisions of this Part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) Conflicting security interests in product or mass. -- If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

"**§ 25-9-337. Priority of security interests in goods covered by certificate of title.**

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under G.S. 25-9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

"**§ 25-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.**

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

"**§ 25-9-339. Priority subject to subordination.**

This Article does not preclude subordination by agreement by a person entitled to priority.

"SUBPART 4. RIGHTS OF BANK.

"**§ 25-9-340. Effectiveness of right of recoupment or setoff against deposit account.**

(a) Exercise of recoupment or setoff. -- Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

(b) Recoupment or setoff not affected by security interest. -- Except as otherwise provided in subsection (c) of this section, the application of this Article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

(c) When setoff ineffective. -- The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the

deposit account which is perfected by control under G.S. 25-9-104(a)(3), if the setoff is based on a claim against the debtor.

"§ 25-9-341. Bank's rights and duties with respect to deposit account.

Except as otherwise provided in G.S. 25-9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

"§ 25-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

This Article does not require a bank to enter into an agreement of the kind described in G.S. 25-9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

"PART 4.

"RIGHTS OF THIRD PARTIES.

"§ 25-9-401. Alienability of debtor's rights.

(a) Other law governs alienability; exceptions. -- Except as otherwise provided in subsection (b) of this section and G.S. 25-9-406, 25-9-407, 25-9-408, and 25-9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

(b) Agreement does not prevent transfer. -- An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

"§ 25-9-402. Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

"§ 25-9-403. Agreement not to assert defenses against assignee.

(a) 'Value.' -- In this section, 'value' has the meaning provided in G.S. 25-3-303(a).

(b) Agreement not to assert claim or defense. -- Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under G.S. 25-3-305(a).

(c) When subsection (b) not applicable. -- Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under G.S. 25-3-305(b).

(d) Omission of required statement in consumer transaction. -- In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Other law not displaced. -- Except as otherwise provided in subsection (d) of this section, this section does not displace law other than this Article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

"§ 25-9-404. Rights acquired by assignee; claims and defenses against assignee.

(a) Assignee's rights subject to terms, claims, and defenses; exceptions. -- Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e) of this section, the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Account debtor's claim reduces amount owed to assignee. -- Subject to subsection (c) of this section and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Omission of required statement in consumer transaction. -- In a consumer transaction, if a record evidences the account debtor's obligation, law other than this

Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable. -- This section does not apply to an assignment of a health-care-insurance receivable.

"**§ 25-9-405. Modification of assigned contract.**

(a) Effect of modification on assignee. -- A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d) of this section.

(b) Applicability of subsection (a). -- Subsection (a) of this section applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under G.S. 25-9-406(a).

(c) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Inapplicability to health-care-insurance receivable. -- This section does not apply to an assignment of a health-care-insurance receivable.

"**§ 25-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.**

(a) Discharge of account debtor; effect of notification. -- Subject to subsections (b) through (i) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. -- Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to

pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

a. Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

b. A portion has been assigned to another assignee; or

c. The account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. -- Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (e) of this section and G.S. 25-2A-303 and G.S. 25-9-407 and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. -- Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffective. -- Except as otherwise provided in G.S. 25-2A-303 and G.S. 25-9-407 and subject to subsections (h) and (i) of this section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may

give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subdivision (b)(3) not waivable. -- Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subdivision (b)(3) of this section.

(h) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. -- This section does not apply to an assignment of a health-care-insurance receivable. Subsection (f) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (f) of this section: North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes); North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes); North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes); North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes); Employment Security Law (Chapter 96 of the General Statutes); North Carolina Workers' Compensation Act (Article 1 of Chapter 97 of the General Statutes); and Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).

(j) Section prevails over specified inconsistent law. -- Except to the extent otherwise provided in subsection (i) of this section, this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

"§ 25-9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

(a) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Effectiveness of certain terms. -- Except as otherwise provided in G.S. 25-2A-303(7), a term described in subdivision (a)(2) of this section is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) Security interest not material impairment. -- The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of G.S. 25-2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

"§ 25-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

(a) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. -- Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) Legal restrictions on assignment generally ineffective. -- A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). -- To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Section prevails over specified inconsistent law. -- Except to the extent otherwise provided in subsection (f) of this section, this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(f) Inapplicability. -- Subsection (c) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (c) of

this section: North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes); North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes); North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes); North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes); Employment Security Law (Chapter 96 of the General Statutes); North Carolina Workers' Compensation Act (Article 1 of Chapter 97 of the General Statutes); and Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).

"§ 25-9-409. Restrictions on assignment of letter-of-credit rights ineffective.

(a) Term or law restricting assignment generally ineffective. -- A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) Limitation on ineffectiveness under subsection (a). -- To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

"PART 5.

"FILING.

"SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT.

"§ 25-9-501. Filing offices.

(a) Filing offices. -- Except as otherwise provided in subsection (b) of this section, if the local law of this State governs perfection of a security interest or agricultural

lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

a. The collateral is as-extracted collateral or timber to be cut; or

b. The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. -- The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

"**§ 25-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.**

(a) Sufficiency of financing statement. -- Subject to subsection (b) of this section, a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Real-property-related financing statements. -- Except as otherwise provided in G.S. 25-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed in the real property records;

(3) Provide a description of the real property to which the collateral is related; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement. -- A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is duly recorded.

(d) Filing before security agreement or attachment. -- A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

"**§ 25-9-503. Name of debtor and secured party.**

(a) Sufficiency of debtor's name. -- A financing statement sufficiently provides the name of the debtor:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

a. Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

b. Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) In other cases:

a. If the debtor has a name, only if it provides the individual or organizational name of the debtor; and

b. If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) Additional debtor-related information. -- A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under sub-subdivision (a)(4)b. of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) Debtor's trade name insufficient. -- A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Representative capacity. -- Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) Multiple debtors and secured parties. -- A financing statement may provide the name of more than one debtor and the name of more than one secured party.

"**§ 25-9-504. Indication of collateral.**

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to G.S. 25-9-108; or

(2) An indication that the financing statement covers all assets or all personal property.

"**§ 25-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.**

(a) Use of terms other than 'debtor' and 'secured party.' -- A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in G.S. 25-9-311(a), using the terms 'consignor', 'consignee', 'lessor', 'lessee', 'bailor', 'bailee', 'licensor', 'licensee', 'owner', 'registered owner', 'buyer', 'seller', or words of similar import, instead of the terms 'secured party' and 'debtor'.

(b) Effect of financing statement under subsection (a). -- This Part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under G.S. 25-9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

"**§ 25-9-506. Effect of errors or omissions.**

(a) Minor errors and omissions. -- A financing statement substantially satisfying the requirements of this Part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Financing statement seriously misleading. -- Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with G.S. 25-9-503(a) is seriously misleading.

(c) Financing statement not seriously misleading. -- If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with G.S. 25-9-503(a), the name provided does not make the financing statement seriously misleading.

(d) 'Debtor's correct name.' -- For purposes of G.S. 25-9-508(b), the 'debtor's correct name' in subsection (c) of this section means the correct name of the new debtor.

"**§ 25-9-507. Effect of certain events on effectiveness of financing statement.**

(a) Disposition. -- A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. -- Except as otherwise provided in subsection (c) of this section and G.S. 25-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under G.S. 25-9-506.

(c) Change in debtor's name. -- If a debtor so changes its name that a filed financing statement becomes seriously misleading under G.S. 25-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

"**§ 25-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.**

(a) Financing statement naming original debtor. -- Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) Financing statement becoming seriously misleading. -- If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under G.S. 25-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under G.S. 25-9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under G.S. 25-9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) When section not applicable. -- This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under G.S. 25-9-507(a).

"**§ 25-9-509. Persons entitled to file a record.**

(a) Person entitled to file record. -- A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) Security agreement as authorization. -- By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under G.S. 25-9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. -- By acquiring collateral in which a security interest or agricultural lien continues under G.S. 25-9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under G.S. 25-9-315(a)(2).

(d) Person entitled to file certain amendments. -- A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by G.S. 25-9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. -- If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section.

"**§ 25-9-510. Effectiveness of filed record.**

(a) Filed record effective if authorized. -- A filed record is effective only to the extent that it was filed by a person that may file it under G.S. 25-9-509.

(b) Authorization by one secured party of record. -- A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. -- A continuation statement that is not filed within the six-month period prescribed by G.S. 25-9-515(d) is ineffective.

"**§ 25-9-511. Secured party of record.**

(a) Secured party of record. -- A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under G.S. 25-9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) Amendment naming secured party of record. -- If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a

secured party of record. If an amendment is filed under G.S. 25-9-514(b), the assignee named in the amendment is a secured party of record.

(c) Amendment deleting secured party of record. -- A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

"§ 25-9-512. Amendment of financing statement.

(a) Amendment of information in financing statement. -- Subject to G.S. 25-9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed in a filing office described in G.S. 25-9-501(a)(1), provides the name of the debtor and the information specified in G.S. 25-9-502(b).

(b) Period of effectiveness not affected. -- Except as otherwise provided in G.S. 25-9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) Effectiveness of amendment adding collateral. -- A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) Effectiveness of amendment adding debtor. -- A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) Certain amendments ineffective. -- An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

"§ 25-9-513. Termination statement.

(a) Consumer goods. -- A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a). -- To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment

to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) Other collateral. -- In cases not governed by subsection (a) of this section, within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. -- Except as otherwise provided in G.S. 25-9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in G.S. 25-9-510, for purposes of G.S. 25-9-519(g), 25-9-522(a), and 25-9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

"**§ 25-9-514. Assignment of powers of secured party of record.**

(a) Assignment reflected on initial financing statement. -- Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement. -- Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage. -- An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under G.S. 25-9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than this Chapter.

"**§ 25-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.**

(a) Five-year effectiveness. -- Except as otherwise provided in subsections (b), (e), (f), and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) Public-finance or manufactured-home transaction. -- Except as otherwise provided in subsections (e), (f), and (g) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) Lapse and continuation of financing statement. -- The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) When continuation statement may be filed. -- A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the 30-year period specified in subsection (b) of this section, whichever is applicable.

(e) Effect of filing continuation statement. -- Except as otherwise provided in G.S. 25-9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) Transmitting utility financing statement. -- If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) Record of mortgage as financing statement. -- A record of a mortgage that is effective as a financing statement filed as a fixture filing under G.S. 25-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is

released or satisfied of record or its effectiveness otherwise terminates as to the real property.

"**§ 25-9-516. What constitutes filing; effectiveness of filing.**

(a) What constitutes filing. -- Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Refusal to accept record; filing does not occur. -- Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

a. In the case of an initial financing statement, the record does not provide a name for the debtor;

b. In the case of an amendment or correction statement, the record:

1. Does not identify the initial financing statement as required by G.S. 25-9-512 or G.S. 25-9-518, as applicable; or

2. Identifies an initial financing statement whose effectiveness has lapsed under G.S. 25-9-515;

c. In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

d. In the case of a record filed in the filing office described in G.S. 25-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

a. Provide a mailing address for the debtor;

b. Indicate whether the debtor is an individual or an organization; or

c. If the financing statement indicates that the debtor is an organization, provide:

1. A type of organization for the debtor;

2. A jurisdiction of organization for the debtor; or
3. An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under G.S. 25-9-514(a) or an amendment filed under G.S. 25-9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by G.S. 25-9-515(d).

(c) Rules applicable to subsection (b). -- For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by G.S. 25-9-512, 25-9-514, or 25-9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. -- A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

"§ 25-9-517. Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

"§ 25-9-518. Claim concerning inaccurate or wrongfully filed record.

(a) Correction statement. -- A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) Sufficiency of correction statement. -- A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) Record not affected by correction statement. -- The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

"SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

"§ 25-9-519. Numbering, maintaining, and indexing records; communicating information provided in records.

(a) Filing office duties. -- For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d), and (e) of this section.

(b) File number. -- Except as otherwise provided in subsection (i) of this section, a file number assigned after January 1, 2003, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Indexing; general. -- Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) Indexing; real-property-related financing statement. -- If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this State provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) Indexing; real-property-related assignment. -- If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under G.S. 25-9-514(a) or an amendment filed under G.S. 25-9-514(b):

(1) Under the name of the assignor as grantor; and
(2) To the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) Retrieval and association capability. -- The filing office shall maintain a capability:
(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and
(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) Removal of debtor's name. -- The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under G.S. 25-9-515 with respect to all secured parties of record.

(h) Timeliness of filing office performance. -- The filing office shall perform the acts required by subsections (a) through (e) of this section at the time and in the manner prescribed by filing-office rule, but after January 1, 2003, not later than three business days after the filing office receives the record in question.

(i) Inapplicability to real-property-related filing office. -- Subsection (b) of this section does not apply to a filing office described in G.S. 25-9-501(a)(1).

"**§ 25-9-520. Acceptance and refusal to accept record.**

(a) Mandatory refusal to accept record. -- A filing office shall refuse to accept a record for filing for a reason set forth in G.S. 25-9-516(b) and may refuse to accept a record for filing only for a reason set forth in G.S. 25-9-516(b).

(b) Communication concerning refusal. -- If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than three business days after the filing office receives the record.

(c) When filed financing statement effective. -- A filed financing statement satisfying G.S. 25-9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a) of this section. However, G.S. 25-9-338 applies to a filed financing statement providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) Separate application to multiple debtors. -- If a record communicated to a filing office provides information that relates to more than one debtor, this Part applies as to each debtor separately.

"**§ 25-9-521.** Reserved.

"**§ 25-9-522. Maintenance and destruction of records.**

(a) Post-lapse maintenance and retrieval of information. -- The filing office shall maintain a record of the information provided in a filed financing statement for at

least one year after the effectiveness of the financing statement has lapsed under G.S. 25-9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records. -- Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section.

"**§ 25-9-523. Information from filing office.**

(a) Acknowledgment of filing written record. -- If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to G.S. 25-9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to G.S. 25-9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) Acknowledgment of filing other record. -- If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to G.S. 25-9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) Communication of requested information. -- Except as otherwise provided in subsection (g) of this section, the filing office shall communicate or otherwise make available in a record, for which it shall not be liable, the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

a. Designates a particular debtor;

b. Has not lapsed under G.S. 25-9-515 with respect to all secured parties of record; and

c. If the request so states, has lapsed under G.S. 25-9-515 and a record of which is maintained by the filing office under G.S. 25-9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) Medium for communicating information. -- In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by

issuing a record that can be admitted into evidence in the courts of this State without extrinsic evidence of its authenticity.

(e) Timeliness of filing office performance. -- The filing office shall perform the acts required by subsections (a) through (d) of this section at the time and in the manner prescribed by filing-office rule, but after January 1, 2003, for a filing office described in G.S. 25-9-501(a)(2), not later than three business days after the filing office receives the request.

(f) Reserved.

(g) Inapplicability to real-property-related filing office. -- Subsection (c) of this section does not apply to a filing office described in G.S. 25-9-501(a)(1) with respect to financing statements filed on or after the effective date of this act.

"**§ 25-9-524. Delay by filing office.**

Delay by the filing office beyond a time limit prescribed by this Part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances.

"**§ 25-9-525. Fees.**

(a) Initial financing statement or other record; general rule. -- Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this Part is:

(1) Thirty dollars ($30.00) if the record is communicated in writing and consists of one or two pages;

(2) Forty-five dollars ($45.00) if the record is communicated in writing and consists of more than two pages, plus two dollars ($2.00) for each page over 10 pages; and

(3) Thirty dollars ($30.00) if the record is communicated by another medium authorized by filing-office rule.

(b) Reserved.

(c) Number of names. -- The number of names required to be indexed does not affect the amount of the fee in subsection (a) of this section.

(d) Response to information request. -- The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(1) Thirty dollars ($30.00) if the request is communicated in writing; and

(2) Thirty dollars ($30.00) if the request is communicated by another medium authorized by filing-office rule.

Upon request the filing office shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of two dollars ($2.00) per page. This subsection does not require that a fee be charged for remote access searching of the filing office database.

(e) Record of mortgage. -- This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under G.S. 25-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

"**§ 25-9-526. Filing-office rules.**

(a) Adoption of filing-office rules. -- The Secretary of State shall adopt and publish rules to implement the Secretary of State's responsibilities under this Part. The filing-office rules must be consistent with this Article.

(b) Harmonization of rules. -- To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this Part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this Part, the Secretary of State, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, may:

(1) Consult with filing offices in other jurisdictions that enact substantially this Part; and

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this Part.

"PART 6.

"DEFAULT.

"SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST.

"**§ 25-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.**

(a) Rights of secured party after default. -- After default, a secured party has the rights provided in this Part and, except as otherwise provided in G.S. 25-9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. -- A secured party in possession of collateral or control of collateral under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107 has the rights and duties provided in G.S. 25-9-207.

(c) Rights cumulative; simultaneous exercise. -- The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. -- Except as otherwise provided in subsection (g) of this section and G.S. 25-9-605, after default, a debtor and an obligor have the rights provided in this Part and by agreement of the parties.

(e) Lien of levy after judgment. -- If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. -- A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) Consignor or buyer of certain rights to payment. -- Except as otherwise provided in G.S. 25-9-607(c), this Part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

"**§ 25-9-602. Waiver and variance of rights and duties.**

Except as otherwise provided in G.S. 25-9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) G.S. 25-9-207(b)(4)c., which deals with use and operation of the collateral by the secured party;

(2) G.S. 25-9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) G.S. 25-9-607(c), which deals with collection and enforcement of collateral;

(4) G.S. 25-9-608(a) and G.S. 25-9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) G.S. 25-9-608(a) and G.S. 25-9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) G.S. 25-9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) G.S. 25-9-610(b), 25-9-611, 25-9-613, and 25-9-614, which deal with disposition of collateral;

(8) G.S. 25-9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) G.S. 25-9-616, which deals with explanation of the calculation of a surplus or deficiency;
(10) G.S. 25-9-620, 25-9-621, and 25-9-622, which deal with acceptance of collateral in satisfaction of obligation;
(11) G.S. 25-9-623, which deals with redemption of collateral;
(12) G.S. 25-9-624, which deals with permissible waivers; and
(13) G.S. 25-9-625 and G.S. 25-9-626, which deal with the secured party's liability for failure to comply with this Article.

"**§ 25-9-603. Agreement on standards concerning rights and duties.**

(a) Agreed standards. -- The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in G.S. 25-9-602 if the standards are not manifestly unreasonable.

(b) Agreed standards inapplicable to breach of peace. -- Subsection (a) of this section does not apply to the duty under G.S. 25-9-609 to refrain from breaching the peace.

"**§ 25-9-604. Procedure if security agreement covers real property or fixtures.**

(a) Enforcement: personal and real property. -- If a security agreement covers both personal and real property, a secured party may proceed:
(1) Under this Part as to the personal property without prejudicing any rights with respect to the real property; or
(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this Part do not apply.

(b) Enforcement: fixtures. -- Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:
(1) Under this Part; or
(2) In accordance with the rights with respect to real property, in which case the other provisions of this Part do not apply.

(c) Removal of fixtures. -- Subject to the other provisions of this Part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal. -- A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

"**§ 25-9-605. Unknown debtor or secondary obligor.**

A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:
a. That the person is a debtor or obligor;
b. The identity of the person; and
c. How to communicate with the person; or
(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
a. That the person is a debtor; and
b. The identity of the person.

"§ 25-9-606. Time of default for agricultural lien.

For purposes of this Part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

"§ 25-9-607. Collection and enforcement by secured party.

(a) Collection and enforcement generally. -- If so agreed, and in any event after default, a secured party:
(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
(2) May take any proceeds to which the secured party is entitled under G.S. 25-9-315;
(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
(4) If it holds a security interest in a deposit account perfected by control under G.S. 25-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and
(5) If it holds a security interest in a deposit account perfected by control under G.S. 25-9-104(a)(2) or (a)(3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) Nonjudicial enforcement of mortgage. -- If necessary to enable a secured party to exercise under subdivision (a)(3) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:
(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
(2) The secured party's sworn affidavit in recordable form stating that:
a. A default has occurred; and

b. The secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement. -- A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) Expenses of collection and enforcement. -- A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. -- This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

"**§ 25-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.**

(a) Application of proceeds, surplus, and deficiency if obligation secured. -- If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under G.S. 25-9-607 in the following order to:

a. The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

b. The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

c. The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under sub-subdivision (a)(1)c. of this section.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under G.S. 25-9-607 unless the failure to do so would be commercially

unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. -- If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

"§ 25-9-609. Secured party's right to take possession after default.

(a) Possession; rendering equipment unusable; disposition on debtor's premises. -- After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under G.S. 25-9-610.

(b) Judicial and nonjudicial process. -- A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) Assembly of collateral. -- If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

"§ 25-9-610. Disposition of collateral after default.

(a) Disposition after default. -- After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Commercially reasonable disposition. -- Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) Purchase by secured party. -- A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) Warranties on disposition. -- A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) Disclaimer of warranties. -- A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) Record sufficient to disclaim warranties. -- A record is sufficient to disclaim warranties under subsection (e) of this section if it indicates 'There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition' or uses words of similar import.

"**§ 25-9-611. Notification before disposition of collateral.**

(a) 'Notification date.' -- In this section, 'notification date' means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. -- Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under G.S. 25-9-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

(c) Persons to be notified. -- To comply with subsection (b) of this section, the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

a. Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

b. Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

1. Identified the collateral;

2. Was indexed under the debtor's name as of that date; and

3. Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

c. Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in G.S. 25-9-311(a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. -- Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with sub-subdivision (c)(3)b. -- A secured party complies with the requirement for notification prescribed by sub-subdivision (c)(3)b. of this section if:

(1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in sub-subdivision (c)(3)b. of this section; and

(2) Before the notification date, the secured party:

a. Did not receive a response to the request for information; or

b. Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

"**§ 25-9-612. Timeliness of notification before disposition of collateral.**

(a) Reasonable time is question of fact. -- Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) Ten-day period sufficient in nonconsumer transaction. -- In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

"**§ 25-9-613. Contents and form of notification before disposition of collateral: general.**

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

a. Describes the debtor and the secured party;

b. Describes the collateral that is the subject of the intended disposition;

c. States the method of intended disposition;

d. States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

e. States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in subdivision (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in subdivision (1) of this section are sufficient, even if the notification includes:

a. Information not specified by that subdivision; or
b. Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in G.S. 25-9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]
From: [Name, address, and telephone number of secured party]
Name of Debtor(s): [Include only if debtor(s) is/are not an addressee]
[For a public disposition:]
We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:
Day and Date: _____
Time: _____
Place: _____
[For a private disposition:]
We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].
You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $_____].
You may request an accounting by calling us at [telephone number]

"§ 25-9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:
a. The information specified in G.S. 25-9-613(1);
b. A description of any liability for a deficiency of the person to which the notification is sent;
c. A telephone number from which the amount that must be paid to the secured party to redeem the collateral under G.S. 25-9-623 is available; and
d. A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]
[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] or write us at [secured party's address] and request a written explanation. [We will charge you $_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

(4) A notification in the form of subdivision (3) of this section is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of subdivision (3) of this section is sufficient, even if it includes errors in information not required by subdivision (1) of this section, unless the error is misleading with respect to rights arising under this Article.

(6) If a notification under this section is not in the form of subdivision (3) of this section, law other than this Article determines the effect of including information not required by subdivision (1) of this section.

"§ 25-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) Application of proceeds. -- A secured party shall apply or pay over for application the cash proceeds of disposition under G.S. 25-9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

a. The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

b. In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. -- If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subdivision (a)(3) of this section.

(c) Application of noncash proceeds. -- A secured party need not apply or pay over for application noncash proceeds of disposition under G.S. 25-9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured. -- If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subdivision (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment. -- If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) Calculation of surplus or deficiency in disposition to person related to secured party. -- The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this Part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) Cash proceeds received by junior secured party. -- A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

"§ 25-9-616. Explanation of calculation of surplus or deficiency.

(a) Definitions. -- In this section:

(1) 'Explanation' means a writing that:

a. States the amount of the surplus or deficiency;

b. Provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;

c. States, if applicable, that future debits, credits, charges, including additional credit service charges or interest,

rebates, and expenses may affect the amount of the surplus or deficiency; and

d. Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) 'Request' means a record:

a. Authenticated by a debtor or consumer obligor;

b. Requesting that the recipient provide an explanation; and

c. Sent after disposition of the collateral under G.S. 25-9-610.

(b) Explanation of calculation. -- In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under G.S. 25-9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

a. Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

b. Within 14 days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required information. -- To comply with sub-subdivision (a)(1)b. of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

a. If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

b. If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the

obligor is known to be entitled and which are not reflected in the amount in subdivision (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) Substantial compliance. -- A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) Charges for responses. -- A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subdivision (b)(1) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response.

"§ 25-9-617. Rights of transferee of collateral.

(a) Effects of disposition. -- A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) Rights of good-faith transferee. -- A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

(c) Rights of other transferee. -- If a transferee does not take free of the rights and interests described in subsection (a) of this section, the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien.

"§ 25-9-618. Rights and duties of certain secondary obligors.

(a) Rights and duties of secondary obligor. -- A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer, or subrogation. -- An assignment, transfer, or subrogation described in subsection (a) of this section:

(1) Is not a disposition of collateral under G.S. 25-9-610; and

(2) Relieves the secured party of further duties under this Article.

"**§ 25-9-619. Transfer of record or legal title.**

(a) 'Transfer statement.' -- In this section, 'transfer statement' means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its postdefault remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) Effect of transfer statement. -- A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party's duties. -- A transfer of the record or legal title to collateral to a secured party under subsection (b) of this section or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article.

"**§ 25-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.**

(a) Conditions to acceptance in satisfaction. -- Except as otherwise provided in subsection (g) of this section, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;

(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:

a. A person to which the secured party was required to send a proposal under G.S. 25-9-621; or

b. Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) of this section of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to G.S. 25-9-624.

(b) Purported acceptance ineffective. -- A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) Debtor's consent. -- For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

a. Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

b. In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

c. Does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(d) Effectiveness of notification. -- To be effective under subdivision (a)(2) of this section, a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to G.S. 25-9-621, within 20 days after notification was sent to that person; and

(2) In other cases:

a. Within 20 days after the last notification was sent pursuant to G.S. 25-9-621; or

b. If a notification was not sent, before the debtor consents to the acceptance under subsection (c) of this section.

(e) Mandatory disposition of consumer goods. -- A secured party that has taken possession of collateral shall dispose of the collateral pursuant to G.S. 25-9-610 within the time specified in subsection (f) of this section if:

(1) Sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) Compliance with mandatory disposition requirement. -- To comply with subsection (e) of this section, the secured party shall dispose of the collateral:

(1) Within 90 days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) No partial satisfaction in consumer transaction. -- In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

"**§ 25-9-621. Notification of proposal to accept collateral.**

(a) Persons to which proposal to be sent. -- A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

a. Identified the collateral;

b. Was indexed under the debtor's name as of that date; and

c. Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in G.S. 25-9-311(a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. -- A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section.

"**§ 25-9-622. Effect of acceptance of collateral.**

(a) Effect of acceptance. -- A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) Discharge of subordinate interest notwithstanding noncompliance. -- A subordinate interest is discharged or terminated under subsection (a) of this section, even if the secured party fails to comply with this Article.

"**§ 25-9-623. Right to redeem collateral.**

(a) Persons that may redeem. -- A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) Requirements for redemption. -- To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in G.S. 25-9-615(a)(1).

(c) When redemption may occur. -- A redemption may occur at any time before a secured party:

(1) Has collected collateral under G.S. 25-9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under G.S. 25-9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under G.S. 25-9-622.

"**§ 25-9-624. Waiver.**

(a) Waiver of disposition notification. -- A debtor or secondary obligor may waive the right to notification of disposition of collateral under G.S. 25-9-611 only by an agreement to that effect entered into and authenticated after default.

(b) Waiver of mandatory disposition. -- A debtor may waive the right to require disposition of collateral under G.S. 25-9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Waiver of redemption right. -- Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under G.S. 25-9-623 only by an agreement to that effect entered into and authenticated after default.

"SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

"**§ 25-9-625. Remedies for secured party's failure to comply with Article.**

(a) Judicial orders concerning noncompliance. -- If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. -- Subject to subsections (c), (d), and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages in consumer-goods transaction. -- Except as otherwise provided in G.S. 25-9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this Part may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

(d) Recovery when deficiency eliminated or reduced. -- A debtor whose deficiency is eliminated under G.S. 25-9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under G.S. 25-9-626 may not otherwise recover under subsection (b) of this section for noncompliance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance.

(e) Statutory damages: noncompliance with specified provisions. -- In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars ($500.00) in each case from a person that:

(1) Fails to comply with G.S. 25-9-208;

(2) Fails to comply with G.S. 25-9-209;

(3) Files a record that the person is not entitled to file under G.S. 25-9-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by G.S. 25-9-513(a) or (c);

(5) Fails to comply with G.S. 25-9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with G.S. 25-9-616(b)(2).

(f) Statutory damages: noncompliance with G.S. 25-9-210. -- A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, five hundred dollars ($500.00) in each case from a person that, without reasonable cause, fails to comply with a request under G.S. 25-9-210. A recipient of a request under G.S. 25-9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) Limitation of security interest: noncompliance with G.S. 25-9-210. -- If a secured party fails to comply with a request regarding a list of collateral or a statement of account under G.S. 25-9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

"§ 25-9-626. Action in which deficiency or surplus is in issue.

(a) Applicable rules if amount of deficiency or surplus in issue. -- In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this Part.

(3) Except as otherwise provided in G.S. 25-9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

a. The proceeds of the collection, enforcement, disposition, or acceptance; or

b. The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of sub-subdivision (a)(3)b. of this section, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under G.S. 25-9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) Nonconsumer transactions; no inference. -- The limitation of the rules in subsection (a) of this section to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

"**§ 25-9-627. Determination of whether conduct was commercially reasonable.**

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. -- The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself

sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) Dispositions that are commercially reasonable. -- A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) Approval by court or on behalf of creditors. -- A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) of this section not necessary; absence of approval has no effect. -- Approval under subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

"§ 25-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.

(a) Limitation of liability of secured party for noncompliance with Article. -- Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

(2) The secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. -- A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

a. That the person is a debtor or obligor;

b. The identity of the person; and

c. How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

a. That the person is a debtor; and

b. The identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. -- A secured party is not liable to any

person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. -- A secured party is not liable to any person under G.S. 25-9-625(c)(2) for its failure to comply with G.S. 25-9-616.

(e) Limitation of multiple liability for statutory damages. -- A secured party is not liable under G.S. 25-9-625(c)(2) more than once with respect to any one secured obligation.

"PART 7.

"TRANSITION.

"§ 25-9-701. Effective date.

This act takes effect on July 1, 2001. References in this Part to 'this act' refer to the session law by which this Part is added to Article 9 of Chapter 25 of the General Statutes. References in this Part to 'former Article 9' are to Article 9 of Chapter 25 of the General Statutes as in effect immediately before the effective date of this act.

"§ 25-9-702. Savings clause.

(a) Pre-effective-date transactions or liens. -- Except as otherwise provided in this Part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the effective date of this act.

(b) Continuing validity. -- Except as otherwise provided in subsection (c) of this section and G.S. 25-9-703 through G.S. 25-9-709:

(1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before the effective date of this act, and would be subject to this act if they had been entered into or created after the effective date of this act, and the rights, duties, and interests flowing from those transactions and liens remain valid after the effective date of this act; and

(2) The transactions and liens described in subdivision (1) of this subsection may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. -- This act does not affect an action, case, or proceeding commenced before the effective date of this act.

"§ 25-9-703. Security interest perfected before effective date.

(a) Continuing priority over lien creditor; perfection requirements satisfied. -- A security interest that is enforceable immediately before the effective date of this act and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act if, on the effective date of this

act, the applicable requirements for enforceability and perfection under this act are satisfied without further action.

(b) Continuing priority over lien creditor: perfection requirements not satisfied. -- Except as otherwise provided in G.S. 25-9-705, if, immediately before the effective date of this act, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this act are not satisfied on the effective date of this act, the security interest:

(1) Is a perfected security interest for one year after the effective date of this act;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under G.S. 25-9-203 before the year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under this act are satisfied before the year expires.

"**§ 25-9-704. Security interest unperfected before effective date.**

A security interest that is enforceable immediately before the effective date of this act but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one year after the effective date of this act;

(2) Remains enforceable thereafter if the security interest becomes enforceable under G.S. 25-9-203 on the effective date of this act or within one year thereafter; and

(3) Becomes perfected:

a. Without further action, on the effective date of this act if the applicable requirements for perfection under this act are satisfied before or at that time; or

b. When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

"**§ 25-9-705. Effectiveness of action taken before effective date.**

(a) Pre-effective-date action; one-year perfection period unless reperfected. -- If action, other than the filing of a financing statement, is taken before the effective date of this act and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before the effective date of this act, the action is effective to perfect a security interest that attaches under this act within one year after the effective date of this act. An attached security interest becomes unperfected one year after the effective date of this act unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) Pre-effective-date filing. -- The filing of a financing statement before the effective date of this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) Pre-effective-date filing in jurisdiction formerly governing perfection. -- This act does not render ineffective an effective financing statement that, before the effective date of this act, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9. However, except as otherwise provided in subsections (d) and (e) of this section and G.S. 25-9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; and

(2) June 30, 2006.

(d) Continuation statement. -- The filing of a continuation statement after the effective date of this act does not continue the effectiveness of the financing statement filed before the effective date of this act. However, upon the timely filing of a continuation statement after the effective date of this act and in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this Article, the effectiveness of a financing statement filed in the same office in that jurisdiction before the effective date of this act continues for the period provided by the law of that jurisdiction.

(e) Application of subdivision (c)(2) to transmitting utility financing statement. -- Subdivision (c)(2) of this section applies to a financing statement that, before the effective date of this act, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9 only to the extent that Part 3 of this Article provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Application of Part 5. -- A financing statement that includes a financing statement filed before the effective date of this act and a continuation statement filed after the effective date of this act is effective only to the extent that it satisfies the requirements of Part 5 of this Article for an initial financing statement.

"**§ 25-9-706. When initial financing statement suffices to continue effectiveness of financing statement.**

(a) Initial financing statement in lieu of continuation statement. -- The filing of an initial financing statement in the office specified in G.S. 25-9-501 continues the effectiveness of a financing statement filed before the effective date of this act if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this act;

(2) The pre-effective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) Period of continued effectiveness. -- The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before the effective date of this act, for the period provided in G.S. 25-9-403 of former Article 9 with respect to a financing statement; and

(2) If the initial financing statement is filed after the effective date of this act, for the period provided in G.S. 25-9-515 with respect to an initial financing statement.

(c) Requirement for initial financing statement under subsection (a). -- To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of Part 5 of this Article for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

"§ 25-9-707. Amendment of pre-effective-date financing statement.

(a) 'Pre-effective-date financing statement'. -- In this section, 'pre-effective-date financing statement' means a financing statement filed before the effective date of this act.

(b) Applicable law. -- After the effective date of this act, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this Article. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. -- Except as otherwise provided in subsection (d) of this section, if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the effective date of this act only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in G.S. 25-9-501;

(2) An amendment is filed in the office specified in G.S. 25-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies G.S. 25-9-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies G.S. 25-9-706(c) is filed in the office specified in G.S. 25-9-501.

(d) Method of amending: continuation. -- If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under G.S. 25-9-705(d) and (f) or G.S. 25-9-706.

(e) Reserved.

(f) Method of amending: termination. -- If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be terminated after the effective date of this act only if:

(1) The pre-effective-date financing statement and a termination statement are filed in the office specified in G.S. 25-9-501; or

(2) A termination statement is filed in the office specified in G.S. 25-9-501 concurrently with the filing in that office of an initial financing statement that satisfies G.S. 25-9-706(c). Under this subsection, no separate fee shall be charged for the filing or indexing of the termination statement.

"§ 25-9-708. Persons entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this Part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this Part:

a. To continue the effectiveness of a financing statement filed before the effective date of this act; or

b. To perfect or continue the perfection of a security interest.

"§ 25-9-709. Priority.

(a) Law governing priority. -- This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the effective date of this act, former Article 9 determines priority.

(b) Priority if security interest becomes enforceable under G.S. 25-9-203. -- For purposes of G.S. 25-9-322(a), the priority of a security interest that becomes enforceable under G.S. 25-9-203 dates from the effective date of this act if the security interest is perfected under this act by the filing of a financing statement before the effective date of this act which would not have been effective to perfect the security interest under former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

"§ 25-9-710. Special transitional provision for maintaining and searching local filing office records.

(a) In this section:

(1) 'Former-Article-9 records' means:

a. Financing statements and other records that have been filed in the local-filing office before July 1, 2001, and that are, or upon processing and indexing will be, reflected in the index maintained, as of June 30, 2001, by the local-filing office for financing statements and other records filed in the local-filing office before July 1, 2001; and

b. The index as of June 30, 2001.

The term does not include records presented to a local-filing office for filing after June 30, 2001, whether or not the records relate to financing statements filed in the local-filing office before July 1, 2001.

(2) 'Local-filing office' means a filing office, other than the office of the Secretary of State, that is designated as the proper place to file a financing statement under G.S. 25-9-401(1) of former Article 9. The term applies only with respect to a record that covers a type of collateral as to which the filing office is designated in that section as the proper place to file.

(b) A local-filing office must not accept for filing a record presented after June 30, 2001, whether or not the record relates to a financing statement filed in the local-filing office before July 1, 2001.

(c) Until July 1, 2008, each local-filing office must maintain all former Article 9 records in accordance with former Article 9. A former Article 9 record that is not reflected on the index maintained at June 30, 2001, by the local-filing office must be processed and indexed, and reflected on the index as of June 30, 2001, as soon as practicable but in any event no later than July 30, 2001.

(d) Until at least June 30, 2008, each local-filing office must respond to requests for information with respect to former Article 9 records relating to a debtor and issue certificates, in accordance with former Article 9. The fees charged for responding to requests for information relating to a debtor and issuing certificates with respect to former-Article-9 records must be the fees in effect under former Article 9 on June 30, 2001.

(e) After June 30, 2008, each local-filing office may remove and destroy, in accordance with any then applicable record retention law of this State, all former-Article-9 records, including the related index.

(f) This section does not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:

(1) The collateral is timber to be cut or as-extracted collateral, or

(2) The record is or relates to a financing statement filed as a fixture and the collateral is goods that are or are to become fixtures."

Section 2.(a) Article 9 of Chapter 25 of the General Statutes, as enacted by Section 1 of this act, is amended by adding the following new section to read:

"**§ 25-9-521. Uniform form of written financing statement and amendment.**

(a) Initial financing statement form. -- A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in G.S. 25-9-516(b):

(b) Amendment form. -- A filing office that accepts written records may not refuse to accept a written record in the form and format except for a reason set forth in G.S. 25-9-516(b):"

Section 2.(b) The Revisor of Statutes shall cause to be printed in G.S. 25-9-521(a), as enacted by subsection (a) of this section, the "National UCC

Financing Statement (Form UCC1) (Rev. 07/29/98)" and the "National UCC Financing Statement Addendum (Form UCC1 Ad) (Rev. 07/29/98)" as reproduced in the official text of U.C.C. Article 9 (1999), which are hereby incorporated by reference into G.S. 25-9-521(a).

Section 2.(c) The Revisor of Statutes shall cause to be printed in G.S. 25-9-521(b), as enacted by subsection (a) of this section, the "National UCC Financing Statement Amendment (Form UCC3) (Rev. 07/29/98)" and the "National UCC Financing Statement Amendment Addendum (Form UCC3 Ad) (Rev. 07/29/98)" as reproduced in the official text of U.C.C. Article 9 (1999), which are hereby incorporated by reference into G.S. 25-9-521(b).

PART II. CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE.

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

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

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

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

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

Letters of Credit. (G.S. 25-5-116).

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

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

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

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. (G.S. 25-9-301 through G.S. 25-9-307).

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

~~Letters of Credit. (G.S. 25-5-116).~~"

Section 4. G.S. 25-1-109 reads as rewritten:

"**§ 25-1-109. Section captions.**

Section captions are parts of this chapter. The subsection headings in Article 9 of this Chapter are not parts of this Chapter."

Section 5. G.S. 25-1-201(9) reads as rewritten:

"(9) 'Buyer in ordinary course of business' means a person ~~who~~ that buys goods in good ~~faith and~~ faith, without knowledge that the sale ~~to him is in violation of~~ violates the ~~ownership~~ rights ~~or security interest~~ of ~~a third party~~ another person in the ~~goods~~ goods, and ~~buys~~ in the ordinary course from a ~~person~~ person, other than a pawnbroker, in the business of selling goods of that ~~kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons~~ kind. A person buys goods in the ordinary

course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. ~~"Buying"~~ A buyer in ordinary course of business may ~~be~~ buy for ~~cash~~ cash, ~~or~~ by exchange of other ~~property~~ property, or on secured or unsecured ~~credit~~ credit, and ~~includes receiving~~ may acquire goods or documents of title under a preexisting contract for ~~sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.~~ sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this Chapter may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business."

Section 6. G.S. 25-1-201(32) reads as rewritten:

"(32) 'Purchase' includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or re-issue, gift or any other voluntary transaction creating an interest in property."

Section 7. G.S. 25-1-201(37) reads as rewritten:

"(37) 'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. ~~The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation of a "security interest".~~ The term also includes any interest of a consignor and a buyer of ~~accounts or~~ accounts, chattel ~~paper which~~ paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9 of this Chapter. The special property interest of a buyer of goods on identification of those goods to a contract for sale under G.S. 25-2-401 is not a 'security interest,' but a buyer may also acquire a 'security interest' by complying with Article 9 of this Chapter. ~~Unless a consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (G.S. 25-2-326).~~ Except as otherwise provided in G.S. 25-2-505, the right of a seller or lessor of goods under Article 2 or 2A of this Chapter to retain or acquire possession of the goods is not a 'security interest', but a seller or lessor may also acquire a 'security interest' by complying with Article 9 of this Chapter. The retention or reservation of title by a seller of goods notwithstanding shipment or

delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation of a 'security interest'.

(a) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest ~~if:~~ if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods, or

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods, or

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) The lessee has an option to renew the lease or to become the owner of the goods,

(iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(ii) 'Reasonably predictable' and 'remaining economic life of the goods' are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) 'Present value' means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into."

Section 8. G.S. 25-2-103(3) reads as rewritten:

"(3) The following definitions in other articles apply to this article:

'Check.' G.S. 25-3-104.

'Consignee.' G.S. 25-7-102.

'Consignor.' G.S. 25-7-102.

'Consumer goods.' ~~G.S. 25-9-109.~~ G.S. 25-9-102.

'Dishonor.' ~~G.S. 25-3-507.~~ G.S. 25-3-502.

'Draft.' G.S. 25-3-104."

Section 9. G.S. 25-2-210 reads as rewritten:

"**§ 25-2-210. Delegation of performance; assignment of rights.**

~~(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.~~

~~(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach~~

~~of the whole contract, or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.~~

~~(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.~~

~~(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.~~

~~(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee.~~

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in G.S. 25-9-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of 'the contract' is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of 'the contract' or of 'all my rights under the contract' or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the

assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee."

Section 10. G.S. 25-2-326 reads as rewritten:

"**§ 25-2-326. Sale on approval and sale or return; ~~consignment sales and~~ rights of creditors.**

~~(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is~~

~~(a) a "sale on approval" if the goods are delivered primarily for use, and~~

~~(b) a "sale or return" if the goods are delivered primarily for resale.~~

~~(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.~~

~~(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery~~

~~(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or~~

~~(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or~~

~~(c) complies with the filing provisions of the article on secured transactions (article 9).~~

~~(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (G.S. 25-2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (G.S. 25-2-202).~~

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a 'sale on approval' if the goods are delivered primarily for use, and

(b) a 'sale or return' if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any 'or return' term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (G.S. 25-2-201) and

as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (G.S. 25-2-202)."

Section 11. G.S. 25-2-502 reads as rewritten:

"**§ 25-2-502. Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.**

~~(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section [G.S. 25-2-501] may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.~~

~~(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.~~

(1) Subject to subsections (2) and (3) of this section and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he has a special property under G.S. 25-2-501 may, on making and keeping good a tender of any unpaid portion of their price, recover them from the seller if:

a. in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

b. in all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subdivision (1)a. of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer, he acquires the right to recover the goods only if they conform to the contract for sale."

Section 12. G.S. 25-2-716(3) reads as rewritten:

"(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver."

Section 13. G.S. 25-2A-103(3) reads as rewritten:

"(3) The following definitions in other Articles apply to this Article:

'Account'. ~~G.S. 25-9-106.~~ G.S. 25-9-102(a)(2).

'Between merchants'. G.S. 25-2-104(3).

'Buyer'. G.S. 25-2-103(1)(a).

'Chattel paper'. ~~G.S. 25-9-105(1)(b).~~ G.S. 25-9-102(a)(11).
'Consumer goods'. ~~G.S. 25-9-109(1).~~ G.S. 25-9-102(a)(23).
'Document'. ~~G.S. 25-9-105(1)(f).~~ G.S. 25-9-102(a)(30).
'Entrusting'. G.S. 25-2-403(3).
~~'General intangibles'. G.S. 25-9-106.~~
'General intangible'. G.S. 25-9-102(a)(42).
'Good faith'. G.S. 25-2-103(1)(b).
'Instrument'. ~~G.S. 25-9-105(1)(i).~~ G.S. 25-9-102(a)(47).
'Merchant'. G.S. 25-2-104(1).
'Mortgage'. ~~G.S. 25-9-105(1)(j).~~ G.S. 25-9-102(a)(55).
'Pursuant to commitment'. ~~G.S. 25-9-105(1)(k).~~ G.S. 25-9-102(a)(68).
'Receipt. G.S. 25-2-103(1)(c).
'Sale'. G.S. 25-2-106(1).
'Sale on approval'. G.S. 25-2-326.
'Sale or return'. G.S. 25-2-326.
'Seller'. G.S. 25-2-103(1)(d)."

Section 14. G.S. 25-2A-303 reads as rewritten:

"**§ 25-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.**

~~(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9 of this Chapter, Secured Transactions, by reason of G.S. 25-9-102(1)(b).~~

~~(2) Except as provided in subsections (3) and (4) of this section, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation, or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.~~

~~(3) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) of this section unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.~~

~~(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5) of this section.~~

~~(5) Subject to subsections (3) and (4) of this section:~~

~~(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in G.S. 25-2A-501(2);~~

~~(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.~~

~~(6) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.~~

~~(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.~~

~~(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.~~

(1) As used in this section, 'creation of a security interest' includes the sale of a lease contract that is subject to Article 9 of this Chapter, Secured Transactions, by reason of G.S. 25-9-109(a)(3).

(2) Except as provided in subsection (3) of this section and G.S. 25-9-407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation, or enforcement of a security

interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4) of this section.

(4) Subject to subsection (3) of this section and G.S. 25-9-407:

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in G.S. 25-2A-501(2);

(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of 'the lease' or of 'all my rights under the lease', or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous."

Section 15. G.S. 25-2A-307 reads as rewritten:

"**§ 25-2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.**

~~(1) Except as otherwise provided in G.S. 25-2A-306, a creditor of a lessee takes subject to the lease contract.~~

~~(2) Except as otherwise provided in subsections (3) and (4) of this section and in G.S. 25-2A-306 and G.S. 25-2A-308, a creditor of a lessor takes subject to the lease contract unless:~~

~~(a) the creditor holds a lien that attached to the goods before the lease contract became enforceable;~~

~~(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or~~

~~(c) the creditor holds a security interest in the goods which was perfected (G.S. 25-9-303) before the lease contract became enforceable.~~

~~(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (G.S. 25-9-303) and the lessee knows of its existence.~~

~~(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.~~

(1) Except as otherwise provided in G.S. 25-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) of this section and in G.S. 25-2A-306 and G.S. 25-2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in G.S. 25-9-317, 25-9-321, and 25-9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor."

Section 16. G.S. 25-2A-309(1)(b) reads as rewritten:

"(b) a 'fixture filing' is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of ~~G.S. 25-9-402(5);~~ G.S. 25-9-502(a) and (b);"

Section 17. G.S. 25-4-208(c) reads as rewritten:

"(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the

item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) No security agreement is necessary to make the security interest enforceable ~~(G.S. 25-9-203(1)(a);~~ (G.S. 25-9-203(b)(3)a.);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds."

Section 18. Article 5 of Chapter 25 of the General Statutes is amended by adding a new section to read:

"**§ 25-5-118. Security interest of issuer or nominated person.**

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Article 9 of this Chapter, but:

(1) A security agreement is not necessary to make the security interest enforceable under G.S. 25-9-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document."

Section 19. G.S. 25-6-102 reads as rewritten:

"**§ 25-6-102. 'Bulk transfers'; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.**

(1) A 'bulk transfer' is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory ~~(G.S. 25-9-109)~~ (G.S. 25-9-102) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment ~~(G.S. 25-9-109)~~ (G.S. 25-9-102) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by ~~the following section [G.S. 25-6-103]~~ G.S. 25-6-103 all bulk transfers of goods located within this State are subject to this article."

Section 20. G.S. 25-7-503(1) reads as rewritten:

"(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (G.S. 25-7-403) or with power of disposition under this chapter (G.S. 25-2-403 and ~~25-9-307)~~ G.S. 25-9-320) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title."

Section 21. G.S. 25-8-103(f) reads as rewritten:

"(f) A commodity contract, as defined in ~~G.S. 25-9-115,~~ G.S. 25-9-102(a)(15), is not a security or financial asset."

Section 22. G.S. 25-8-106 reads as rewritten:

"§ 25-8-106. Control.

(a) A purchaser has 'control' of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has 'control' of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) The certificate is endorsed to the purchaser or in blank by an effective endorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has 'control' of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has 'control' of a security entitlement if:

(1) The purchaser becomes the entitlement holder; ~~or~~

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement ~~holder.~~ holder; or

(3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of ~~subdivision (c) (2) or (d) (2)~~ subsection (c) or (d) of this section has ~~control~~ control, even if the registered owner in the case of ~~subdivision (c) (2)~~ subsection (c) of this section or the entitlement holder in the case of ~~subdivision (d) (2)~~ subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision (c) (2) or (d) (2) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder."

Section 23. G.S. 25-8-110(e) reads as rewritten:

"~~(e) The following rules determine a 'securities intermediary's jurisdiction' for purposes of this section:~~

~~(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~

~~(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subdivision (1) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~

~~(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.~~

~~(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in subdivision (3) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.~~

(e) The following rules determine a 'securities intermediary's jurisdiction' for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this Part, this Article, or this Chapter, that jurisdiction is the securities intermediary's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and an agreement between the securities intermediary and its entitlement

holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this section applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located."

Section 24. G.S. 25-8-301(a) reads as rewritten:

"(a) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and ~~has been~~ is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorse to the purchaser by an effective ~~indorsement.~~ indorsement and has not been indorsed to the securities intermediary or in blank."

Section 25. G.S. 25-8-302(a) reads as rewritten:

"(a) Except as otherwise provided in subsections (b) and (c) of this section, ~~upon delivery~~ a purchaser of a certificated or uncertificated security ~~to a purchaser, the purchaser~~ acquires all rights in the security that the transferor had or had power to transfer."

Section 26. G.S. 25-8-510 reads as rewritten:

"**§ 25-8-510. Rights of purchaser of security entitlement from entitlement holder.**

(a) ~~An~~ In a case not covered by the priority rules in Article 9 of this Chapter or the rules stated in subsection (c) of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under G.S. 25-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in ~~Article 9,~~ Article 9 of this Chapter, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. ~~Purchasers~~ Except as otherwise provided in subsection (d) of this section, purchasers who have control rank ~~equally, except that a~~ according to priority in time of:

(1) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under G.S. 25-8-106(d)(1);

(2) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under G.S. 25-8-106(d)(2); or

(3) If the purchaser obtained control through another person under G.S. 25-8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary."

PART III. CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES.

Section 27. G.S. 6-21.2(5) reads as rewritten:

"(5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor, account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the "outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.

Notwithstanding the foregoing, however, if debtor has defaulted or violated the terms of the security agreement and has refused, on

demand, to surrender possession of the collateral to the secured party as authorized by ~~§ 25-9-503,~~ G.S. 25-9-609, with the result that said secured party is required to institute an ancillary claim and delivery proceeding to secure possession of said collateral; no such written notice shall be required before enforcement of the provisions relative to payment of attorneys' fees in addition to the "outstanding balance."

Section 28. G.S. 20-28.2(f)(5) reads as rewritten:

"(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of ~~Part 5~~ Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder."

Section 29. G.S. 20-28.3(e3)(1) reads as rewritten:

"(1) A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

a. Default on the obligation secured by the motor vehicle has occurred;

b. As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

c. The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of ~~Part 5~~ Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

d. The lienholder agrees not to sell, give, or otherwise transfer possession of the seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle

after the forfeiture hearing, to the defendant or the motor vehicle owner; and

e. The seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or motor vehicle owner."

Section 30. G.S. 20-58.8 reads as rewritten:

"**§ 20-58.8. Applicability of §§ 20-58 to 20-58.8; use of term 'lien'.**

~~(a) The provisions of G.S. 20-58 through 20-58.8 apply to the perfection of security interests pursuant to G.S. 25-9-302.~~

(b) The provisions of G.S. 20-58 through 20-58.8 inclusive shall not apply to or affect:

(1) A lien given by statute or rule of law for storage of a motor vehicle or to a supplier of services or materials for a vehicle;

(2) A lien arising by virtue of a statute in favor of the United States, this State or any political subdivision of this State; or

(3) A security interest in a vehicle created by a manufacturer or by a dealer in new or used vehicles who holds the vehicle in his inventory. ~~Such security interests shall be perfected by filing a financing statement under Article 9 of the Uniform Commercial Code.~~

(c) When the term "lien" is used in other sections of this Chapter, or has been used prior to October 1, 1969, with reference to transactions governed by G.S. 20-58 through 20-58.8, to describe contractual agreements creating security interests in personal property, the term "lien" shall be construed to refer to a "security interest" as the term is used in G.S. 20-58 through 20-58.8 and the Uniform Commercial Code."

Section 31. G.S. 25A-16 reads as rewritten:

"**§ 25A-16. Transfer of equity.**

If a buyer voluntarily transfers his rights in collateral pursuant to ~~G.S. 25-9-311~~ applicable law and the seller agrees, the seller may impose a transfer fee not to exceed ten percent (10%) of the unpaid balance of the debt or thirty-five dollars ($35.00), whichever is less."

Section 32. G.S. 25A-22(b) reads as rewritten:

"(b) Upon the payment of all sums for which the buyer is obligated under a consumer credit sale, the seller shall promptly release any security interest in accordance with the terms of ~~G.S. 25-9-404~~ G.S. 25-9-513 or G.S. 20-58.4, whichever is applicable. In the event a security interest in real property is involved, the seller shall take such action as is necessary to enable the lien to be discharged of record under the provisions of G.S. 45-37."

Section 33. G.S. 44-68.14(a)(1) reads as rewritten:

"(1) The Secretary of State, he shall cause the notice to be ~~marked, held, and indexed~~ numbered, maintained, and indexed in

accordance with ~~the provisions of G.S. 25-9-403(4),~~ G.S. 25-9-519, as if the notice were a financing statement within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes; or".

Section 34. G.S. 44-68.14(b) reads as rewritten:

"(b) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the Secretary of State for filing he shall cause:

(1) A record of a certificate of release or nonattachment to be ~~marked, held, and indexed~~ numbered, maintained, and indexed as if a record of the certificate were a termination statement within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes, but the record of the notice of lien to which the certificate relates may not be removed from the files; and

(2) A record of a certificate of discharge or subordination to be ~~marked, held, and indexed~~ numbered, maintained, and indexed as if the record of the certificate were a release of collateral within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes."

Section 35. G.S. 47-20(b)(1) reads as rewritten:

"(1) 'Rents, issues, or profits' means all amounts payable by or on behalf of any lessee, tenant, or other person having a possessory interest in real estate on account of or pursuant to any written or oral lease or other instrument evidencing a possessory interest in real property or pursuant to any form of tenancy implied by law, and all amounts payable by or on behalf of any licensee or permittee or other person occupying or using real property under license or permission from the owner or person entitled to possession. The term shall not include farm products as defined in ~~G.S. 25-9-109(3),~~ G.S. 25-9-102(34), timber, the proceeds from the sale of farm products or timber, or the proceeds from the recovery or severance of any mineral deposits located on or under real property."

Section 36. G.S. 53-177 reads as rewritten:

"**§ 53-177. Recording fees.**

The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to ~~G.S. 25-9-302 et seq.~~ Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 **et seq.** Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the loan, or (iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument: Provided, however, the amount collected by the licensee from

the borrower for the purchase of a nonfiling or nonrecording insurance policy, or for self insurance, shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar ($1.00) less than the cost of recording or filing a security interest. Provided further, a licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose."

Section 37. G.S. 63A-11(e) reads as rewritten:

"(e) ~~The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, G.S. 25-9-101 to G.S. 25-9-607 inclusive, shall apply to transactions under this section, but not to transactions involving the issuance of bonds for airport projects, to the same extent the provisions of Article 9 would apply were G.S. 25-9-104(e) and G.S. 25-9-302(6) repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this section but not to transactions involving the issuance of bonds for airport projects."

Section 38. G.S. 75A-41 reads as rewritten:

"**§ 75A-41. Security interests subsequently created.**

~~Security interests, other than a security interest in inventory held for sale to be perfected only as provided in G.S. 25-9-301 to G.S. 25-9-408,~~ Except for security interests in watercraft that are inventory held for sale, security interests created in watercraft by the voluntary act of the owner after the original issue of title to the owner must be shown on the certificate of title. In such cases, the owner shall file an application with the Commission on a blank furnished for that purpose, setting forth the security interests and other information as the Commission requires. The Commission, if satisfied that it is proper that the same be recorded and upon surrender of the certificate of title covering the watercraft, shall thereupon issue a new certificate of title showing their security interests in the order of the priority according to the date of the filing of the application. For the purpose of recording the subsequent security interest, the Commission may require any secured party to deliver the certificate of title to the Commission. The newly issued certificate shall be sent or delivered to the secured party from whom the prior certificate was obtained."

Section 39. G.S. 75A-42 reads as rewritten:

"**§ 75A-42. Certificate as notice of security interest.**

A certificate of title, when issued by the Commission showing a security interest, shall be deemed adequate notice to the State, creditors, and purchasers that a security interest in the watercraft exists and the recording or filing of the creation or reservation of a security interest in the county or city wherein the purchaser or debtor resides or elsewhere is not necessary and shall not be required. Watercraft, other than those that are inventory held for sale, for which a certificate of title is currently in ~~effect,~~ effect shall be exempt from the provisions of ~~G.S. 25-9-302, 25-9-304, 25-9-307, 25-9-309, 25-9-312, 25-9-318, and 25-9-401 to 25-9-408~~ G.S. 25-9-

309, 25-9-310, 25-9-312, 25-9-320, 25-9-322, 25-9-323, 25-9-324, 25-9-331, 25-9-404, 25-9-405, 25-9-406, and 25-9-501 to 25-9-526 for so long as the certificate of title remains in effect."

Section 40. G.S. 75A-44 reads as rewritten:

"**§ 75A-44. Priority of security interests shown on certificates.**

~~The security interests, except security interests in watercraft which are inventory held for sale and which are perfected under G.S. 25-9-301 to 25-9-408,~~ Except for security interests in watercraft that are inventory held for sale, security interests shown upon the certificates of title issued by the Commission pursuant to applications for certificates shall have priority over any other liens or security interests against the watercraft however created and recorded, except for a mechanics lien for repairs, provided that the mechanic furnishes the holder of any recorded lien who may request it with an itemized sworn statement of the work done and materials supplied for which the lien is claimed."

Section 41. G.S. 143B-456.1(f) reads as rewritten:

"(f) ~~The provisions of G.S. 25-9-104(c) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, being G.S. 25-9-101 to G.S. 25-9-607, inclusive, shall apply to transactions under this section to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(c) and G.S. 25-9-302(6) hereby repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this section."

Section 42. G.S. 159C-28 reads as rewritten:

"**§ 159C-28. Application of the U.C.C.**

~~The provisions of G.S. 25-9-104(c) and 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply to transactions under Chapter 159C to the same extent the provisions of such Article 9 would apply were G.S. 25-9- 104(c) and 25-9-302(6) hereby repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this Chapter."

Section 43. G.S. 159D-23 reads as rewritten:

"**§ 159D-23. Application of Article 9 of Chapter 25.**

~~The provisions of G.S. 25-9-104(c) and 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of North Carolina Uniform Commercial Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply [to] transactions under this Chapter 159D to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(c) and 25-9-302(6) hereby repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this Chapter."

Section 44. G.S. 161-10(a)(13) reads as rewritten:

"(13) Uniform Commercial Code. -- Such fees as are provided for in Chapter 25, Article 9, ~~Part 4,~~ Part 5, of the General Statutes."

PART IV. UCC ARTICLE 9 FILING FEES INCREASE.

Section 45. G.S. 25-9-403(5) reads as rewritten:

"(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00)."

Section 46. G.S. 25-9-405 reads as rewritten:

"**§ 25-9-405. Assignment of security interest; duties of filing officer; fees.**

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in G.S. 25-9-403(4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00).

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and also the most current file number if it has been continued and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the Uniform Commercial Code index of the financing statement, and in the case of a fixture filing, or a filing 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, he shall index in the real estate index the assignment under the name of the assignor as grantor and, to the extent that the law of this State provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00). Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of G.S. 25-9-402) may be made only by an assignment of the mortgage in the manner provided by the law of the State other than this Chapter.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

Section 47. G.S. 25-9-406 reads as rewritten:

"**§ 25-9-406. Release of collateral; duties of filing officer; fees.**

A secured party of record may, by his signed statement, release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and

address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release 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 presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00)."

Section 48. G.S. 25-9-407 reads as rewritten:

"**§ 25-9-407. Information from filing officer.**

(1) If the person filing any financing statement, termination statement, statement of assignment or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate for which he shall not be liable showing whether there is on file, on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00). Where the Uniform Commercial Code index has been automated, the filing officer shall issue a computer printout of the index entries for a particular debtor for a fee of ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00). Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of one dollar ($1.00) per page."

PART V. DIRECTIONS AND EFFECTIVE DATE.

Section 49. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Commercial Code, Revised Article 9 and conforming amendments to Articles 1, 2, 2A, 4, 5, 6, 7, and 8 and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

Section 50. Part IV of this act becomes effective September 1, 2000, and applies to fees paid on or after that date. Except as otherwise provided, this act becomes effective July 1, 2001.

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: June 14, 2000

RE: **Senate Bill 1305 (Revise Article 9 of the UCC)**

Senate Bill 1305 is based on Uniform Commercial Code Revised Article 9 (Secured Transactions), which was completed by the National Conference of Commissioners on Uniform State Laws in conjunction with the American Law Institute to update the statutory framework that governs security interests in personal property and fixtures. Revised Article 9 expands the scope of property and transactions covered by current Article 9, modifies as well as creates definitions, modernizes the filing system for financing statements, simplifies methods of perfection and increases the certainty of priority rules, formulates clearer rules for the enforcement of security interests, and provides specific transition rules. About 25 states have already enacted Revised Article 9 to become effective on the uniform effective date of July 1, 2001.

Senate Bill 1305 consists of five parts. Part I is based on Revised Article 9. Part II makes conforming amendments to other articles of the Uniform Commercial Code. Part III makes conforming and clarifying amendments to other sections of the General Statutes. Part IV increases certain fees in current Article 9 from $15.00 to $30.00 to provide revenue to help with the implementation of Revised Article 9. Part V authorizes the printing of drafters' comments, provides a delayed effective date of September 1, 2000, for the increases in current fees, and provides a delayed effective date of July 1, 2001, for Revised Article 9 and the conforming and clarifying amendments.

Revised Article 9 supports commerce by reducing costs and uncertainty of financing personal property, including the modern form of asset securitization. It accomplishes this by, among other things:

- Scope and definitional provisions that bring within Revised Article 9 several kinds of

collateral formerly left to the uncertainties of common law, e.g., health care receivables, deposit accounts in nonconsumer transactions, commercial tort claims, and proceeds which are stock dividends and licensing royalties. Revised Article 9 also applies to the perfection and priority of agricultural liens.

- Filing rules that require only one filing for each debtor in most financing transactions, no matter how many items or kinds of collateral are involved. Revised Article 9 provides for central filing in the Secretary of State's office for filings other than fixture filings and filings with respect to timber to be cut and "as-extracted collateral", which will continue to be filed in the register of deeds' office.

- Requiring most filings to be made at the location of the debtor, e.g., state of formation for a registered entity, rather than where the collateral is located. Thus the filer knows just where to file and the searcher knows exactly where to look.

- Timing standards for performance by filing offices.

- Vastly simplified rules that determine which state's law controls.

- Simplified formalities such as allowing electronic "signatures" on the security agreement and permitting very broad description of collateral in filings.

- Facilitation of electronic filing by providing uniform statutory forms for filing and eliminating the requirement that the debtor sign an authorized financing statement.

- Providing for perfection by "control" rather than filing or possession of collateral, for deposit accounts, letter of credit rights, and electronic chattel paper as well as investment property.

- Priority and foreclosure rules that settle existing uncertainties and enhance purchase money security.

- Elimination of North Carolina's nonuniform Part 6 (Public Sale Procedures) of current UCC Article 9 and providing a uniform "safe harbor" form for giving notice to the debtor of a private or public foreclosure sale.

- Additional protection of consumer debtors in foreclosure by additional disclosure requirements.

- Transition rules that provide detailed guidelines, including time frames, for creditors whose security interests are already perfected under existing law. Under these rules, creditors will be able to determine when and how they must act to continue, amend or terminate perfection.

These and other changes made by Revised Article 9 eliminate much risk and cost associated with secured financing. North Carolina's prestige as a major banking and financial center makes passage in time for the uniform effective date of July 1, 2001, extremely urgent.

The strategy of Revised Article 9 is to create a nationwide mechanism for secured transactions. For this reason, uniformity is more than usually important. However, some variations of a local nature have seemed advisable, which include:

- Incorporating Revised Article 9's optional set of model provisions for priority of production-money security interests in crops.

- Bringing forward the current exemption from filing provided for security interests created in connection with the issuance of bonds, notes, or other evidence of indebtedness for borrowed money by the State or its political subdivisions or agencies.

- Providing that Revised Article 9's provisions, which render ineffective any legal restrictions on the assignment of rights to payment, do not apply to certain specified statutory restrictions on assignments, e.g., structured settlement payment rights, workers' compensation claims, and crime victims award payments.

- Postponing to January 1, 2003, the date after which filings in the Secretary of State's office are required to have assigned file numbers that include a verification number, commonly known as a "check digit".

- Changing from two business days to three business days the time period in which filing offices are required to perform the duties imposed by §§ 25-9-519 and 25-9-523 and providing a delayed effective date of January 1, 2003, for compliance with the time period.

- Requiring a filing office to communicate its refusal to accept a record for filing within three business days rather than two business days after receipt of the record.

- Bringing forward the current nonliability provision for the information communicated by a filing office in responding to a request for information.

- Deleting the requirement that filing offices make copies of all filed records available to the public because the public records law already covers access to these records.

- Deleting the provision for an increased fee for filing and indexing a record of a mortgage as an initial financing statement where the financing statement indicates that it is filed in connection with either a public-finance transaction or a manufactured-home transaction.

- Deleting the requirement of an annual report to the Governor and the Legislature on filing office operations.

- Providing that a financing statement filed before July 1, 2001, may be terminated only by filing in the office specified in § 25-9-501. (§ 25-9-706(c)).

The following materials from the Uniform Law Commissioners' information kit on Revised Article 9 are attached for informational purposes: (1) a facts sheet stating Revised Article 9's purpose, origin, and legislative activity in other jurisdictions; (2) a statement of reasons why states should adopt Revised Article 9; and (3) a summary highlighting significant changes made by Revised Article 9. The Official Comments to Revised Article 9 are available and will be published in the General Statutes as annotations if Senate Bill 1305 is enacted.

Attachments

A Few Facts About

REVISED UCC ARTICLE 9, SECURED TRANSACTIONS (1999)

PURPOSE: Updates UCC Article 9, last revised in 1972 and adopted in every state. Article 9 provides a statutory framework that governs secured transactions—transactions which involve the granting of credit secured by personal property.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1999.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:

Alaska*
Arizona
California
Hawaii**
Illinois **
Indiana *
Iowa *
Kansas *
Kentucky *
Maine *
Maryland
Minnesota *
Montana
Nebraska
Nevada
Oklahoma *
Rhode Island **
South Dakota *
Tennessee *
Texas
Utah *
Vermont*
Virginia *
Washington *
West Virginia *

2000 INTRODUCTIONS:

Colorado
Delaware
District of Columbia
Florida
Idaho
Massachusetts
Michigan
Mississippi
Missouri
New Jersey
New Mexico
New York
North Carolina
South Carolina
Wyoming

For any further information regarding the Revision of UCC Article 9, Secured Transactions, please contact John McCabe or Katie Robinson at 312-915-0195.

** 2000 Enactment*

*** Awaiting Governor's Signature*

(6/8/00)

(Please note: this information can also be found on our Website at www.nccusl.org)

WHY STATES SHOULD ADOPT
UNIFORM COMMERCIAL CODE ARTICLE 9 - SECURED TRANSACTIONS

Trillions of dollars of commercial and consumer credit are granted each year in secured transactions under Article 9 of the Uniform Commercial Code -- a manufacturer finances the acquisition of machinery and raw materials, a retailer finances inventory, a consumer finances furniture for a new house. The manufacturer, the retailer, and the consumer all depend upon Article 9 of the Uniform Commercial Code to make it possible for them to obtain the credit they need. Their creditors get assurance, in the form of the collateral that secures the granting of credit, that it will cushion the risk of default in the event the debtor does not pay the debt. Article 9 of the Uniform Commercial Code is absolutely necessary to economic function in the United States. It is the crankshaft for the American economic engine, and it is the envy of the rest of the world, which often struggles with the mechanics of credit granting and enforcement of creditor's rights.

Major revisions to Article 9 were completed in 1998. These revisions bring Article 9 into the 21st Century. There are many reasons that Revised Article 9 should be adopted in every state.

Technology. Paper-based transactions are giving way to electronic transactions. Revised Article 9 makes way for this revolution.

Volume. Article 9 was first proposed in 1951. Its last update was in 1972. Since 1972 the volume of commerce and the volume of credit has increased exponentially. Volume of secured transactions increases proportionately and directly with increase in economic activity in the United States. *The filing system revisions are particularly necessary to meet the problem of increased volume.*

New Collateral. New kinds of property and transactions have been developed since Article 9 was last amended. The *scope* of Article 9 expands to keep up and the 1998 revisions meet the needs for collateral into the new millennium. Examples of specific new collateral are deposit accounts and health insurance receivables.

Certainty of Perfection. Uncertainties about where to perfect a security interest under old Article 9 are overcome by the new basic rule in the 1998 revisions that makes the location of the debtor the place where the creditor will perfect the security interest.

New Liens. Statutory, non-possessory liens have proliferated since Article 9 was originally approved. Such liens represent a risk for creditors, and a potential conflict with security interests in collateral, if there is no public notice of their existence. Article 9 includes certain statutory, non-possessory liens for the purposes of providing public notice and setting priorities between creditors.

Clarification of Rules. Over time, provisions of Article 9 have been interpreted by courts, sometimes in conflicting ways. Some decisions deal with issues that were not expressly addressed in original Article 9. The result is ambiguity in the application of some rules. The revisions to Article 9 address and cure the accrued ambiguity problems.

Consumer Impact. Revised Article 9 addresses consumer issues that were not addressed in original Article 9.

Commitment to Uniformity. Amendments to Article 9 from state to state have created differences that impair interstate transactions. The revisions address specific kinds of secured transactions in oil and gas and agriculture in an effort to re-establish uniformity of law governing these kinds of transactions.

UNIFORM COMMERCIAL CODE
REVISED ARTICLE 9, SECURED TRANSACTIONS (1998)

- A Summary -

The Uniform Commercial Code has eleven substantive articles. Article 9, Secured Transactions, may be the most important of the eleven. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 appears deceptively simple. There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs—a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests easily found in the public record, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

The following numbered topics highlight Article 9 as revised in 1998. They are not a treatise on Revised Article 9, but are a schematic summary of its relevant changes.

1. **The Scope Issue.** The 1998 revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9. These are some of the kinds of collateral that are included in Revised Article 9 that are not in original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under it for those purposes.

2. **Perfection.** Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. "Control" is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased from ten days in old Article 9 to twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.

3. **Choice of Law.** In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1998 revisions to Article 9 make two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the collateral is found as the law that governs perfection, effect of perfection,

and a creditor's priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9. At the same time, the location of the debtor establishes a more certain place to perfect than the old rule does. Collateral shifts location much easier than the debtors do.

4. **The Filing System.** Improvements in the filing system in the 1998 revisions to Article 9 include a full commitment to centralized filing—one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Paper filing of financing statements is already disappearing in many states in 1998, as Revised Article 9 becomes available to them. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

5. **Consumer Transactions.** Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1998 revisions to Article 9 than it was pre-1998. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him

or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1998 revisions to Article 9.

6. **Default and Enforcement.** Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lienholders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership comprises more than 300 attorneys, judges, and law professors, who are appointed by each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft uniform and model state laws and work toward their enactment.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1305

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

S1305-ARU-001

Date_____,2000

Comm. Sub. []
Amends Title []

Senator Hartsell

moves to amend the bill on page 77, line 18,
by deleting the word "and"; and

on page 92, line 4,
by rewriting the line to read:
"(4) Subsection (e) of this section does not require the";
and

on page 98, line 18,
by deleting the words "the session" and substituting the words
"PARTS I, II and III of the session"; and

on page 99, line 42,
by deleting the words "takes effect"; and

on page 100, line 39,
by deleting the word "state;" and substituting the word "State;";
and

on page 102, line 33,
by deleting the words "local filing" and substituting the word
"local-filing"; and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1305

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

S1305-ARU-001 Page 2 of __

on page 103, line 41,
by inserting between the words "the" and "form" the word
"following".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1305

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

S1305-ARU-002

Date_____,2000

Comm. Sub. []
Amends Title []

Senator Hartsell

moves to amend the bill on page 126, lines 34 through 36, by rewriting the lines to read:

"Section 50. The Department of the Secretary of State shall study the issue of fraudulent filings under Article 9 of Chapter 25 of the General Statutes that are intended to hinder, harass, delay or otherwise interfere with public employees in the performance of their lawful duties. The Department shall report to the General Assembly by January 1, 2001 with any recommendations which may include the creation of civil or criminal sanctions or remedies related to these filings.

Section 51. Parts I, II, and III of this act become effective July 1, 2001. Part IV of this act becomes effective September 1, 2000, and applies to fees paid on or after that date. The remainder of this act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Negative Ramifications if Revised UCC Article 9 is not Enacted in North Carolina

The incompatibility of North Carolina's present Article 9 of the Uniform Commercial Code ("present Article 9") and Revised Article 9 of the Uniform Commercial Code ("Revised Article 9"), which most other states are adopting, leaves creditors with unanswerable questions about where to file and about which state's law will govern a transaction's outcome. To be protected, a creditor whose business might invoke North Carolina law may well have to file in many states AND counties, and often in different places for each of many debtors and items of collateral. The cost and confusion are huge. It is conceivable that the cost may range into thousands of dollars for one transaction.

There are other differences between present Article 9 and Revised Article 9. For example, in multi-state transactions, the following issues could arise:

- Some terms that were defined in present Article 9 have been re-defined in Revised Article 9 (e.g., "accounts"), which could create ambiguity regarding what collateral is covered.

- Revised Article 9 is much more expansive in coverage. The parties would be able to secure and perfect a security interest in a greater variety of assets in states that had enacted Revised Article 9, as opposed to those that had not enacted Revised Article 9. Therefore, the same security agreement could be applied and interpreted differently in different states.

- How collateral can be described in financing statements has been changed in Revised Article 9 (e.g., supergeneric descriptions of property are allowed). This again could result in inconsistent results from state to state.

Present Article 9 leaves uncertain and risky the position of those engaging in asset securitization--a major trend in modern financing. Revised Article 9 makes a real difference for securitization.

Revised Article 9 expressly provides for the use of electronic media. Present Article 9 leaves this huge issue unresolved and open to litigation.

When the debtor and the collateral are in a state that has enacted Revised Article 9, possible bankruptcy jurisdiction in a state that has not enacted Revised Article 9 makes even perfection of those security interests uncertain. A bankruptcy court in a state that has not enacted Revised Article 9 may have the ability to void the perfection that is valid in the state in which the interest is perfected under Revised Article 9. This uncertainty will also increase the cost of secured loans for all involved.

The bottom line is that North Carolina's commercial credibility and the welfare not only of its creditor population, but also of its debtors who ultimately pay, are greatly enhanced by enactment of Revised Article 9.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1484

Short Title: Local Option Homestead Relief. (Public)

Sponsors: Senators Hoyle; Albertson, Carter, Cooper, and Perdue.

Referred to: Judiciary I.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA, IF APPROVED BY THE VOTERS IN THE 2000 GENERAL ELECTION, TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subsection to read:

"(8) Property tax homestead exclusion. If the General Assembly enacts legislation classifying and excluding from ad valorem taxation part of the value of the residence of each elderly or disabled individual whose income is below a maximum amount and who satisfies other conditions, the General Assembly may, notwithstanding subsection (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to increase the portion of a classified residence's value that is excluded in that county and to increase the maximum income threshold to qualify for the exclusion in that county."

Section 2. G.S. 105-277.1 is amended by adding a new subsection to read:

"(a1) Local Option Increase. -- The board of commissioners of a county may, by resolution, increase the amount of the exclusion provided in subsection (a) of this section, increase the maximum income threshold provided in subdivision (a)(2) of

this section, or both. An increase adopted under this subsection shall apply uniformly within the county. The board of commissioners of a county may, by resolution, repeal or reduce an increase adopted under this subsection, but may not reduce the exclusion or the income threshold provided in subsection (a) of this section. A resolution changing the exclusion amount or the income threshold within a county pursuant to this subsection shall become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution."

Section 3. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. If the county has increased the exclusion amount or the income threshold pursuant to G.S. 105-277.1(a1), the assessor shall substitute the applicable dollar amounts. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed fifteen thousand dollars ($15,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above fifteen thousand dollars ($15,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 4. G.S. 105-328 reads as rewritten:

"**§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.**

(a) ~~For~~ Except as provided in subsection (a1) of this section, for purposes of municipal taxation, all property subject to taxation by a city or town situated in two or more counties may, by resolution of the governing body of the municipality, be

listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body ~~shall determine~~ determines that adoption of the appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(a1) This section does not apply to assessments of property that differ in any of the counties in which the city or town is located because of a local option adjustment in the homestead exclusion under G.S. 105-277.1(a1).

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection ~~(a), above,~~ (a) of this section, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal assessor for the period of the unexpired term. Persons holding the position of municipal assessor on July 1, 1971, shall be deemed qualified to fill the position. A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294.

(2) With the approval of the governing body, a municipal assessor may employ testers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor."

Section 5. The catch line of G.S. 105-277.1 reads as rewritten:

"**§ 105-277 1. Property ~~classified for taxation at reduced valuation.~~ tax homestead exclusion.**"

Section 6. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election to be held in November 2000. The 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 amendment authorizing the General Assembly to allow counties to (1) increase the property tax exemption for a residence owned by a low-income elderly or disabled person and (2) raise the definition of 'low-income' so more elderly and disabled persons can qualify for the exemption."

Section 7. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 8. Sections 2, 3, and 4 of this act become effective only if the constitutional amendment proposed by Section 1 of this act is approved as provided in Sections 6 and 7 of this act. If the constitutional amendment is approved, Sections 2, 3, and 4 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State. The remainder of this act is effective when it becomes law.

SENATE BILL 1484:
Local Option Homestead Relief.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hoyle
Date:	June 20, 2000	**Summary by:**	O.Walker Reagan,
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 1484 would authorize a constitutional amendment to give counties the local option to increase the portion of a qualified person's residence's value that is excluded from property taxation and to increase the maximum income threshold for a person to qualify for the exclusion. The constitutional amendment would be presented as a referendum to the voters in the November 2000 General Election. The statutory changes would only become effective if the voters approve the constitutional amendment.***

CURRENT LAW: Under current law certain taxpayers who are either age 65 or older, or totally and permanently disabled, with annual incomes of not more than $15,000, may exclude the first $20,000 of value from the value of their permanent residence for property tax purposes.

BILL ANALYSIS: Section 1 of the bill sets out the proposed language to be added to the NC Constitution. This provision would permit the General Assembly to enact a general law to give each county the option to increase the portion of a classified residence's value that is excluded in that county from property taxation and to increase the maximum income threshold for a person to qualify for the exclusion in that county.

Section 2 adds a new subsection to G.S. 105-277.1 to allow a county by resolution to increase the amount of the exclusion above $20,000 for the amount of the value of the permanent residence that is excluded for property taxes for a person age 65 or older, or a disabled person. This section also permits the county by resolution to increase the annual income threshold above $15,000 for a person to qualify to be able to take the exclusion of $20,000 or a higher amount, if permitted by the county, off the tax value of their residence. The county may repeal or reduce these increases, but never below the $20,000 exclusionary amount or the $15,000 income threshold. Any change in the exclusion or the income threshold will be effective for the following tax year beginning July 1.

Section 3 makes a conforming change to allow the amount of the exclusion and income threshold applicable to the county to be included on the tax listing abstract notice sheet.

Section 4 amends the law governing the authority of municipalities lying in more than one county to reconcile differing valuation methods to not allow for reconciliation where the differences are because of differences in the homestead exemption arising under G.S. 105-277.1 as set forth in Section 2 of the bill.

Section 5 amends the catch line of G.S. 105-277.1.

Section 6 sets out the ballot question for the 2000 General Election.

EFFECTIVE DATE: If the constitutional amendment is approved by a majority of the voters, the constitutional amendment and the implementing statutes would become effective upon certification of the vote. The county's option to change the exclusion amount and income threshold amount could apply to tax years beginning July 1, 2001.

S1483-SMRU-001

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 20, 2000

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

FAVORABLE

S.B. **1484** Local Option Homestead Relief.
Sequential Referral: Finance
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. **1305** Revise Article 9 of the UCC.
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 760*

Short Title: Campaign Finance Changes. (Public)

Sponsors: Senators Gulley, Cooper; and Perdue.

Referred to: Judiciary I.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE CAMPAIGN FINANCE LAWS.

The General Assembly of North Carolina enacts:

-- REDEFINING "POLITICAL COMMITTEE," PROHIBITING CIRCUMVENTION OF CONTRIBUTION LIMITS BY PROLIFERATION OF COMMITTEES, AND RELATED CHANGES.

Section 1.(a) G.S. 163-278.6(14) reads as rewritten:

"(14) The term 'political committee' means a combination of two or more individuals, or any person, committee, association, ~~or~~ organization, ~~the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes~~ or other entity that makes, or accepts money to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has as a significant purpose ~~expenditures for the purpose of influencing or attempting to influence~~ to support or oppose

the nomination or election of ~~any candidate at any election, or which~~ one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is presumed to have as a significant purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption.

If the entity qualifies as a 'political committee' under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions ~~to repay loans or cover a deficit,~~ or ~~which~~ makes expenditures ~~to satisfy obligations of an election already held. The term includes, without limitation, any political party's State, county or district executive committee.~~ or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report. Entities that are financed, maintained, or controlled by the same entity, as determined by the State Board of Elections, shall be considered as one entity for the purpose of determining whether they are a political committee."

Section 1.(b) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(8a) The term 'election cycle' means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, 'election cycle' means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year."

Section 1.(c) G.S. 163-278.13 is amended by adding a new subsection to read:

"(e2) Political committees and candidates' campaigns that are financed, maintained, or controlled by the same entity, as determined by the State Board of Elections, shall be considered as one political committee for the purposes of applying the contribution limits of this section. No individual or other entity shall contribute funds to a candidate or political committee for the purpose of circumventing the contribution limits of this section."

Section 1.(d) G.S. 163-278.16(a) reads as rewritten:

"(a) Except as provided in G.S. 163-278.6(14) and G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

(1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and

(2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee."

-- REDEFINING "CONTRIBUTION" AND "EXPENDITURE"; DEFINING "INDEPENDENT EXPENDITURE"; AND CHANGING THE SPECIAL REPORTING REQUIREMENT FOR CONTRIBUTIONS AND INDEPENDENT EXPENDITURES.

Section 2.(a) G.S. 163-278.6(6) reads as rewritten:

"(6) The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate, political committee, political party, or referendum committee, ~~from any person or individual,~~ whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a ~~contribution, in support of or in opposition to any candidate, political committee, referendum committee, or political party.~~ contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or ~~goods notwithstanding~~ goods. Notwithstanding the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term 'contribution' does not include an 'independent expenditure.'"

Section 2.(b) G.S. 163-278.6(9) reads as rewritten:

"(9) The terms 'expend' or 'expenditure' mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, ~~from any person or individual,~~ whether or not made in an election year, and any contract, agreement, promise or other

obligation, whether or not legally enforceable, to make an expenditure, ~~in support of or in opposition to~~ to support or oppose the nomination, election, or passage of ~~any candidate, political committee, referendum committee, or political party.~~ one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term 'expenditure' also includes any payment or other transfer made by a candidate, political committee, or referendum committee. The special definition of 'expenditure' in G.S. 163-278.12A applies only in that section."

Section 2.(c) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(9a) The term 'independently expend' or 'independent expenditure' means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term 'independent expenditure' applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes."

Section 2.(d) G.S. 163-278.12 reads as rewritten:

"**§ 163-278.12.** ~~**Contributions and expenditures by an individual other than a candidate.**~~ **Special reporting of contributions and independent expenditures.**

(a) Subject to G.S. 163-278.16(f) and 163-278.14, it shall be permissible for an individual other than a candidate to make ~~contributions or expenditures in support of, or in opposition to, any candidate, political committee, or referendum committee other than by contribution to a candidate, political committee, or referendum committee.~~ independent expenditures. In the event an individual or entity permitted to make independent expenditures but not otherwise required to report them makes ~~contributions or expenditures, other than by contribution to a candidate, political committee, or referendum committee,~~ independent expenditures in excess of one hundred dollars ($100.00), then, within 10 days after making such ~~a contribution or~~ an independent expenditure, ~~he~~ that individual or entity shall file a statement of such ~~contribution or~~ independent expenditure with the ~~Board in accordance with the terms and conditions of G.S. 163-278.11.~~ appropriate board of elections using forms and timetables prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars ($100.00) with the appropriate board of elections using forms and timetables prescribed by the State Board of Elections.

(c) In prescribing the forms in subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a donation of more than one hundred dollars ($100.00) to the entity filing the report if the donation was made for the purpose of furthering the reported independent expenditure or contribution."

-- REDEFINING THE TERM "CANDIDATE".

Section 3. G.S. 163-278.6(4) reads as rewritten:

"(4) The term 'candidate' means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, ~~or~~ has otherwise qualified as a candidate in a manner authorized by ~~law.~~ law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held."

-- REMOVING THE TERM "POLITICAL PURPOSE".

Section 4.(a) G.S. 163-278.6(16) is repealed.

Section 4.(b) G.S. 163-278.16(g) reads as rewritten:

"(g) All printed matter ~~for a political purpose~~ from a political party or political committee which ~~identifies a candidate that party or committee is opposing~~ opposes the nomination or election of a clearly identified candidate shall indicate in type no smaller than 12 point the name of the political party or political committee and the name of the candidate that is intended to benefit from the printed matter."

Section 4.(c) G.S. 163-278.36 reads as rewritten:

"**§ 163-278.36. Elected officials to report funds.**

All ~~contributions~~ donations to, and all ~~expenditures~~ payments from any 'booster fund,' 'support fund,' 'unofficial office account' or any other similar source ~~which are~~ made ~~to, in behalf of,~~ or used in support of ~~any person holding~~ an individual's candidacy for elective office, or in support of an individual's duties and activities while in an elective office ~~for any political purpose whatsoever during his term of office~~ shall be deemed contributions and expenditures as defined in this Article and shall be reported as contributions and expenditures as required by this Article. The ~~annual report~~ reports due in January and July of each year shall show the balance of each separate fund or account maintained on behalf of the elected office holder."

Section 4.(d) G.S. 163-278.19(a) reads as rewritten:

"(a) Except as provided in ~~G.S. 163-278.19(b),~~ subsections (b), (d), (e), and (f) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:

(1) To make any contribution to a candidate or political committee ~~or expenditure~~ (except a loan of money by a national or State bank or federal or State savings and loan association made in accordance with the applicable banking or savings and loan association laws and regulations and in the ordinary course of business) ~~in aid or in behalf of or in opposition to any candidate or political committee in any election or for any political purpose whatsoever;~~ or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;

(2) To pay or use or offer, consent or agree to pay or use any of its money or property ~~for or in aid of or in opposition to any candidate or political committee or for or in aid of any person, organization or association organized or maintained for political purposes, or for or in aid of or in opposition to any candidate or political committee or for any political purpose whatsoever; and~~ for any contribution to a candidate or political committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or

(3) To ~~reimburse~~ compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so made;

and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof."

-- PERMITTING CONTRIBUTIONS AND INDEPENDENT EXPENDITURES BY NONBUSINESS CORPORATIONS; REMOVING REDUNDANT STATUTES CONCERNING CORPORATE AND INSURANCE COMPANY CONTRIBUTIONS; AND MAKING CONFORMING CHANGES.

Section 5.(a) G.S. 163-278.19 is amended by adding a new subsection to read:

"(f) This section does not prohibit a contribution or independent expenditure by an entity that:

(1) Was formed with an express purpose of promoting political ideas and not to generate business income;

(2) Does not have shareholders or other persons which have an economic interest in its assets and earnings;

(3) Is exempt from federal income taxation; and

(4) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive more than ten percent (10%) of its total revenues in a calendar year from such entities."

Section 5.(b) G.S. 163-269 and G.S. 163-270 are repealed.

Section 5.(c) G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No ~~individual or political committee~~ individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any ~~individual or other political committee~~ individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate.

(e) This section shall not apply to any State, district or county executive committee of any political party. For the purposes of this section only, the term 'political party' means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, ~~or~~ referendum ~~committee who~~ committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor."

Section 5.(d) G.S. 163-278.13B(a)(1) reads as rewritten:

"(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120-47.1(7), or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes."

Section 5.(e) G.S. 163-278.15 reads as rewritten:

"**§ 163-278.15. No acceptance of contributions made by corporations, foreign and domestic.**

No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

-- CLARIFYING WHAT IS COVERED BY ARTICLE 22A AND WHAT IS ACTIVITY THAT CONSTITUTES INDIRECT CONTRIBUTIONS BY CORPORATIONS, ETC.

Section 6.(a) Part 1 of Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and do not apply to primaries and elections for federal offices or offices in other States. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision."

Section 6.(b) G.S. 163-278.19 is amended by adding a new subsection to read:

"(a1) A transfer of funds shall be deemed to have been a contribution or expenditure made indirectly if it is made to any committee or political party account, whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 760*
PROPOSED COMMITTEE SUBSTITUTE -- S760-PCSRR-004

Short Title: Lobbyist Fundraising, etc. (Public)

Sponsors:

Referred to: Judiciary I.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LIMITATION ON LOBBYIST-RELATED FUNDRAISING TO STRENGTHEN THE ACT AND TO COMPLY WITH A COURT DECISION; AND TO PERMIT A MAJORITY OF A COUNTY BOARD OF ELECTIONS TO APPROVE A PLAN TO DESIGNATE ONE-STOP VOTING SITES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.13B reads as rewritten:

"**§ 163-278.13B. Limitation on fund-raising during legislative session.**

(a) Definitions. -- For purposes of this section:

(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120-47.1(7), or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(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 purpose of which is to assist a~~

~~member or members of or candidate or candidates for the Council of State or General~~ Assembly.

(3) The General Assembly is in 'regular session' from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is 'made' during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is 'accepted' during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. -- While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a limited contributor or relay to the ~~prohibited~~ limited contributor the ~~prohibited~~ limited contributee's solicitation of a contribution.

(c) Prohibited Contributions. -- While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No ~~limited contributee~~ entity prohibited from solicitation by subsection (b) of this section shall accept a contribution from a limited contributor.

(5) No limited contributor shall solicit a contribution from any individual or political committee on behalf of a limited contributee. This subdivision does not apply to a limited contributor soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(d) Exception. -- 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.

(e) Prosecution. -- A violation of this section is a Class 2 misdemeanor."

Section 3. G.S. 163-227.2(g) reads as rewritten:

"(g) Notwithstanding any other provision of this section, a county board of elections by ~~unanimous~~ majority vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Any site other than the county board of elections office shall be in any building or part of a building that the county board of elections is entitled under G.S. 163-129 to demand and use as a voting place. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. 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. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day."

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

SENATE BILL 760:
Lobbyist Fundraising, etc.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Gulley
Date:	June 15, 2000	**Summary by:**	William R. Gilkeson
Version:	S760-PCSRR-004		Staff Attorney

SUMMARY: The Proposed Committee Substitute for Senate Bill 760 would do 2 things:

1. *Change North Carolina's limit on lobbyist-related fundraising during legislative sessions. The changes would remove some language held unconstitutional by a recent court decision and would attempt to strengthen the statute without defying that decision.*
2. *Allow a county board of elections to designate multiple sites for One-Stop absentee voting by majority vote.*

LOBBYIST-RELATED FUNDRAISING: The first section of the PCS is a response to the recent decision of the N.C. Court of Appeals in the case of Winborne v. Easley, 523 S.E. 2d. 149 (1999). That decision, which the N.C. Supreme Court chose not to review, held unconstitutional a portion of North Carolina's statute limiting political fundraising by legislators from lobbyists while the General Assembly is in session.[1] The statute generally prohibits legislators from accepting or soliciting contributions during session.

The *Winborne* court said the statute was valid except for the part that also prohibited fundraising by political committees whose purpose was to support legislators. Since the statute was restricting a First Amendment right, the court said, it must be narrowly tailored to serve a compelling state interest. When the statute went beyond telling *legislators* they couldn't accept or solicit contributions from lobbyists, and said *political committees supporting legislators* also couldn't do so, the court said the statute went too far.

The PCS does 3 things to the lobbyist-related fundraising statute, all designed to conform the statute to the *Winborne* decision and to shore up the statute's strength without defying that decision:

1. Remove the Invalidated Language. The PCS would clean up the definition of "limited contributee" by removing the political committee language that the court found overbroad.

2. Prohibit Acceptance by Anyone Who Can't Solicit. The PCS would prohibit anyone who is prohibited from *soliciting* a contribution from a lobbyist during session from also *accepting* one. The statute – the part of it that the court held valid – prohibits solicitation during session by a legislator or that legislator's "real or purported agent." This provision would apply that same formula to accepting. Therefore, a political committee supporting a legislator could accept a contribution only if it was not

[1] The statute in question, G.S. 163-278.13B, has several detailed definitions and provisions. Whenever "legislator" appears in this summary, please read it as shorthand for legislator, legislative candidate, or member or candidate for the Council of State. Whenever "lobbyist" appears, please read that as shorthand for a registered lobbyist, the principal of a lobbyist, or a political committee established by a lobbyist's principal. The prohibitions apply to all those entities in the same way. Whenever "session" appears, please read that as shorthand for regular session, that is, the long or short sessions, but not extra sessions.

so close to the legislator as to be an agent. Unlike the pre-*Winborne* statute, this provision would not prohibit all lobbyist contributions during session to political committees that support a legislator. Political parties, for example, would clearly not be agents of a legislator and could accept contributions. However, a political committee whose treasurer acts on behalf of and under the control of the legislator would be an agent and would fall under the ban on accepting contributions as well as soliciting them. The PCS also would not make the lobbyist responsible for knowing who was and wasn't the legislator's agent: Only acceptance by an agent would be prohibited. Making a contribution to an agent would not be.

3. Shore Up the Ban on Indirect Solicitations. Even after *Winborne*, the statute retains strong prohibitions against legislators soliciting lobbyists. A legislator's real or purported agent may not solicit a lobbyist to contribute to that legislator or to any other candidate or political committee. A legislator may not solicit a third party (such as a political committee), requesting that the third party directly or indirectly relay to the lobbyist the legislator's request for a contribution. The PCS takes that last sentence and strengthens it by adding that the legislator may not request that the third party directly or indirectly *solicit a contribution from a lobbyist.* That language goes a step further than saying the legislator may not ask the third party *to relay the legislator's request.* "Relaying the legislator's request" might be narrowly interpreted to mean saying to the lobbyist, "Senator X would like for you to contribute." The language of the PCS would prohibit the legislator from asking the third party to say to the lobbyist, "Please contribute."

CHANGE IN ONE-STOP PROCEDURE. The PCS would make a change in the procedure for designating additional One-Stop absentee ballot sites for the November general election. Under legislation enacted last year, a county board of elections may designate One-Stop sites in addition to the county elections board office. The county board must submit that plan for approval by the State Board of Elections. The plan the county board submits must have a unanimous vote from all members of the county board. The PCS retains the provision for State Board approval, but changes the requirement for county board approval, so that the plan may be approved by a majority of the 3 members. *Section 2 of the bill.*

The PCS would be effective upon its becoming law. (It would, of course, not be enforceable until precleared under Section 5 of the Voting Rights Act.)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 21, 2000

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

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

S.B. **760** Campaign Finance Changes

Draft Number:	PCS A690
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

*also changes the short title

I will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1483

Short Title: Local Option Elderly Tax Relief. (Public)

Sponsors: Senators Hoyle; Albertson, Carter, Cooper, Kerr, and Perdue.

Referred to: Judiciary I.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA, IF APPROVED BY THE VOTERS IN THE 2000 GENERAL ELECTION, TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO PROVIDE PROPERTY TAX DEFERRAL AS AN ALTERNATIVE FORM OF PROPERTY TAX RELIEF FOR THE ELDERLY AND DISABLED.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subsection to read:

"(8) Property tax homestead deferral. -- The General Assembly may, notwithstanding subsection (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to allow elderly and disabled individuals in that county whose income is below a maximum amount and who satisfy other conditions to choose to defer ad valorem taxes on their residence instead of claiming an exclusion of part of the value of the residence enacted by the General Assembly."

Section 2. G.S. 105-277.1 reads as rewritten:

"**§ 105-277.1. Property classified for taxation at reduced valuation.**

(a) Exclusion. -- The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. ~~A~~ For the purposes of this section, a

qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than fifteen thousand dollars ($15,000).

(3) Is a North Carolina resident.

(a1) Temporary Absence. -- An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(b) Definitions. -- ~~When used in this section, the following definitions shall apply:~~ The following definitions apply in G.S. 105-277.1 through G.S. 105-277.1B:

(1) Code. -- The Internal Revenue Code, as defined in G.S. 105-228.90.

(1a) Income. -- Adjusted gross income, as defined in section 62 of the Code, plus all other moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.

(1b) Owner. -- A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another. A manufactured home jointly owned by husband and wife is considered property held by the entirety.

(2) Repealed by Session Laws 1993, c. 360, s. 1.

(2a) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 20.

(3) Permanent residence. -- A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

(3a) Property tax relief. -- The exclusion provided by this section or the deferral provided by G.S. 105-277.1B.

(4) Totally and permanently disabled. -- A person is totally and permanently disabled if the person has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.

(b1) Election. -- If a qualified owner elects property tax deferral under G.S. 105-277.1B, the owner is not entitled to the exclusion provided by this section. When property is owned by two or more individuals who qualify for exclusion under this

section, an election under G.S. 105-277.1B must be made by all owners to become effective.

(c) Application. -- An application for ~~the exclusion provided by this section~~ property tax relief should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through April 15 preceding the tax year for which the ~~exclusion~~ relief is claimed. When property is owned by two or more persons other than husband and wife and one or more of them qualifies for this exclusion, each owner ~~shall~~ must apply separately for his or her proportionate share of the exclusion.

An application form provided by a county for deferral under G.S. 105-277.1B must state the conditions under which deferred taxes and interest become due and payable and must also state that interest will accrue on the amount deferred and that this amount constitutes a lien. Each applicant who elects property tax deferral under G.S. 105-277.1B must furnish a list of the amounts of all liens on the property for which deferral is sought and the holders of these liens.

(1) Elderly Applicants. -- Persons 65 years of age or older may apply for ~~this exclusion~~ property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.

(2) Disabled Applicants. -- Persons who are totally and permanently disabled may apply for ~~this exclusion~~ property tax relief by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. The proof shall be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, he or she ~~shall not be~~ is not required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the ~~taxation at reduced valuation.~~ property tax relief.

(d) Multiple Ownership. -- A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of ~~this exclusion~~ property tax relief notwithstanding that only one of them meets the age or disability requirements of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife and one or more of the owners qualifies for this exclusion, each qualifying owner is entitled to the full amount of the exclusion not to exceed his or her proportionate share of the valuation of the ~~property.~~ property, unless all of the owners qualify for and have elected property tax deferral under G.S. 105-277.1B. No part of an exclusion available to one co-owner may be claimed by any other co-owner and in no event may the total exclusion allowed for a permanent residence exceed the exclusion amount provided in this section."

Section 3. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section, G.S. 105-277.1B, to read:

"**§ 105-277.1B. Local option deferral of residential tax increases for qualified owners.**

(a) Local Option. -- The board of commissioners of a county may, by resolution, allow qualified owners in the county the option of electing to defer taxes as provided in this section. A resolution adopted under this subsection must apply uniformly within the county. The board of commissioners of a county may, by resolution, repeal a resolution adopted under this subsection allowing optional tax deferral under this section. A resolution allowing or repealing optional tax deferral under this section must become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution.

(b) Classification. -- A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. For the purposes of this section, a qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than fifty thousand dollars ($50,000).

(3) Is a resident of a county that has adopted a resolution under subsection (a) of this section allowing optional property tax deferral.

(c) Temporary Absence. -- An otherwise qualifying owner does not lose the benefit of classification under this section because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(d) Deferral. -- If a county has adopted a resolution under subsection (a) of this section allowing optional tax deferral, a qualified owner may elect to defer payment of all or part of any future increases in the amount of tax levied on the permanent residence to the extent permissible under subsection (f) unless (i) the property is subject to a lien that, pursuant to a federal law, rule, or regulation, prohibits deferral of taxes or (ii) the amount of outstanding liens on the property exceeds eighty percent (80%) of the assessed value of the property. The amount of the tax increase that may be deferred each year is the amount by which the tax due on the residence for that year exceeds the amount of tax that was due on the residence for the year preceding the owner's application for deferral under this section. The amount of taxes deferred shall accrue interest at the rate specified in G.S. 105-241.1(i) for assessments from the date the tax is otherwise due until payment. The amount of deferred taxes and accrued interest constitute a lien on the property, which attaches at the time prescribed in G.S. 105-355 and has the priority established in G.S. 105-356.

The definitions in G.S. 105-277.1(b) and the provisions of G.S. 105-277.1(b1) through (d) apply in this section.

(e) Notification of Additional Liens. -- The owner of tax-deferred property must notify the assessor of the amount and holder of any new lien against the property arising after application for deferral has been made, within 60 days after the creation of the new lien.

(f) Transfer or Disqualification of Property. -- Payment of taxes deferred under G.S. 105-277.1 may be deferred until the death of the owner or until the property is transferred, at which time the full amount of deferred taxes and interest becomes due and must be paid within nine months after the date of death or transfer, unless the property is transferred to the former owner's spouse and the spouse is 65 years of age or older and occupies the property as his or her permanent residence, in which case the spouse may elect to continue deferring payment of the tax.

Except as provided in subsection (c) of this section, in any year in which the owner of tax-deferred property no longer occupies the property as his or her permanent residence, no tax levied on the property for that year may be deferred and the full tax for that year is due on the date established in G.S. 105-360. If the owner of tax-deferred property fails to occupy the property as his or her permanent residence for three successive years, the full amount of deferred taxes and interest becomes due that third year and is due and payable at the same time the tax levied on the property in that year is otherwise due. In any year in which the total amount of deferred taxes, interest, and other unsatisfied liens on the property exceeds eighty percent (80%) of the assessed value of the property, the assessor shall notify the owner that the portion of deferred taxes and interest that exceeds the eighty percent (80%) limit is due and must be paid within 60 days after receipt of the notice. Failure to pay any amount due under this subsection causes the total amount of deferred taxes and interest to become due and payable at the same time the tax levied on the property in the year in which the failure occurs is otherwise due.

(g) Annual Notification to Property Owner. -- On or before September 1 of each year, the assessor must notify each property owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest.

(h) Prepayment. -- All or part of the deferred taxes and accrued interest may be paid to the tax collector at any time. Any partial payment shall be applied first to accrued interest. A property owner to whom a tax deferral has previously been granted may revoke the application for deferral at any time by notifying the assessor in writing; however, an owner may not elect to pay taxes upon the property at a reduced value under G.S. 105-277.1 unless all of the deferred taxes and accrued interest have been paid to the tax collector.

(i) Payment by Trustee or Mortgagee. -- A mortgagee or trustee that elects to pay any tax deferred by the owner of property subject to the mortgage or deed of trust does not acquire a right to foreclose as a result. This section does not deny or prohibit a mortgagee or trustee the right to foreclose on the applicable mortgage or note and deed of trust that is otherwise in default.

(j) Clauses Preventing Application for Deferral Void. -- Except for requirements dictated by federal law, rule, or regulation, any provision in a mortgage, deed of trust, or other agreement that prohibits the owner from electing to defer taxes on property under this section is void.

(k) Construction. -- This section does not prevent the collection of personal property taxes that become a lien against tax-deferred property."

Section 4. G.S. 105-282.1(a)(3) reads as rewritten:

"(3) After an owner of property entitled to exemption under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or ~~105-278.8 or~~ 105-278.8; exclusion under G.S. 105-275(3), (7), (8), (12), (17) through (19), ~~(21)~~ (21), or (39), G.S. 105-277.1, or G.S. ~~105-278~~ 105-278; or deferral under G.S. 105-277.1B has applied for ~~exemption or exclusion and the exemption or exclusion~~ exemption, exclusion, or deferral and the application has been approved, the owner is not required to file an application in subsequent years ~~except in the following circumstances:~~ unless one of the following events has occurred:

a. New or additional property ~~is~~ has been acquired or improvements ~~are~~ have been added or removed, necessitating a change in the valuation of the ~~property; or~~ property.

b. There ~~is~~ has been a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion.

c. The owner no longer qualifies for the deferral."

Section 5. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election to be held in November 2000. The 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 amendment authorizing the General Assembly to allow counties to provide that low-income and middle-income elderly and disabled individuals may elect to defer property tax increases on their residences in certain circumstances instead of claiming the property tax homestead exemption for part of the value of their residence allowed under current law."

Section 6. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 7. Sections 2, 3, and 4 of this act become effective only if the constitutional amendment proposed by Section 1 of this act is approved as provided

in Sections 5 and 6 of this act. If the constitutional amendment is approved, Sections 2, 3, and 4 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State. The remainder of this act is effective when it becomes law.

SENATE BILL 1483:
Local Option Elderly Tax Relief.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hoyle
Date:	June 20, 2000	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 1483 would authorize a constitutional amendment to give counties the local option to permit certain qualified taxpayers to defer paying property tax increases for the remainder of their lives or until their property is sold. The accrued deferred taxes and interest would be due within nine months of the time of disqualification. The constitutional amendment would be presented as a referendum to the voters in the November, 2000 General Election. The statutory changes would only become effective if the voters approve the constitutional amendment.***

CURRENT LAW: Under current law certain taxpayers who are either age 65 or older, or totally and permanently disabled, with annual incomes of not more than $15,000, may exclude the first $20,000 of value from the value of their permanent residence for property tax purposes.

BILL ANALYSIS: Section 1 of the bill sets out the proposed language to be added to the NC Constitution. This provision would permit the General Assembly to enact a general law to give each county the option to allow elderly and disabled individuals with limited income the right to choose to defer ad valorem taxes on their residences.

Section 2 amends the current law, G.S. 105-277.1, to allow the qualified taxpayer to choose between a reduced valuation under G.S. 105-277.1 or a deferral of tax increases under the new G.S. 105-277.1B. The taxpayer can elect one but not both options.

Section 3 creates the deferred tax option for local governments. This allows the county the option to permit taxpayers to elect to defer the payment of property tax increases on their residences if they are at least age 65 or older, or totally and permanently disabled, and have income of not more than $50,000 per year. Under this provision a qualified taxpayer could elect to defer all or part of future property tax increases until nine months after either the earlier of the taxpayer's death or the sale of the property. Deferred taxes would accrue interest. A person would be disqualified under this section if the indebtedness secured by the property exceeds 80% of the assessed value of the property. Also after deferral, at any time that the secured indebtedness and the outstanding deferred taxes exceed 80% of the assessed value of the property, the taxpayer will have 60 days notice to pay the amount of the deferred taxes in excess of 80% of the value.

Section 4 makes conforming changes.

Section 5 sets out the ballot question for the 2000 General Election.

EFFECTIVE DATE:

If the constitutional amendment is approved by a majority of the voters, the constitutional amendment and the implementing statutes would become effective upon certification of the vote. The deferral tax option could apply to tax years beginning July 1, 2001.

VISITOR REGISTRATION SHEET

S.J. F — 6-20-00

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie Mahoney	Secretary of State
Scott Lenhart	Sec State
Ann Brown	UNC School of Law
[illegible]	NCAHC
Anna Barnes	CWA-NC.
Sandy Lam	CWA-NC.
Carrie McGraw	CWA NC
[illegible]	Dept of Rev
Julie Campbell	NCCBI
Paul Mahoney	NC ASSN of HEALTH PLANS
Lulenne Bernhardt	" " " "
P. Ray Hall	GSC
Kim Hibbard	NCLM
Brian Francis	Mecklenburg County
Mary Cromartie	REBIC

VISITOR REGISTRATION SHEET

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

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Greg Rokmaar	NC Tire Group
R. Rod Wilms	NCMBA
Jim B. Funderburk	SBoE
Johnnie McLean	SBE
Melissa Lovell	DOJ
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Bill Campbell	Institute of Government
Mary Lacy	Sen. Odom
Erin Gray	Senator Garrou
Evelyn Daeschner	UNC-CH
Deborah Ross	ACLU
Bill Scogin	Kennedy Covington
John Phelps	NCLM
Mark Carlson	NCCM
Susan Markham	DHHS

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

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Ed Regan	N.C. Assoc. of Co. Comm's
Dick Hatch	NC Coalition on Aging AARP
K. Michaels	PPOD
Cam Creer	BPW/NC
[illegible]	NCAHP
Ken Wright	BCBS NC
Elizabeth Dalton	Intern - Sen Basnight
Jim Blackburn	NC Association of County Commrs

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 22, 2000

The Senate Judiciary I Committee met on June 22, 2000 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Hensley to explain **House Bill 813** – AN ACT TO MAKE CYBERSTALKING A CRIMINAL OFFENSE.

Senator Clodfelter moved to adopt a Proposed Committee Substitute for House Bill 813 for discussion. The motion carried by a majority voice vote.

After discussion by the Committee, Senator Clodfelter moved to give the Proposed Committee Substitute a favorable report. The motion carried by a majority voice vote.

Senator Rand was recognized to explain **Senate Bill 1192** – AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY FOR CERTAIN APPLICANTS FOR EMPLOYMENT IN ADULT CARE HOMES, NURSING HOMES, AND HOME CARE AGENCIES, AND TO IMPOSE A CRIMINAL PENALTY FOR FALSIFYING INFORMATION ON EMPLOYMENT APPLICATIONS.

Senator Rand moved to adopt a Proposed Committee Substitute for Senate Bill 1192 for discussion. The motion carried by a majority voice vote.

Senator Rand moved to amend the Proposed Committee Substitute on Page 8, Lines 1 and 2. (Amendment #1 is attached.) The motion carried by a majority voice vote.

Ruffin Poole, with the Attorney General's office, was recognized to answer questions from the Committee.

Senator Rand moved to amend the Proposed Committee Substitute on page 6, Line 33 and on Page 6, Line 37. (Amendment #2 is attached.) The motion carried by a majority voice vote.

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

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

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

DATE: Thursday, June 22, 2000
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

HB 813	Prohibit Cyberstalking	Hensley
SB 1192	Criminal Record Checks - Long-Term Care	Rand
SB 1290	Election Board Conduct	Clodfelter

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - June 22, 2000

HB 813	Prohibit Cyberstalking	Hensley
SB 1192	Criminal Record Checks - Long-Term Care	Rand
SB 1290	Election Board Conduct	Clodfelter

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 813
Committee Substitute Favorable 4/19/99
Committee Substitute #2 Favorable 4/22/99

Short Title: Prohibit Cyberstalking. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CYBERSTALKING A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. Article 35 of Chapter 14 is amended by adding a new section to read:

"**§ 14-277.5. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. -- Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. -- The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(3) Harass. -- A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes that person and that serves no legitimate purpose.

(4) Provider. -- A provider of electronic mail or electronic communication or the provider's officer, employee, agent, landlord, custodian, or designee.

(5) Virus. -- A program or set of instructions including, but not limited to, a virus, Trojan horse, boot sector, macro, logic bomb, worm, or hoax, the purpose of which is to replicate itself and to destroy, damage, or infect software or hardware designed to transmit or receive electronic mail or electronic communication.

(b) It is unlawful for a person to use electronic mail or electronic communication with the intent to harass, threaten, annoy, terrify, defame, or embarrass any person. A first offense under this subsection is a Class 1 misdemeanor; however, a first offense under this subsection is a Class A1 misdemeanor if there is in effect at the time of the offense a temporary restraining order, injunction, or other court order prohibiting the defendant from contact with the victim. A second or subsequent offense under this subsection is a Class A1 misdemeanor.

(c) It is unlawful for a person to use electronic mail or electronic communication to intentionally introduce a virus into electronic mail or electronic communication. An offense under this subsection is a Class H felony.

(d) Any offense committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, or assembly.

(f) It is not an offense under this section for a provider to provide information, facilities, or technical assistance to persons authorized by federal or State law to intercept or provide electronic mail or electronic communication or to conduct electronic mail or electronic communication surveillance, if the provider has been provided with a court order signed by the authorizing judge directing the provision of information, facilities, or technical assistance."

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

H813-CSRU-005
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 813
Committee Substitute Favorable 4/19/99
Committee Substitute #2 Favorable 4/22/99

THIS IS A DRAFT 21-JUN-00 18:56:39
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Prohibit Cyberstalking/Treat Dom Viol. (Public)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CYBERSTALKING A CRIMINAL OFFENSE, CLARIFY THE CRIMINAL ACT OF INTRODUCING COMPUTER VIRUSES, AND TO PERMIT DOMESTIC VIOLENCE ABUSER TREATMENT AS A SPECIAL CONDITION OF PROBATION IN CERTAIN CRIMINAL CASES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Article 35 of Chapter 14 is amended by adding a new section to read:

"**§ 14-196.3. Cyberstalking.**

(a) The following definitions apply in this section:

(1) Electronic communication. -- Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. -- The transmission of information or communication by the use of the Internet, a

computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

(4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly.

Section 2. G.S. 14-196(a)(2) reads as rewritten:

"(2) To use in telephonic ~~or electronic mail~~ communications any words or language threatening to

inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person;".

Section 3. G.S. 14-453 reads as rewritten:

"**§ 14-453. Definitions.**

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

(1) 'Access' means to instruct, communicate with, cause input, cause output, cause data processing, or otherwise make use of any resources of a computer, computer system, or computer network.

(1a) 'Authorization' means having the consent or permission of the owner, or of the person licensed or authorized by the owner to grant consent or permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.

(1b) 'Commercial electronic mail' means messages sent and received electronically consisting of commercial advertising material, the principal purpose of which is to promote the for-profit sale or lease of goods or services to the recipient.

(2) 'Computer' means an internally programmed, automatic device that performs data processing or telephone switching.

(3) 'Computer network' means the interconnection of communication systems with a computer through remote terminals, or a complex consisting of two or more interconnected computers or telephone switching equipment.

(4) 'Computer program' means an ordered set of data that are coded instructions or statements that when executed by a computer cause the computer to process data.

(4a) 'Computer services' means computer time or services, including data processing services, Internet services, electronic mail services, electronic message services, or information or data stored in connection with any of these services.

(5) 'Computer software' means a set of computer programs, procedures and associated documentation

concerned with the operation of a computer, computer system, or computer network.

(6) 'Computer system' means at least one computer together with a set of related, connected, or unconnected peripheral devices.

(6a) 'Data' means a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer, computer system, or computer network. Data may be embodied in any form ~~including, but not limited to,~~ including computer printouts, magnetic storage media, optical storage media, and punch cards, or may be stored internally in the memory of a computer.

(6b) 'Electronic mail' means the same as the term is defined in G.S. 14-196.3(a)(2).

~~(6b)~~ (6c) 'Electronic mail service provider' means any person who (i) is an intermediary in sending or receiving electronic mail and (ii) provides to end users of electronic mail services the ability to send or receive electronic mail.

(7) 'Financial instrument' includes any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security, or any electronic data processing representation thereof.

(8) 'Property' includes financial instruments, information, including electronically processed or produced data, and computer software and computer programs in either machine or human readable form, and any other tangible or intangible item of value.

(8a) 'Resource' includes peripheral devices, computer software, computer programs, and data, and means to be a part of a computer, computer system, or computer network.

(9) 'Services' includes computer time, data processing and storage functions.

(10) 'Unsolicited' means not addressed to a recipient with whom the initiator has an existing business or personal relationship and not sent at the request of, or with the express consent of, the recipient."

Section 4. G.S. 14-454 reads as rewritten:

"**§ 14-454. Accessing computers.**

(a) It is unlawful to willfully, directly or indirectly, access or cause to be accessed any computer, computer program, computer system, computer network, or any part thereof, for the purpose of:

(1) Devising or executing any scheme or artifice to defraud, unless the object of the scheme or artifice is to obtain educational testing material, a false educational testing score, or a false academic or vocational grade, or

(2) Obtaining property or services other than educational testing material, a false educational testing score, or a false academic or vocational grade for a person, by means of false or fraudulent pretenses, representations or promises.

A violation of this subsection is a Class G felony if the fraudulent scheme or artifice results in damage of more than one thousand dollars ($1,000), or if the property or services obtained are worth more than one thousand dollars ($1,000). Any other violation of this subsection is a Class 1 misdemeanor.

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any computer, computer program, computer system, or computer network for any purpose other than those set forth in subsection (a) above, is guilty of a Class 1 misdemeanor.

(c) For the purpose of this section, the ~~term "accessing or causing~~ phrase 'access or cause to be accessed' includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network."

Section 5. G.S. 14-455 reads as rewritten:

"**§ 14-455. Damaging computers, computer programs, computer systems, computer networks, and resources.**

(a) It is unlawful to willfully and without authorization alter, damage, or destroy a computer, computer program, computer system, computer network, or any part thereof. A violation of this subsection is a Class G felony if the damage caused by the alteration, damage, or destruction is more than one thousand dollars ($1,000). Any other violation of this subsection is a Class 1 misdemeanor.

(b) This section applies to alteration, damage, or destruction effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating

computer program) into a computer, computer program, computer system, or computer network."

Section 6. G.S. 14- 456 reads as rewritten:

"**§ 14-456. Denial of computer services to an authorized user.**

(a) Any person who willfully and without authorization denies or causes the denial of computer, computer program, computer system, or computer network services to an authorized user of the computer, computer program, computer system, or computer network services is guilty of a Class 1 misdemeanor.

(b) This section also applies to denial of services effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer program, computer system, or computer network."

Section 7. G.S. 14-458(a) reads as rewritten:

"(a) ~~It~~ Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network without authority and with the intent to do any of the following:

(1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.

(2) Cause a computer to malfunction, regardless of how long the malfunction persists.

(3) Alter or erase any computer data, computer programs, or computer software.

(4) Cause physical injury to the property of another.

(5) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

(6) Falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

For purposes of this subsection, a person is "without authority" when (i) the person has no right or permission of the

owner to use a computer, or the person uses a computer in a manner exceeding the right or permission, or (ii) the person uses a computer or computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk commercial electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider."

Section 8. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of residential treatment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), pursuant to G.S. 15A-1343.1, for a minimum of 90 days or a maximum of 120 days and abide by all rules and regulations of that program. This condition may also include a period of supervision through the Post-Boot Camp Probation Program.

(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or

faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while ~~he~~ the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also

be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(9a) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) the program is approved by the Department of Administration.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

Section 9. G.S. 50B-3(a) reads as rewritten:

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

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

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

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

Section 10. This act becomes effective December 1, 2000, and applies to offenses committed on or after that date.

HOUSE BILL 813:
Prohibit Cyberstalking

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Hensley
Date:	June 22, 2000	**Summary by:**	O. Walker Reagan
Version:	PCS for 3rd Edition		Committee Co-Counsel
	H813-SMRU-005		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 813 creates the criminal offense of "cyberstalking", making it unlawful to use electronic communications to harass or threaten a person. The bill also amends the computer crimes statutes to make it a crime to access or damage computer programs without authorization, which would include self-replicating viruses. The bill also permits as a special condition of probation that a person guilt of domestic violence may be required to attend an abuser treatment program approved by the Department of Administration.***

CURRENT LAW: G.S. 14-196 makes it a Class 2 misdemeanor to use threatening language to any person over the telephone or to annoy or harass a person by repeated telephoning or making false statements over the phone. G.S. 14-277.1 makes communicating a threat, orally, in writing or by any other means, a Class 1 misdemeanor. G.S. 14-394 makes it a Class 1 misdemeanor to write and send any letter without signing one's true name which threatens injury or violence, uses vulgar or obscene language, or which would disgrace any person if published. G.S. 50B-3(12) currently allows the court in a civil domestic violence action to order abuser treatment at an approved treatment program. There is currently no similar provision in criminal cases.

BILL ANALYSIS: Section 1 of the Proposed Senate Committee Substitute creates new criminal offenses related to the use of electronic mail and electronic communication. The bill would make it a Class 2 misdemeanor to use electronic mail or electronic communication with the intent to threaten bodily harm, to repeatedly communicate with another for the purpose of abusing, annoying, threatening, harassing, or embarrassing any person, or to make false statements concerning the death, or injury of another person with the same intent. This provision mirrors the telephone harassment statute in G.S. 14-196.

Section 2 makes a conforming change to the telephone harassing statute.

Sections 3, 4, 5, 6 and 7 amended the computer crime statutes to include unauthorized access or damage to computer programs as a crime. Section 3 adds the same definition for email as is used in the cyberstalking statute. Section 4 makes it illegal to access a computer program without authorization for fraudulent or any other purposes. Section 5 makes it illegal to damage a computer program without authority. Section 6 makes it illegal to deny access to a computer program without authority. Section 7 makes a clarifying change.

Section 8 amends the probation statute to permit as a special condition of probation that a judge may order the defendant to attend and complete an abuser treatment program approved by the Department of Administration, if the court finds that the defendant was responsible for the acts of domestic violence and a suitable program is located within a reasonable distance of the defendant's residence.

The act would take effect December 1, 2000, and would apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1192*

Short Title: Crim. Record Checks/Long-Term Care. (Public)

Sponsors: Senators Rand; Forrester, Hagan, Lucas, Metcalf, Phillips, and Purcell.

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY FOR CERTAIN APPLICANTS FOR EMPLOYMENT IN ADULT CARE HOMES, NURSING HOMES, AND HOME CARE AGENCIES, AND TO IMPOSE A CRIMINAL PENALTY FOR FALSIFYING INFORMATION ON EMPLOYMENT APPLICATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.10. Criminal record checks for adult care homes, nursing homes, and home care agencies.**

The Department of Justice may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

(1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.

(2) Adult care homes licensed under Chapter 131D of the General Statutes.

(3) Home care agencies licensed under Chapter 131E of the General Statutes.

The criminal history shall be provided to nursing homes and home care agencies in accordance with G.S. 131E-265 and to adult care homes in accordance with G.S. 131D-40. The requesting entity shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked, any additional

information required by the Department of Justice, and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. All information received by the entity shall be kept confidential in accordance with G.S. 131E-265 and G.S. 131D-40, as applicable. The Department of Justice shall charge a reasonable fee for conducting the checks authorized by this section. The fee for the State check may not exceed fourteen dollars ($14.00)."

Section 2.(a) Subsections (a) and (a1) of G.S. 131D-40 read as rewritten:

"(a) Requirement; Adult Care Home. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. An adult care home shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ G.S. 114-19.10 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. -- An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A contract agency of an adult care home shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114-19.10 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 2.(b) G.S. 131D-40 is amended by adding the following new subsection to read:

...

"(e) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

Section 2.(c) Subsections (a) and (a1) of G.S. 131E-265 read as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. -- An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a

position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114.19.10 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. -- An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114-19.10 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 2.(d) G.S. 131E-265 is amended by adding the following new subsection to read:

. . .

"(e) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

Section 3. G.S. 114-19.3(a) reads as rewritten:

"(a) Authority. -- The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

(1) Hospitals licensed under Chapter 131E of the General Statutes.

~~(2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.~~

~~(3) Adult care homes licensed under Chapter 131D of the General Statutes.~~

~~(4) Home care agencies or hospices licensed under Chapter 131E of the General Statutes.~~

(5) Child placing agencies licensed under Chapter 131D of the General Statutes.

(6) Residential child care facilities licensed under Chapter 131D of the General Statutes.

(7) Hospitals licensed under Chapter 122C of the General Statutes.

(8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.

(9) Licensed child care facilities and nonlicensed child care homes regulated by the State.

(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly."

Section 4. This act becomes effective December 1, 2000. Sections 2(b) and 2(d) of this act apply to offenses committed on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1192*
Proposed Committee Substitute S1192-PCS2849-LN001C

Short Title: Crim. Record Checks/Long-Term Care. (Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY FOR CERTAIN APPLICANTS FOR EMPLOYMENT IN ADULT CARE HOMES, NURSING HOMES, HOME CARE AGENCIES, AND CERTAIN MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES FACILITIES; TO IMPOSE A CRIMINAL PENALTY FOR FALSIFYING INFORMATION ON EMPLOYMENT APPLICATIONS; AND TO REQUIRE CERTAIN DISCLOSURES BY NURSING HOMES.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home care agencies, and area mental health, developmental disabilities, and substance abuse services authorities.**

The Department of Justice may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

(1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.

(2) Adult care homes licensed under Chapter 131D of the General Statutes.

(3) Home care agencies licensed under Chapter 131E of the General Statutes.

(4) Area mental health, developmental disabilities, and substance abuse services authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.

The criminal history shall be provided to nursing homes and home care agencies in accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40, and to area mental health, developmental disabilities, and substance abuse services authorities in accordance with G.S. 122C-80. The requesting entity shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked if a national criminal history record check is required, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories. If a national criminal history record check is required, the fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. All information received by the entity shall be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as applicable. The Department of Justice shall charge a reasonable fee for conducting the checks authorized by this section. The fee for the State check may not exceed fourteen dollars ($14.00)."

Section 2.(a) Subsections (a) and (a1) of G.S. 131D-40 read as rewritten:

"(a) Requirement; Adult Care Home. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an ~~An~~ adult care home shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ G.S. 114-19.10 to conduct a State or national criminal history record ~~check~~ check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. ~~within five business days of making the conditional offer of employment.~~ All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. -- An offer of employment by a contract agency of an adult care home licensed under this Chapter

to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a ~~A~~ contract agency of an adult care home shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. ~~criminal history record check within five business days of making the conditional offer of employment.~~ All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 2.(b) G.S. 131D-40 is amended by adding the following new subsections to read:

"(e) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. -- An adult care home may employ an applicant conditionally prior to obtaining the results of a criminal record check regarding the applicant if both of the following requirements are met:

(1) The adult care home shall not employ an applicant prior to obtaining the applicant's consent for a criminal record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The adult care home shall submit the request for a criminal record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. -- An entity and officers and employees of an entity shall be immune from liability for failure to consider criminal history information not contained in the criminal history record check requested and received by the entity pursuant to this section."

Section 3.(a) Subsections (a) and (a1) of G.S. 131E-265 read as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. -- An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of

employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, ~~A~~ a nursing home or home care agency shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114.19.10 to conduct a ~~criminal history record check within five business days of making the conditional offer of employment.~~ State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. -- An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an

applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, ~~A~~ a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114-19.10 ~~to conduct a criminal history record check within five business days of making the conditional offer of employment.~~ to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 3.(b) G.S. 131E-265 is amended by adding the following new subsections to read:

"(e) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. -- A nursing home or home care agency may employ an applicant conditionally prior to obtaining the results of a criminal record check regarding the applicant if both of the following requirements are met:

(1) The nursing home or home care agency shall not employ an applicant prior to obtaining the applicant's consent for a criminal record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The nursing home or home care agency shall submit the request for a criminal record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. -- An entity and officers and employees of an entity shall be immune from liability for failure to consider criminal history information not contained in the criminal history record check requested and received by the entity pursuant to this section."

Section 4. Chapter 122C of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 3A.

"Miscellaneous Provisions.

"**§ 122C-80. Criminal history record check required for certain applicants for employment.**

(a) Definition. -- As used in this section, 'area authority' means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.

(b) Requirement. -- An offer of employment by an area authority licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of

this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An area authority shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an area authority shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. All criminal history information received by the area authority is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section.

(c) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the area authority shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the area authority. If the area authority disqualifies an applicant after consideration of the relevant factors, then the area authority may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(d) Limited Immunity. -- An area authority and an officer or employee of an area authority that, in good faith, complies with this section is not liable for:

(1) The failure of the area authority to employ an individual on the basis of information provided in the criminal history record check of the individual.
(2) To consider criminal history information not contained in the criminal history record check requested and received by the entity pursuant to this section.

(e) Relevant Offense. -- As used in this section, 'relevant offense' means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the

General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(f) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(g) Conditional Employment. -- An area authority may employ an applicant conditionally prior to obtaining the results of a criminal record check regarding the applicant if both of the following requirements are met:

(1) The area authority shall not employ an applicant prior to obtaining the applicant's consent for criminal record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The area authority shall submit the request for a criminal record check not later than five business days after the individual begins conditional employment."

Section 5. G.S. 114-19.3(a) reads as rewritten:

"(a) Authority. -- The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

(1) Hospitals licensed under Chapter 131E of the General Statutes.

~~(2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.~~

~~(3) Adult care homes licensed under Chapter 131D of the General Statutes.~~

~~(4) Home care agencies or hospices licensed under Chapter 131E of the General Statutes.~~

(5) Child placing agencies licensed under Chapter 131D of the General Statutes.

(6) Residential child care facilities licensed under Chapter 131D of the General Statutes.

(7) Hospitals licensed under Chapter 122C of the General Statutes.

~~(8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.~~

(9) Licensed child care facilities and nonlicensed child care homes regulated by the State.

(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly."

Section 6. Effective January 1, 2001, Part A of Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-113. Special care units; disclosure of information required.**

(a) A nursing home or combination home licensed under this Part that provides special care for persons with Alzheimer's disease or other dementias in a special care unit shall make the following disclosures pertaining to the special care provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias. The disclosure shall be made annually, in writing, to all of the following:

(1) The Department, as part of its licensing procedures.

(2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

(1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with dementia.

(2) The process and criteria for placement, transfer, or discharge to or from the special care unit.

(3) The process used for assessment and establishment of the plan of care and its implementation, as required under State and federal law.

(4) Typical staffing patterns and how the patterns reflect the resident's need for increased care and supervision.

(5) Dementia-specific staff training.

(6) Physical environment features designed specifically for the special care unit.

(7) Alzheimer's disease and other dementia-specific programming.
(8) Opportunities for family involvement.
(9) Additional costs or fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosures made by each licensed facility subject to this section.

(d) Nothing in this section shall be construed as prohibiting a nursing home or combination home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias. The disclosures required by this section apply only to a nursing home or combination home that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term 'special care unit' means a wing or hallway within a nursing home, or a program provided by a nursing home, that is designated especially for residents with Alzheimer's disease or other dementias, or other special needs disease or condition, as determined by the Medical Care Commission, which may include mental disabilities."

Section 7. Sections 1 through 5 of this act become effective October 1, 2001, and apply to offenses committed and offers of employment made on and after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 1192:
Criminal Record Checks/Long-Term Care.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Rand
Date:	June 22, 2000	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S1192-PCS2849-LN001C		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1192 would mandate that national criminal history record checks be conducted on persons to be hired by adult care homes, nursing homes, combination homes, home care agencies, and certain mental health, developmental disabilities, and substance abuse services facilities in certain circumstances, in addition to the State criminal history checks currently required. The bill would also require special care units in nursing homes to make certain disclosures with respect to policies and services offered for persons with Alzheimer's disease and other dementia.***

CURRENT LAW: Current law only requires a State criminal history record check for employees of adult care homes, nursing homes, combination homes, home care agencies, and certain mental health, developmental disabilities, and substance abuse services facilities. These record checks are fingerprint-based but do not include a national criminal history record check conducted by the FBI.

Adult care homes are required to make the disclosures that this bill would require nursing homes and combination homes to make.

BILL ANALYSIS: Section 1 authorizes the NC Department of Justice to provide criminal history record checks from State and national repositories to nursing homes or combination homes, adult care homes (and contract agencies of adult care homes), and home care agencies licensed by the State, and area mental health authorities.

Section 2 amends the adult care home (and contract agency) criminal records check statute to provide that if an applicant for employment has been a resident of the State for less than 5 years, then offer of employment is conditioned upon consent to a State and national record check (fingerprint check) but if the applicant for employment has been a resident of the State for 5 or more years, then the offer is conditioned upon consent to a State check (no fingerprints). This section also makes it a Class A1 misdemeanor for applicants who willfully provide false information on the employment application. Adult care homes are allowed to conditionally employ an applicant prior to obtaining the results of the check. Also adult care homes are immune from liability for failure to consider criminal history record information not contained in the record check received by the adult care home.

Section 3 amends the nursing home/home care agency law the same as the law is amended for adult care homes in Section 2 of the bill.

Section 4 amends the Area Mental Health Authority statutes to require these agencies to condition offers of employment of certain persons upon applicant's consent to a State or national criminal history record check under the same conditions as required for adult care homes under Section 2 of the bill.

Section 5 amends the statute that authorizes State criminal history record checks to delete those entities that are now required to have State and national criminal history record checks under Section 1 of the bill.

Section 6 requires special care units in nursing homes and combination homes to make certain disclosures with respect to policies and services offered for persons with Alzheimer's disease and other dementia as is currently required for adult care homes. This disclosure is to be made annually in writing to DHHS as part of the licensing procedure and to each person seeking placement or receiving services and shall include the following information:

1. a statement of the overall philosophy and mission and how it reflects the special needs of resident;
2. process and criteria for placement, transfer or discharge;
3. process used for assessment and establishment of the plan of care and its implementation;
4. typical staffing patterns and how these patterns reflect the patient's need for increased care;
5. dementia-specific staff training;
6. physical environmental features designed specifically for the special care unit;
7. dementia-specific programming;
8. opportunities for family involvement; and
9. additional costs or fees to the resident for special care.

EFFECTIVE DATE: The criminal history record check sections of the bill (Sections 1-5) become effective October 1, 2000 and apply to offenses committee and offers of employment made on or after that date. Section 6 of the bill is effective when the bill becomes law.

This summary was contributed to by Gann Watson and John Young.

S1192-SMRU-001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1192

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

S1192-ALN-010

Date 6/22 ,2000

Comm. Sub. [yes]PCS2849-LN001C
Amends Title []

Senator Rand

moves to amend the bill on page 8, lines 1 and 2, by rewriting the lines to read:

"(4) ~~Home care agencies or hospices~~ Hospices licensed under Chapter 131E of the General Statutes.".

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 6-22-00

S. B. No. 1192 PCS Amendment No. 2 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE 2849-LNDO IC

Rep.) RAND
)
Sen.)

moves to amend the bill on page 6, line 33

( ) WHICH CHANGES THE TITLE

by DELETING THE WORDS "IS NOT LIABLE"
AND "SHALL BE IMMUNED FROM LIABILITY"; AND

ON PAGE 6, LINE 37,
BY DELETING THE WORD "TO" AND SUBSTITUTING
THE WORD "FAILURE TO".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

State of North Carolina

MICHAEL F. EASLEY
ATTORNEY GENERAL

Department of Justice
P. O. Box 629
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Phone: (919) 716-6400
Fax: (919) 716-6750

June 22, 2000

Honorable Roy Cooper
Chair, Senate Judiciary I Committee
Room 2010, Legislative Building
Raleigh, NC 27601-2808

RE: Senate Bill 1192

Dear Senator Cooper: Roy

I am writing to encourage your support of Senate Bill 1192, which is scheduled to be taken up in the Senate's Judiciary I Committee this morning.

In its current form, the bill expands the scope of criminal record searches required for applicants for employment in rest homes, adult care facilities and home health care agencies in North Carolina. Although background checks for an applicant's North Carolina criminal history have been required in the past, this bill will expand those to include a cross check of the applicant's fingerprints against the FBI's national database. This change ensure that information is obtained not just about North Carolina convictions but about convictions in other states as well. This bill also makes it a crime to lie about your criminal history on an application for employment in one these elder care facilities.

These important changes will help decrease the likelihood that convicted criminals will get hired to work with elderly seniors and it will provide an important level of additional security for seniors and their families.

There is, however, more work to be done. Even with these changes, the current system of background checks leaves the decision on whether or not to hire a felon to the sole discretion of the business doing the hiring. There is nothing in the law that prevents an individual with a long string of property crimes from being hired to provide in-home care to vulnerable older people. There is nothing in the law to prevent a man or woman with a history of dangerous assaultive behavior from being hired to work with the elderly in a rest home.

When I addressed the Joint Legislative Committee on Health Care Oversight this past April, I encouraged the legislature to develop a schedule of criminal violations that, if uncovered in a criminal background check, would immediately disqualify individuals for employment in rest homes, adult care facilities or home health care agencies.

Other states have created similar systems and I continue to believe that a system such as this would provide much needed protection against dangerous and irresponsible hiring decisions by facilities that find themselves pressed to hire additional staff quickly. I am urging the General Assembly to pass a provision this session that would require a study commission or oversight committee to study this particular issue prior to the next session and develop a system of proposed mandatory disqualifiers for employment with the elder care industry.

I encourage you to involve representatives of seniors advocacy groups, the SBI, and the adult care industry in developing the criteria and system by which individuals with "red flag" convictions are barred from working with seniors, either for a period of years or for life. Other states have approached the problem and developed systems that meet their needs. North Carolina needs a law specifically tailored to meet ours.

Our seniors have worked hard all their lives. They should not have to spend their twilight years worrying about whether the people caring for them have criminal records.

My office will be happy to work with you as you consider this issue further. Please contact me or my staff if we can provide additional information to you.

With every good wish, I am

Very truly yours,

Michael F. Easley

CC: Judiciary I Committee Members

VISITOR REGISTRATION SHEET

Jud T. — 6-22-00

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Cruss Porter	Bone & Associates
Jim Wimer	NCCSOR
Jean Cowell	DOA NCCFW
Deborah Ross	ACLU
Patricia A. Young	Hospice for the Carolinas
Stacy Flannery	NCHCFA
Jon Wilson	NCAATC7
John Phelps	NCLM
Shunetta Frost	Kingstown Mayes Leo Team
Sara Singletm	Governor's Office
Rabbi S. Mirvis	Bone & Associates
[illegible]	" "
Joe McClees	McClees Consulting
Dennis Patterson	AP

MINUTES
SENATE JUDICIARY I COMMITTEE
JUNE 27, 2000

The Senate Judiciary I Committee met on June 27, 2000 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Clodfelter to explain **Senate Bill 1290** – AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY BOARD OF ELECTIONS MEMBERS.

Senator Clodfelter moved to adopt a Proposed Committee Substitute for Senate Bill 1290 for discussion. The motion carried by a majority voice vote.

After discussion by the Committee, Senator Wellons moved to give the Proposed Committee Substitute a favorable report. The motion carried by a majority voice vote.

Representative Justus was recognized to explain **House Bill 1026** – AN ACT TO INCREASE THE LIABILITY OF PRINCIPALS WHO FAIL TO PAY SALES REPRESENTATIVES COMMISSIONS UPON TERMINATION CONTRACTS WITH SALES REPRESENTATIVES.

Senator Carpenter moved to adopt a Proposed Committee Substitute for House Bill 1026 for discussion. The motion carried by a majority voice vote.

Cindy Hobbs, a former Sales Representative, was recognized to comment on the bill.

After discussion by the Committee, Senator Carpenter moved to give the House Bill 1026 a favorable report. Senator Wellons offered a substitute motion to send the bill to a subcommittee. The substitute motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

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

DATE: Tuesday, June 27, 2000
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB 1290	Election Board Conduct	Clodfelter
HB 1026	Liability to Sales Reps	Justus

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - June 27, 2000

SB 1290	Election Board Conduct	Clodfelter
HB 1026	Liability to Sales Rep	Justus

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1290*

Short Title: Election Bd. Conduct. (Public)

Sponsors: Senators Clodfelter and Gulley.

Referred to: Judiciary I.

May 31, 2000

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY BOARD OF ELECTIONS MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Political Activities by Board of Elections Members.

"**§ 163-38. Applicability of Article.**

This Article applies to members of the State Board of Elections and of each county and municipal board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board.

"**§ 163-39. Limitation on political activities.**

No person subject to this Article shall:

(1) Make public statements supporting or opposing the nomination or election of one or more clearly identified candidates for public office.

(2) Make public statements supporting or opposing the passage of one or more clearly identified referendum proposals.

(3) Solicit contributions for a candidate, political committee, or referendum committee.

Nothing in this section shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member from making a contribution.

"**§ 163-40. No person to engage in prohibited act as alter ego.**

No person acting as the alter ego of a board member subject to this Article shall engage in any act prohibited by this Article.

"**§ 163-40.1. Violation is ground for removal.**

A violation of this Article is a ground to remove a State Board of Elections member under G.S. 143B-16, a county board of elections member under G.S. 163-22(c), or a municipal board of elections member under G.S. 163-280(i).

"**§ 163-40.2. Definitions.**

The provisions of Article 22A of this Chapter apply to the definition and proof of terms used in this Article."

Section 2. This act becomes effective January 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1290*
Proposed Committee Substitute -- S1290-PCSRR-003

Short Title: Election Bd. Conduct. (Public)

Sponsors:

Referred to: Judiciary I.

May 31, 2000

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY BOARD OF ELECTIONS MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Political Activities by Board of Elections Members.

"**§ 163-38. Applicability of Article.**

This Article applies to members of the State Board of Elections and of each county and municipal board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board.

"**§ 163-39. Limitation on political activities.**

No individual subject to this Article shall:

(1) Make statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or

more clearly identified candidates for public office.

(2) Make statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum proposals.

(3) Solicit contributions for a candidate, political committee, or referendum committee.

Individual expressions of opinion, support, or opposition not intended for general public distribution shall not be deemed a violation of this Article. Nothing in this Article shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member from making a contribution to a candidate, political committee, or referendum committee..

"**§ 163-40. Violation may be ground for removal.**

A violation of this Article may be a ground to remove a State Board of Elections member under G.S. 143B-16, a county board of elections member under G.S. 163-22(c), or a municipal board of elections member under G.S. 163-280(i). No criminal penalty shall be imposed for a violation of this Article.

"**§ 163-40.1. Definitions.**

The provisions of Article 22A of this Chapter apply to the definition and proof of terms used in this Article."

Section 2. This act becomes effective January 1, 2001.

SENATE BILL 1290:
Election Board Conduct.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senators Clodfelter and Gulley
Date:	June 22, 2000	**Summary by:**	William R. Gilkeson
Version:	S1290-PCSRR-003		Staff Attorney

SUMMARY: The Proposed Committee Substitute for Senate Bill 1290 would prohibit members of county, municipal, and State boards of elections from making statements intended for general distribution to the public at large supporting or opposing the nomination or election of candidates on the ballot within the territory covered by the board. The same would apply for statements by board members supporting or opposing the passage of referendum proposals. The bill was recommended by the Election Laws Revision Commission.

CURRENT LAW: Current law takes party affiliation into account in the process by which members of State, county, and municipal boards of elections are appointed. The law places campaign-related limitations on board members in terms of their qualifications. But current law does not prohibit board members from endorsing candidates or soliciting contributions.

Appointment. Currently, State and county board of elections members are appointed from lists of nominees put forth by the State Chairs of the political parties. State Board members are appointed by the Governor. County board members are appointed by the State Board. Municipal board members are appointed by the city council. No more than a simply majority of any of the three kinds of boards may be of the same party. Municipal boards, however, may only exist in cities that have nonpartisan city elections, and the appointment process of municipal boards does not have a formal role for the party Chairs. In all three kinds of boards, the members are appointed for a set term.

Qualifications. Current law says State and county board members may not be elected officials, candidates for elective office, an officer in a political party organization, or a campaign manager or political treasurer. County board of elections members have the additional requirement of not being related to a candidate for office in the county as spouse, son, son-in-law, daughter, daughter-in-law, parent-in-law, sister-in-law, brother-in-law, aunt, uncle, niece, or nephew. The county board statute has a proviso that serving as a party convention delegate is permitted. Municipal board of elections members may not hold or be candidates for elective office or be campaign manager for a candidate, but nothing is said about being a treasurer and nothing is said about party activity. All those limitations are stated as qualifications for the office rather than as limitations on activity. The county board statute actually says that if a member fails to meet one of those qualifications, the office becomes vacant.

Removal. There are roughly parallel provisions in the statutes for all three kinds of boards giving the appointing authority the right to remove a board member for good cause.

BILL ANALYSIS: Senate Bill 1290 would create a new Article in Chapter 163, the Election Law, setting out uniform limitations on the political activity of members of State, county, and

municipal boards of elections. None would be able to make "statements intended for general distribution or dissemination to the public at large" supporting or opposing the nomination or election of candidates or the passage of referendum proposals. This would apply only to candidates or referenda on the ballot in the territory covered by the board. Board members would also be prohibited from soliciting contributions for those candidates or referendum proposals, or for committees supporting them. The prohibitions would not apply to serving as a delegate to a political convention, or to ***making*** contributions, as opposing to ***soliciting*** them.

A violation of the Article would be grounds for removal under the current statutes that allow removal for cause. It would not involve any criminal liability.

The bill says terms in the new Article, such as "candidate," "support or oppose the nomination or election of a candidate," and "contribution" have the same meaning as in Article 22A, the Campaign Finance Act.

The bill would become effective January 1, 2001.

BACKGROUND: The Election Laws Revision Commission voted to endorse this Legislative Proposal at its April 13, 2000, meeting after hearing from Sen. Daniel Clodfelter of Mecklenburg County. Sen. Clodfelter recounted an incident in which a member of the Mecklenburg County Board of Elections wrote and signed letters and articles published in *The Charlotte Observer* advocating the defeat of members of the Charlotte-Mecklenburg School Board. When a citizen complained about this to the State Board of Elections, she was told that nothing prohibited the board member's statements. Sen. Clodfelter noted that the N.C. Code of Judicial Conduct prohibits such conduct by judges as being inappropriate to their office, and he noted that boards of elections sit in a quasi-judicial capacity. The initial draft of a bill Sen. Clodfelter presented to the Commission was patterned closely after the Code of Judicial Conduct, but members of the Commission suggested changes before they endorsed the proposal. Notably, the Commission removed from the draft a prohibition against board members making contributions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1026

Short Title: Liability to Sales Rep. (Public)

Sponsors: Representative Justus.

Referred to: Judiciary III.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE LIABILITY OF PRINCIPALS WHO FAIL TO PAY SALES REPRESENTATIVES COMMISSIONS UPON TERMINATION CONTRACTS WITH SALES REPRESENTATIVES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-192(a) reads as rewritten:

"(a) A principal who fails to comply with the provisions of G.S. 66-191 is liable to the sales representative in a civil action for (i) all amounts due the sales representative plus exemplary damages in an amount not to exceed <u>three times</u> the amount of commissions due the sales representative, (ii) attorney's fees actually and reasonably incurred by the sales representative in the action, and (iii) court costs."

Section 2. 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 D

H1026-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1026
THIS IS A DRAFT 11-JUN-00 19:56:04
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Liability to Sales Rep.. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE LIABILITY OF PRINCIPALS WHO FAIL TO PAY SALES REPRESENTATIVES COMMISSIONS UPON TERMINATION CONTRACTS WITH SALES REPRESENTATIVES, AND TO MAKE THE LAW APPLICABLE TO IN-STATE PRINCIPALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-190 reads as rewritten:

"**§ 66-190. Definitions.**

The following definitions apply in this Article:

. . . . .

(3) 'Principal' means a person ~~who does not have a permanent or fixed place of business in this State and~~ who:

a. Manufactures, produces, imports, or distributes a tangible product for sale at wholesale;

b. Contracts with a sales representative to solicit orders for the product; and

c. Compensates the sales representative, in whole or in part, by commission.

. . . . ."

Section 2. G.S. 66-192(a) reads as rewritten:

"(a) A principal who fails to comply with the provisions of G.S. 66-191 is liable to the sales representative in a civil action for (i) all amounts due the sales representative plus exemplary damages in an amount not to exceed three times the amount of commissions due the sales representative, (ii) attorney's fees actually and reasonably incurred by the sales representative in the action, and (iii) court costs."

Section 3. This act becomes effective October 1, 2000, and applies to causes of action arising on or after that date.

HOUSE BILL 1026:
Liability to Sales Representatives.

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Rep. Justus
Date:	June 27, 2000	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***House Bill 1026 would allow a sales representative who is not paid commissions due within 45 days of the termination of the sales representative contract, to sue to for punitive damages up to three times the amount of the actual compensation due.***

CURRENT LAW: Article 27 of Chapter 66 requires that a business which does not have a permanent or fixed place of business in NC that hires sales representatives in this State to solicit orders of goods manufactured, produced, imported, or distributed by the business, to pay the sales representative all commissions due within 45 days of the termination of the contract with the sales representative. If the commissions are not paid on time, the sales representative is entitled to sue to recover the amount of the commissions due, punitive damages equal to the amount owed, plus actual attorney fees and court costs.

BILL ANALYSIS: House Bill 1026 would change this law by increasing the amount of punitive damages a court could award the sales representative from one times to three times the actual amounts due.

EFFECTIVE DATE: The bill currently has an effective date of October 1, 1999 that will need to be amended.

ARTICLE 27.
Sales Representative Commissions.

§ 66-190. Definitions.

The following definitions apply in this Article:

(1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders or sales or as a specified amount per order or per sale.

(2) "Person" means an individual, corporation, partnership, association, estate, or trust.

(3) "Principal" means a person who does not have a permanent or fixed place of business in this State and who:

a. Manufactures, produces, imports, or distributes a tangible product for sale at wholesale;
b. Contracts with a sales representative to solicit orders for the product; and
c. Compensates the sales representative, in whole or in part, by commission.

(4) "Sales representative" means a person who:

a. Contracts with a principal to solicit wholesale orders;
b. Is compensated, in whole or in part, by commission;
c. Does not place orders or purchase for his own account or for resale;
d. Does not sell or take orders for the sale of products at retail; and
e. Is not an employee of the principal.

(1989, c. 506, s. 1.)

§ 66-191. Payment of commissions.

When a contract between a sales representative and a principal is terminated for any reason other than malfeasance on the part of the sales representative, the principal shall pay the sales representative all commissions accrued under the contract to the sales representative within 45 days after the effective date of the termination.
(1989, c. 506, s. 1.)

§ 66-192. Civil liability.

(a) A principal who fails to comply with the provisions of G.S. 66-191 is liable to the sales representative in a civil action for (i) all amounts due the sales representative plus exemplary damages in an amount not to exceed the amount of commissions due the sales representative, (ii) attorney's fees actually and reasonably incurred by the sales representative in the action, and (iii) court costs.

(b) Where the court determines that an action brought by a sales representative against a principal under this Article is frivolous, the sales representative is liable to the principal for court costs and for attorney's fees actually and reasonably incurred by the principal in defending the action.

(c) A principal who is not a resident of this State who contracts with a sales representative to solicit orders in this State shall be subject to personal jurisdiction as provided in G.S. 1-75.4.

(d) Nothing in this Article shall invalidate or restrict any other or additional right or remedy available to a sales representative or preclude a sales representative from seeking to recover in one action on all claims against a principal.

§ 66-193. Contracts void.

A provision in any contract between a sales representative and a principal purporting to waive any provision of this Article, whether by expressed waiver or by a contract subject to the laws of another state, is void.
History
(1989, c. 506, s. 1.)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

REVISED REPORT #2

Tuesday, June 27, 2000

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

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

S.B. **1192** Criminal Record Checks/Long-Term Care

Draft Number:	PCS 3982
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1290** Election Board Conduct

Draft Number:	PCS 4791
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)**813** Prohibit Cyberstalking

Draft Number:	PCS 8207
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

J-I 6-27-00

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Dorothy Best	Political Awareness Pac
2.	Georgia Lewis	PAC
3.	Mildred M. Ross	PAC (Wayne Co.)
4.	Lydia Burden	PAC (Wayne Co.)
5.	James E. Lewis	PAC (Wayne Co.)
6.	~~Johnny L. Lewis~~	PAC (Wayne Co.)
7.	Linda Bissette	PAC (Wayne Co.)
8.	Victoria McDowell	PAC Wayne Co.
9.	Deborah Hon	
10.	Bill Seago	KCCH
11.	Bob Hall	Democracy South
12.	Marion Scott	G Boyd Williams
13.	Tammy Pompey	CSX Corp
14.	David Simmons	Alley Associates, Inc.
15.	John McMillan	NFIB/SBA
16.	Greg Rabil-AOL	NYTRNG
17.	Amal Sabi	John Locke
18.	Cindy Hawkins	Lt. Gov's Office
19.	Doug Lassiter	Lassiter Enterprise
20.	John Phelps	NCLM
21.	FRAN PRESTON	NCRMA

MINUTES
SENATE JUDICIARY I COMMITTEE
JULY 5, 2000

The Senate Judiciary I Committee met on July 5, 2000 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Representative Sutton to explain **House Bill 1502** - AN ACT TO AUTHORIZE LOCAL COURT OFFICIALS TO RESPOND TO ADVERSE WEATHER AND OTHER EMERGENCY SITUATIONS BY CANCELLING COURT SESSIONS AND CLOSING COURT OFFICES AND TO AUTHORIZE THE CHIEF JUSTICE TO EXTEND STATUTES OF LIMITATIONS AND OTHER COMPARABLE DEADLINES IN RESPONSE TO CATASTROPHIC CONDITIONS, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

Senator Clodfelter moved to amend House Bill 1502 on Page 1, Line 23 and Page 2, Line 26. (Amendment attached.) The motion carried by a majority voice vote.

Senator Clodfelter moved to give House Bill 1502 a favorable report as amended and roll it into a new Committee Substitute. The motion carried by a majority voice vote.

Senator Hartsell was recognized to explain **Senate Bill 1335** - AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Hartsell moved to adopt a Proposed Committee Substitute for Senate Bill 1335 for discussion. The motion carried by a majority voice vote.

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

Senator Hartsell moved to amend the Proposed Committee Substitute on Page 16, Lines 18 through 38. (Amendment #1 - attached.) The motion carried by a majority voice vote.

Senator Rand moved to amend the Proposed Committee Substitute on Page 70, Line 2. (Amendment #2 - attached.) The motion carried by a majority voice vote.

Senator Gulley moved to amend the Proposed Committee Substitute on Page 20, Lines 9 and 10. (Amendment #3 – attached.) The motion carried by a majority voice vote.

Senator Hartsell moved to amend the Proposed Committee Substitute on Page 30, Lines 20 through 21; Page 30, Line 23; Page 32, Lines 20 through 22 and Page 32, Line 24. (Amendment #4 – attached.) The motion carried by a majority voice vote.

Senator Clodfelter moved to amend the Proposed Committee Substitute on Page 70, Line 16. (Amendment #5 – attached.) The motion carried by a majority voice vote.

Senator Rand moved to amend the Proposed Committee Substitute on Page 70, Line 30. (Amendment #6 – attached.) The motion carried by a majority voice vote.

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

Senator Carter was asked to give a brief explanation of **House Bill 1804** – AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

George Sweat, Director of the Office of Juvenile Justice, was recognized to comment on the bill.

Senator Cooper asked that the bill be brought back at the next meeting to continue the discussion.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

REVISED

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

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

DATE: Wednesday, July 5, 2000
TIME: 10:00 a.m.
ROOM: 1027

The following bills or resolutions will be considered:

SB	1335	2000 Technical Corrections	Sen. Hartsell
SB	1462	Establish Juvenile Dept.	Sen. Cooper
HB	1502	Adverse Weather Ct. Closing	Reps. Sutton, Barefoot Goodwin, McCrary

Senator Cooper, Chair

SENATE JUDICIARY I COMMITTEE

AGENDA - July 5, 2000

SB 1335	2000 Technical Corrections	Sen. Hartsell
SB 1462	Establish Juvenile Dept.	Sen. Cooper
HB 1502	Adverse Weather Ct. Closing	Reps. Sutton, Barefoot Goodwin, McCrary

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1502*
Second Edition Engrossed 5/24/00

Short Title: Adverse Weather Court Closing. (Public)

Sponsors: Representatives Sutton; Barefoot, Goodwin, and McCrary.

Referred to: Judiciary III.

May 11, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL COURT OFFICIALS TO RESPOND TO ADVERSE WEATHER AND OTHER EMERGENCY SITUATIONS BY CANCELLING COURT SESSIONS AND CLOSING COURT OFFICES AND TO AUTHORIZE THE CHIEF JUSTICE TO EXTEND STATUTES OF LIMITATIONS AND OTHER COMPARABLE DEADLINES IN RESPONSE TO CATASTROPHIC CONDITIONS, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-39. Adverse weather cancellation of court sessions and closing court offices; extension of statutes of limitations in catastrophic conditions.**

(a) Cancellation of Court Sessions, Closing Court Offices. -- In response to adverse weather or other comparable emergency situations, any session of any court of the General Court of Justice may be cancelled, postponed, or altered by judicial officials, and court offices may be closed by judicial branch hiring authorities, pursuant to uniform statewide guidelines prescribed by the Director of the Administrative Office of the Courts.

(b) Authority of Chief Justice to Extend Statutes of Limitations. -- When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State, the Chief Justice may by order entered pursuant to his subsection extend, to a date

certain no fewer than 10 days after the effective date of the order, the time within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings in each county named in the order.

(1) Catastrophic conditions defined. -- As used in this subsection, 'catastrophic conditions' means any set of circumstances that make it impossible or extremely hazardous for judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that create a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid travelling to or being in the courthouse, including conditions that may result from hurricane, tornado, flood, snowstorm, ice storm, other severe natural disaster, fire, or riot.

(2) Entry of order. -- The Chief Justice may enter an order under this subsection at any time after catastrophic conditions have ceased to exist. The order shall be in writing and shall become effective for each affected county upon being filed in the office of the clerk of superior court of that county.

(c) In Chambers Jurisdiction Not Affected. -- Nothing in this section prohibits a judge or other judicial officer from exercising, during adverse weather or other emergency situations, any in chambers or ex parte jurisdiction conferred by law upon that judge or judicial officer, as provided by law. The effectiveness of any such exercise shall not be affected by a determination by the Chief Justice that catastrophic conditions existed at the time it was exercised."

Section 2. This act becomes effective July 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1502

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

H1502-ASN-003

Date_____,2000

Comm. Sub. [YES]
Amends Title []
Second Edition

moves to amend the bill on page 1, line 23, by deleting the word "his" and substituting the word "this"; and

further amends the bill on page 2, line 26, by deleting that line and adding the following:

"Section 2. This act is effective when it becomes law, and applies to court closings occurring on or after the date of effectiveness.".

SIGNED _____
Amendment Sponsor

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

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

S1335-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 1335
THIS IS A DRAFT 4-JUL-00 17:32:09
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: 2000 Technical Corrections. (Public)

Sponsors:

Referred to:

May 18, 2000

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 OTHER TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-38.4(1) reads as rewritten:

"(1) The Supreme Court may adopt standards for the certification and conduct of mediators and other neutrals who participate in settlement procedures conducted pursuant to this section. The standards may also regulate mediator training programs. The Supreme Court may adopt procedures for the enforcement of those standards. The administration of mediator certification, regulation of mediator conduct, and decertification shall be conducted through the Dispute Resolution Commission."

Section 2. G.S. 18B-603(f)(8) reads as rewritten:

"(8) The permits authorized by ~~G.S. 18B-100(1),~~ G.S. 18B-1001(1), (3), (5), and (10) for tourism resorts;".

Section 3. G.S. 20-19(c3)(3) reads as rewritten:

"(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 greater than 0.00 ~~or more~~ at any relevant time after the driving;".

Section 4. G.S. 20-19(c3)(4) reads as rewritten:

"(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 greater than 0.00 ~~or more~~ at any relevant time after the driving."

Section 5. 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 6. 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 7. 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 8. G.S. 31B-4(a) reads as rewritten:

"(a) The right to renounce property or an interest therein is barred by:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor by the person authorized to renounce,

(2) A written waiver of the right to renounce, or

(3) Repealed by Session Laws 1998-148, s. 4.

(4) A sale of the property or interest under judicial sale made before the renunciation is effected."

Section 9. G.S. 43-46 reads as rewritten:

"**§ 43-46. Notice of delinquent taxes filed.**

It shall be the duty of the tax collector of each taxing unit, not later than June 30 following the date the taxes became delinquent, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or assessments thereon, including ~~the~~ interest, in the office of the register of deeds for registration; and if such officer fails to perform such duty, and there shall be subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall acquire a good title free from any lien for such taxes and assessments, and the collector and his sureties shall be liable for the payment of the taxes and assessments with the interest thereon. The register of deeds shall enter the notice of

delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate from the time it is noted on the record copy. The register of deeds shall enter the notice of cancellation of the tax lien on the record copy of the certificate of title upon presentation of satisfactory evidence of payment."

Section 10.(a) Section 2.2 of S.L. 1999-189 and Section 50 of S.L. 1999-456 are repealed.

Section 10. (b) G.S. 57C-2-20 reads as rewritten:

"**§ 57C-2-20. Formation.**

(a) One or more persons may ~~organize~~ form a limited liability company by delivering executed articles of organization to the Secretary of State for filing. A limited liability company may also be formed through the conversion of another business entity pursuant to Part 1 of Article 9A of this Chapter.

(b) (1) When the filing by the Secretary of State ~~files~~ of the articles of ~~organization,~~ organization becomes effective, the proposed organization becomes a limited liability company subject to this Chapter and to the purposes, conditions, and provisions stated in the ~~articles, and the person executing the articles of organization become members of the limited liability company.~~ articles of organization.

(2) Filing of the articles of organization by the Secretary of State is conclusive evidence of the ~~organization~~ formation of the limited liability company, except in a proceeding by the State to cancel or revoke the articles of organization or involuntarily dissolve the limited liability company.

(c) If initial members are not identified in the articles of organization of a limited liability company in the manner provided in G.S. 57C-3-01(a), the organizers shall hold one or more meetings at the call of a majority of the organizers to identify the initial members of the limited liability company. Unless otherwise provided in this Chapter or in the articles of organization of the limited liability company, all 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 11. G.S. 58-7-70 reads as rewritten:

"**§ 58-7-70. Effects of redomestication.**

The ~~license,~~ agent appointments and licenses, rates, and other items that the Commissioner authorizes or grants, in his discretion, that are in existence at the time any insurer licensed to transact the business of insurance in this State transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method, shall continue in full force and effect upon such transfer if such insurer remains duly licensed to transact the business of insurance in this State. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the insurer or its new location unless so ordered by the Commissioner. Every transferring insurer shall file new policy forms with the Commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the Commissioner: Provided, however, every such transferring insurer shall (i) notify the Commissioner of the details of the proposed transfer and (ii) promptly file any resulting amendments to corporate documents filed or required to be filed with the Commissioner."

Section 12. G.S. 58-28-15 reads as rewritten:

"**§ 58-28-15. Validity of acts or contracts of unauthorized company shall not impair obligation of contract as to the company; maintenance of suits; right to defend.**

The failure of a company to obtain a license shall not impair the validity of any acts or contracts of the company. Any person or insured holding contracts of insurance of an unauthorized insurer may bring an action in the courts of this State under the provisions of G.S. 58-16-35 for the enforcement of any rights pursuant to the contract of insurance. The failure of the insurance company to obtain a license shall not prevent such company from defending any action at law or suit in equity in any court of this State so long as the said company fully complies with the provisions of G.S. 58-16-35(c), but no company transacting insurance business in this State without a license shall be permitted to maintain an action at law or in equity in any court of this State to enforce any right, claim or demand arising out of the transaction of such business until such company shall have obtained a license. Nor shall an action at law or in equity be maintained in any court of this State by any

successor or assignee of such company on any such right, claim or demand originally held by such company until a license shall have been obtained by the company or by a company which has acquired all or substantially all of its assets. Nothing in this section shall be construed to abrogate the conditions of admission into this State nor to impair the authority of the Commissioner with respect to the issuance of ~~certificates of authority [licenses].~~ licenses. The Commissioner in considering the issuance of a license shall take into consideration the acts or transactions which an unauthorized company has engaged in in this State prior to its application for a license."

Section 13. G.S. 58-30-10(6) reads as rewritten:

"(6) 'Doing business' includes any of the following acts by insurers, whether effected by mail or otherwise:

a. The issuance or delivery of contracts of insurance to persons resident in this State;

b. The solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;

c. The collection of premiums, membership fees, assessments, or other consideration for such contracts;

d. The transaction of matters subsequent to execution of such contracts and arising out of them;

e. Operating as an insurer under a license ~~or license~~ issued by the Department; or

f. The purchase of contracts of insurance issued to persons in this State by an assumption agreement."

Section 14. G.S. 58-30-55(2) reads as rewritten:

"**§ 58-30-55. Condition on release from delinquency proceedings.**

No insurer that is subject to any delinquency proceedings, whether formal or informal, administrative or judicial, shall:

(1) Be released from such proceeding, unless such proceeding is converted into a judicial rehabilitation or liquidation proceeding;

(2) Be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked ~~license or~~ license;

(3) Be returned to the control of its shareholders or private management; or

(4) Have any of its assets returned to the control of its shareholders or private management;

until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the insurer shall have been approved by the guaranty associations."

Section 15. G.S. 58-42-45(a) reads as rewritten:

"(a) The provisions of Chapter 150B of the General Statutes shall apply to this Article.

~~shall pursuant to~~".

Section 16. G.S. 58-50-1 reads as rewritten:

"**§ 58-50-1. Waiver by insurer.**

The acknowledgment by any insurer of the receipt of notice given under any policy covered by Articles 49, 50 through 55, 65, or 67 of this Chapter, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim ~~[under]~~ under the policy, shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under the policy."

Section 17. G.S. 59-201(a) reads as rewritten:

"(a) In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the Secretary of State and set forth:

(1) The name of the limited ~~partnership;~~ partnership.

(2) The address, including county and city or town, and street and number, if any, of the registered office and the name of the registered agent at such address for service of process required to be maintained by ~~G.S. 59-105;~~ G.S. 59-105.

(3) The latest date upon which the limited partnership is to ~~dissolve; and~~ dissolve.

(4) The name and the address, including county and city or town, and street and number, if any, of each general partner.

(5) The address, including county and city or town, and street and number, if any, of the office at which the records referred to in G.S. 59-106 are kept, if such records are not kept at the registered office."

Section 18. G.S. 89C-12 reads as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant

was rejected or a certificate of licensure granted, and the date licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded by the Board, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all licensed professional engineers and all licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each year. The roster shall be printed by the Board out of the Board's fund and distributed as described in the Board's rules. On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of the report, together with a complete statement of the receipts and expenditures of the Board attested by the chair and the secretary and a copy of the ~~the~~ roster of licensed professional engineers and professional land surveyors."

Section 19.(a) G.S. 93A-3(a) reads as rewritten:

"(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate brokers or real estate ~~salesmen.~~ salespersons. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of ~~two~~ three members expire in one year, the terms of ~~two~~ three members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission except vacancies in legislative appointments shall be filled under G.S. 120-122."

Section 19.(b) The Revisor of Statutes is authorized to delete any reference to the words "salesman", "salesman's", "salesmen", and "salesmen's" wherever they appear in Chapter 93A of the General Statutes and to substitute, as appropriate, the words "salesperson", "salesperson's", "salespersons", and "salesperson's".

Section 20.(a) Section 16 of S.L. 1999-293 is repealed.

Section 20.(b) G.S. 110-136.3 is amended by adding a new subsection to read:

"(d1) Employment verifications. -- For the purpose of establishing or modifying a child support order, the amount of the obligor's gross income may be established by a written statement signed by the obligor's employer or the employer's designee or an Employee Verification form produced by the Automated Collections Tracking System that has been completed and signed by the obligor's employer or the employer's designee. A written statement signed by the employer of the obligor or the employer's designee that sets forth an obligor's gross income, as well as an Employee Verification form signed by the obligor's employer or the employer's designee, shall be admissible evidence in any action establishing or modifying a child support order."

Section 21.(a) The introductory language of Section 6 of S.L. 1998-220 reads as rewritten:

"Section 6. ~~G.S. 115C-174.21(b)~~ G.S. 115C-174.11(b) reads as rewritten:"

Section 21.(b) The introductory language of Section 11 of S.L. 1998-220 reads as rewritten:

"Section 11. ~~G.S. 115C-174.21(c)~~ G.S. 115C-174.11(c) reads as rewritten:"

Section 22. G.S. 115C-105.46(2) reads as rewritten:

"(2) Shall provide, in cooperation with the Board of Governors of The University of North Carolina, ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under ~~G.S. 115C-105.57.~~ G.S. 115C-105.47."

Section 23. G.S. 115C-325(n) reads as rewritten:

"(n) Appeal. -- Any career employee who has been dismissed or demoted under G.S. 115C-325(e)(2), or under G.S. 115C-325(j2), or who has been suspended without pay under G.S. 115C-325(a)(4a), or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1, ~~or any school administrator whose contract is not renewed in accordance with G.S. 115C-287.1,~~ or any probationary teacher whose contract is not renewed under

G.S. 115C-325(m)(2) shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the career employee is employed. This appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be determined under G.S. 115C-325(j2)(8) or G.S. 115C-325(j3)(10). A career employee who has been demoted or dismissed, or a school administrator whose contract is not renewed, who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action."

Section 24. G.S. 115C-325(q)(1)b. reads as rewritten:

"b. If the State Board through its designee recommends the dismissal of a principal under this subdivision, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.

~~These principals shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.~~"

Section 25. G.S. 115C-404(a) reads as rewritten:

"**§ 115C-404. Use of juvenile court information.**

(a) Written notifications received in accordance with G.S. 7B-3101 and information gained from examination of juvenile records in accordance with G.S. 7B-3100 are confidential records, are not public records as defined under G.S. 132-1, and shall not be made part of the student's official record under G.S. 115C-402. Immediately upon receipt, the principal shall maintain these documents in a safe, locked record storage that is separate from the student's other school records. The principal shall shred, burn, or otherwise destroy documents received in accordance with G.S. 7B-3100 to protect the confidentiality of the information when the principal receives notification that the court dismissed the petition under G.S. 7B-2411, the court transferred jurisdiction over the student to superior court under G.S. 7B-

2200, or the court granted the student's petition for expunction of the records. The principal shall shred, burn, or otherwise destroy all information gained from examination of juvenile records in accordance with G.S. 7B-3100 when the principal finds that the school no longer needs the information to protect the safety of or to improve the educational opportunities for the student or others. In no case shall the principal make a copy of these documents.

~~G.S. 7A-675.2 Article 31 of Chapter 7B of the General Statutes petition, court, records pursuant to Chapter 7B of the General Statutes.~~"

Section 26. G.S. 116-14(b1) reads as rewritten:

"(b1) The President shall receive General Fund appropriations made by the General Assembly for continuing operations of The University of North Carolina that are administered by the President and the President's staff complement established pursuant to G.S. 116-14(b) in the form of a single sum to Budget Code 16010 of The University of North Carolina in the manner and under the conditions prescribed by G.S. 116-30.2. The President, with respect to the foregoing appropriations, shall have the same duties and responsibilities that are prescribed by G.S. 116-30.2 for the Chancellor of a special responsibility constituent institution. The President may establish procedures for transferring funds from Budget Code 16010 to the constituent institutions for nonrecurring expenditures. The President may identify funds for capital improvement projects from Budget Code 16010, and the capital improvement projects may be established following the procedures set out in ~~in~~ G.S. 143-18.1."

Section 27. G.S. 116B-66(a) reads as rewritten:

"(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state

did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state; or

~~(4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or~~

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under ~~G.S. 116B-56(7),~~ G.S. 116B-56(a)(6), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state."

Section 28. The catchline of G.S. 120-9 reads as rewritten:

"**§ 120-9. Freedom of ~~speech; protection from arrest.~~ speech.**"

Section 29. G.S. 126-2(b)(5) reads as rewritten:

"(5) One member of the public at large appointed by the Governor. The initial member appointed under this subdivision shall serve for a term expiring June 30, 2001; the terms of subsequent appointees shall be for six years.

~~seven~~".

Section 30. G.S. 131D-2(b)(1) reads as rewritten:

"(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of

this section or any rules adopted hereunder adult care. ~~adult care adult care~~ Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. A license shall not be renewed if outstanding fines and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;

b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and

c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and

2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

b. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Medical Care Commission, for substantial failure to comply with the provisions of this section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

Section 31. G.S. 136-176(b)(2) reads as rewritten:

"(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in ~~G.S. 136-80~~ G.S. 136-180 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops."

Section 32. G.S. 143-151.57(a) reads as rewritten:

"(a) Maximum Fees. -- The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	Maximum Fee
Application for home inspector license	$25.00
Application for associate home inspector license	15.00

Home inspector examination	75.00
Issuance of home inspector license	150.00
Issuance of associate home inspector license	100.00
Late renewal of home inspector license	25.00
Late renewal of associate home inspector license ~~inspector~~	15.00
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per licensee	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing.

Section 33. G.S. 143B-270(c) reads as rewritten:

"(c) Members appointed shall hold office for a term of four years beginning on October 1, 1987, except that three of the initial appointees and these three appointees' immediate successors shall serve a term of two years, with the immediate successors' terms expiring on September 30, 1991. ~~The Speaker, Lieutenant Governor, and Governor shall each select one of their initial appointees to serve a two-year term.~~"

Section 34. G.S. 160A-23.1(d) reads as rewritten:

"(d) If the council adopts the resolution provided for in subsection (a) of this section ~~and:~~

~~(1)~~ ~~Does~~ and does not adopt the changes, or

~~(2)~~ ~~Does~~ does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

(1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in 2002, the second primary, if necessary, shall be held on the second primary election date for county officers in 2002, and the general election shall be held on the general election date for county officers in ~~1992;~~ 2002;

(2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in 2002 and the

election shall be held on the date for the second primary for county officers in 2002;

(3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in 2002;

(4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in 2002 and the runoffs, if necessary, shall be held on the date for the second primary for county officers in 2002.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in July 2002, except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of 2002."

Section 35. G.S. 168A-5(b)(6) reads as rewritten:

"(6) To require or request a person to undergo a medical examination, which may include a medical history, for the purpose of determining the person's ability or capacity to safely and satisfactorily perform the duties of available jobs for which the person is otherwise qualified, or to aid in determining possible accommodations for a disabling condition, provided (i) that an offer of employment has been made on the condition that the person meets the physical and mental requirements of the job with or without reasonable accommodation; and (ii) that the examination, unless limited to determining the extent to which a person's disabling condition would interfere" with his or her ability or capacity to safely and satisfactorily perform the duties of the ~~the~~ job in question or the possible accommodations for a disabling condition, is required of all persons conditionally offered employment for the same position regardless of disabling condition;"

Section 36. G.S. 5A-23(g) reads as rewritten:

"(g) ~~A judge conducting a hearing to determine if a person is in civil contempt may at that hearing, upon making the required findings, find the person in criminal contempt for the same conduct, regardless of whether imprisonment for civil contempt is proper in the case.~~ A person who is found in civil contempt under

this Article shall not, for the same conduct, be found in criminal contempt under Article 1 of this Chapter."

Section 37. G.S. 7A-41(c)(8) reads as rewritten:

"(8) The names and boundaries of precincts in New Hanover and Pender Counties are those in existence on ~~May~~ December 1, 1999."

Section 38. G.S. 14-113.20(b) reads as rewritten:

"(b) The term "identifying information" as used in this section includes the following:

(1) Social security numbers.
(2) Drivers license numbers.
(3) Checking account numbers.
(4) Savings account numbers.
(5) Credit card numbers.
(6) Debit card numbers.
(7) Personal Identification (PIN) Code as defined in ~~G.S. 14-113.8(8).~~ G.S. 14-113.8(6).
(8) Electronic identification numbers.
(9) Digital signatures.
(10) Any other numbers or information that can be used to access a person's financial resources."

Section 39.(a) G.S. 17C-3(a) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called 'the ~~Commission," in the Department of Justice.~~ Commission.' The Commission shall be composed of 26 members as follows:

(1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.
(2) Police Officers. -- Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.
(3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; the Secretary of the Department of Correction; the President of the Department of Community Colleges.
(3a) A representative of the Office of Juvenile Justice.
(4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities;

one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years."

Section 39.(b) G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Chapter, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

(1) Promulgate rules and regulations for the administration of this Chapter, which rules may require (i) the submission by any criminal justice agency of information with respect to the employment, education, retention, and training of its criminal justice officers, and (ii) the submission by any criminal justice training school of information with respect to its criminal justice training programs that are required by this Chapter;

(2) Establish minimum educational and training standards that must be met in order to qualify for entry level employment and retention as a criminal

justice officer in temporary or probationary status or in a permanent position;

(3) ~~Certify,~~ Certify and recertify, pursuant to the standards that it has established for the purpose, persons as qualified under the provisions of this Chapter to be employed at entry level and retained as criminal justice officers;

(4) Establish minimum standards for the certification of criminal justice training schools and programs or courses of instruction that are required by this Chapter;

(5) ~~Certify,~~ Certify and recertify, pursuant to the standards that it has established for the purpose, criminal justice training schools and programs or courses of instruction that are required by this Chapter;

(6) Establish minimum standards and levels of education and experience for all criminal justice instructors who participate in programs or courses of instruction that are required by this Chapter;

(7) ~~Certify,~~ Certify and recertify, pursuant to the standards that it has established for the purpose, criminal justice instructors who participate in programs or courses of instruction that are required by this Chapter;

(8) Investigate and make such evaluations as may be necessary to determine if criminal justice agencies, schools, and individuals are complying with the provisions of this Chapter;

(9) Adopt and amend bylaws, consistent with law, for its internal management and control;

(10) Enter into contracts incident to the administration of its authority pursuant to this Chapter;

(11) Establish minimum standards and levels of training for certification and periodic recertification of operators of and instructors for training programs in radio microwave, laser, and other electronic speed-measuring instruments;

(12) Certify and recertify, pursuant to the standards that it has established, operators and instructors for training programs for each approved type of radio microwave, laser, and other electronic speed-measuring instruments;

(13) In conjunction with the Secretary of Crime Control and Public Safety, approve use of specific models and types of radio microwave, laser, and other speed-measuring instruments and establish the procedures for operation of each approved instrument and standards for calibration and testing for accuracy of each approved instrument.

(14) Establish minimum standards for in-service training for criminal justice officers."

Section 40. G.S. 24-1.1E(c) reads as rewritten;

"(c) Prohibited Acts and Practices. -- The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lending without home-ownership counseling. -- A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

(2) No lending without due regard to repayment ability. -- As used in this subsection, the term "obligor" refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the scheduled

payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.

(3) No financing of fees or charges. -- In making a high-cost home loan, a lender may not directly or indirectly finance:

a. Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced;

b. Any points and fees; or

c. Any other charges payable to third parties.

(4) No benefit from refinancing existing high-cost home loan with new high-cost home loan. -- A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder.

(5) Restrictions on home-improvement contracts. -- A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(6) No shifting of liability. -- A lender is prohibited from shifting any loss, liability or claim of any kind to the closing agent or closing attorney for any violation of section."

Section 41. G.S. 42A-19 reads as rewritten:

"**§ 42A-19. Transfer of property subject to a vacation rental agreement.**

(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take his or her title subject to the vacation rental agreement if the vacation rental is to end not later than 180 days after the grantee's interest in

the property is recorded in the office of the register of deeds. If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor such terms, but the tenant shall be entitled to a refund of ~~any~~ payments made by him or ~~her.~~ her, as provided in subsection (b) of this section. Prior to entering into any contract of sale, the landlord shall disclose to the grantee the time periods that the property is subject to a vacation rental agreement. Not later than 10 days after entering into the contract of sale the landlord shall disclose to the grantee each tenant's name and address and shall provide the grantee with a copy of each vacation rental agreement. Not later than 10 days after transfer of the property, the grantee or the grantee's agent shall:

(1) Notify each tenant in writing of the property transfer, the grantee's name and address, and the date the grantee's interest was recorded.

(2) Advise each tenant whether he or she has the right to occupy the property subject to the terms of the vacation rental agreement and the provisions of this section.

(3) Advise each tenant of whether he or she has the right to receive a refund of any payments made by him or her.

(b) Except as otherwise provided in this subsection, upon termination of the landlord's interest in the residential property subject to a vacation rental agreement, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the landlord's successor in interest and thereafter notify the tenant by mail of such transfer and of the transferee's name and address. For vacation rentals that end more than 180 days after the recording of the interest of the landlord's successor in interest, unless the landlord's successor in interest has agreed in writing to honor the vacation rental agreement, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the tenant. Compliance with this subsection shall relieve the landlord or real estate broker of further liability with respect

to any payment of rent or fees. Funds held as a security deposit shall be disbursed in accordance with G.S. 42A-18.

~~(c) If, prior to the tenant's occupancy of the property, the landlord's interest in the property is involuntarily transferred to another, the landlord shall refund to the tenant within 60 days after the transfer any payments made by the tenant.~~

(d) The failure of a landlord to comply with the provisions of this section shall constitute an unfair trade practice in violation of G.S. 75-1.1. A landlord who complies with the requirements of this section shall have no further obligations to the tenant."

Section 42.(a) G.S. 43-22 reads as rewritten:

"**§43-22. Jurisdiction of courts; registered land affected only by registration.**

Except as otherwise specially provided by this Chapter, registered land and ownership therein shall be subject to the jurisdiction of the courts in the same manner as if it had not been registered; but the registration shall be the only operative act to transfer or affect the title to registered land, and shall date from the time the writing, instrument or record to be registered is duly filed in the office of the register of deeds, subject to the provisions of this Chapter; no voluntary or involuntary transaction shall affect the title to registered lands until registered in accordance with the provisions of this Chapter: Provided, that all mortgages, deeds, surrendered and canceled certificates, when new certificates are issued for the land so deeded, the other paper- writings, if any, pertaining to and affecting the registered estate or estates herein referred to, shall be filed by the register of deeds for reference and information, but the ~~registration of titles book~~ consolidated real property records shall be and constitute sole and conclusive legal evidence of title, except in cases of mistake and fraud, which shall be corrected in the methods now provided for the correction of papers authorized to be registered."

Section 42.(b) G.S. 43-25 reads as rewritten:

"**§43-25. Release from registration.**

Whenever the record owner of any estate in lands, the title to which has been registered or attempted to be registered in accordance with the provisions of this Chapter, desires to have such estate released from the provisions of said Chapter insofar as said Chapter relates to the form of conveyance, so that such estate may ever thereafter be conveyed, either absolutely or upon condition or trust, by the use of any desired form of conveyance other than the certificate of title prescribed by said Chapter,

such owner may present his owner's certificate of title to such registered estate to the register of deeds of the county wherein such land lies, with a memorandum or statement written by him on the margin thereof in the words following, or words of similar import, to wit: "I (or we),....., being the owner (or owners) of the registered estate evidenced by this certificate of title, do hereby release said estate from the provisions of Chapter 43 of the General Statutes of North Carolina insofar as said Chapter relates to the form of conveyance, so that hereafter the said estate may, and shall be forever until again hereafter registered in accordance with the provisions of said Chapter and acts amendatory thereof, conveyed, either absolutely or upon condition or trust, by any form of conveyance other than the certificate of title prescribed by said Chapter, and in the same manner as if said estate had never been registered." Which said memorandum or statement shall further state that it is made pursuant to the provisions of this section, and shall be signed by such record owner and attested by the register of deeds under his hand and official seal, and a like memorandum or statement so entered, signed and attested upon the margin of the record of the said owner's certificate of title in the ~~registration of titles book~~ consolidated real property records in said register's office, with the further notation made and signed by the register of deeds on the margin of the certificate of title in the ~~registration of titles book~~ consolidated real property records showing that such entry has been made upon the owner's certificate of title; and thereafter any conveyance of such registered estate, or any part thereof, by such owner, his heirs or assigns, by means of any desired form of conveyance other than such certificate of title shall be as valid and effectual to pass such estate of the owner according to the tenor and purport of such conveyance in the same manner and to the same extent as if such estate had never been so registered."

Section 42.(c) G.S. 43-31 reads as rewritten:

"**§ 43-31. When whole of land conveyed.**

Whenever the whole of any registered estate is transferred or conveyed the same shall be done by a transfer or conveyance attached to the certificate substantially as follows:

The owners (giving the names of the parties owning land described in the certificate) hereby, in consideration of _____ dollars, sell and convey to the purchaser (giving name of purchaser) the lot or tract of land, as the case may be, described in the certificate of title hereto attached. The

transfer shall be indexed on the grantor and grantee indexes in the same manner as deeds are indexed.

The same shall be signed and properly acknowledged by the parties and shall have the full force and effect of a deed in fee simple: Provided, that if the sale shall be in trust, upon condition, with power to sell or other unusual form of conveyance, the same shall be set out in the transfer, and shall be entered upon the ~~registration of titles book~~ consolidated real property records as hereinafter provided; that upon presentation of the transfer, together with the certificate of title, to the register of deeds, the transaction shall be duly noted and registered in accordance with the provisions of this Chapter, and certificate of title so presented shall be canceled and a new certificate with the same number issued to the purchaser thereof, which new certificate shall fully refer by number and also by name of holder to former certificate just canceled."

Section 42.(d) G.S. 43-35 reads as rewritten:

"**§43-35. References and cross references entered on register.**

In all cases the register of deeds shall place upon the ~~registry of title books~~ consolidated real property records and upon the certificate of title of such registered estate therein, references and cross references to the new certificates issued as above provided, in accordance with the provisions of this Article, and the new certificates issued shall fully refer by number and by name of the holder to the canceled certificate in place of which they are issued."

Section 42.(e) G.S. 43-36 reads as rewritten:

"**§ 43-36. When land conveyed as security.**

(a) Whole Land Conveyed. -- Whenever the owner of any registered estate shall desire to convey same as security for debt, it may be done in the following manner, by a short form of transfer, substantially as follows, to wit:

A.B. and wife (giving names of all owners or holders of certificates and their wives) hereby transfer to C.D. the tract or lot of land described as No. ..... in registration of titles book for ..... County, a certificate for the title for same being hereto attached, to secure a debt of ..... dollars, due to ....., of ..... County and State, on the .... day of ....., ..., evidenced by bond (or otherwise as the case may be) dated the ..... day of ....., ... In case of default in payment of said debt with accrued interest, ... days notice of sale required.

The same shall be signed and properly acknowledged by the parties making same, and shall be presented, together with the

owner's certificate, to the register of deeds, whose duty it shall be to note upon the owner's certificate and upon the certificate of title in the ~~registration of titles book~~ consolidated real property records the name of the trustee, the amount of debt, and the date of maturity of same.

(b) Part of Land Conveyed. -- When a part of the registered estate shall be so conveyed, the register of deeds shall note upon the ~~book~~ consolidated real property records and owner's certificate the part so conveyed, and if the same be required and the proper fee paid by the trustee, shall issue what shall be known as a partial certificate, over his hand and seal, setting out the portion so conveyed.

(c) Effect of Transfer. -- All transfers by such short form shall convey the power of sale upon due advertisement at the county courthouse and in some newspaper published in the county, or adjoining county, in the same manner and as fully as is now provided by law in the case of mortgages and deeds of trust and default therein.

(d) Other Encumbrances Noted. -- All registered encumbrances, rights or adverse claims affecting the estate represented thereby shall continue to be noted, not only upon the certificate of title in the ~~registration book,~~ consolidated real property records, but also upon the owner's certificate, until same shall have been released or discharged. And in the event of second or other subsequent voluntary encumbrances the holder of the certificate may be required to produce such certificate for the entry thereon or attachment thereto of the note of such subsequent charge or encumbrance as provided in this Article.

(e) Other Forms of Conveyance May Be Used. -- Nothing in this section nor this Chapter shall be construed to prevent the owner from conveying such land, or any part of the same, as security for a debt by deed of trust or mortgage in any form which may be agreed upon between the parties thereto, and having such deed of trust or mortgage recorded in the office of the register of deeds as other deeds of trust and mortgages are recorded: Provided, that the book and page of the record at which such deed of trust or mortgage is recorded shall be entered by the register of deeds upon the owner's certificate and also on the ~~registration of titles book.~~ consolidated real property records.

(f) Sale under Lien; New Certification. -- Upon foreclosure of such deed of trust or mortgage, or sale under execution for taxes or other lien on the land, the fact of such foreclosure or sale shall be reported by the trustee, mortgagee or other person authorized to make the same, to the register of deeds of the

county in which the land lies, and, upon satisfactory evidence thereof, it shall be his duty to call in and cancel the outstanding certificate of title for the land, so sold, and to issue a new certificate in its place to the purchaser or other person entitled thereto; and the production of such outstanding certificate and its surrender by the holder thereof may be compelled, upon notice to him, by motion before and order of the clerk of the superior court in the original proceeding or the clerk of the superior court of the county in which the land lies; but the right of appeal from such order may be exercised and shall be allowed as in other special proceedings, and pending any such appeal the rights of all parties shall be preserved."

Section 42.(f) G.S. 43-38 reads as rewritten:

"**§43-38. Transfers probated; partitions; contracts.**

All transfers of registered land shall be duly executed and probated as required by law upon like conveyances of other lands, and in all cases of change in boundary by partition, subtraction or addition of land there shall be an accurate survey and permanent marking of boundaries and accurate plots, showing the courses, distances and markings of every portion thereof, which shall be duly proved and registered as upon the initial registration. Such transfers shall be presented to the register of deeds for entry upon the ~~registration of titles book~~ consolidated real property records and upon the owner's certificate within 30 days from the date thereof, or become subject to any rights which may accrue to any other person by a prior registration. All leases or contracts affecting land for a period exceeding three years shall be in writing, duly proved before the clerk of the superior court, recorded in the register's office, and noted upon the registry and upon the owner's certificate."

Section 42.(g) G.S. 43-39 reads as rewritten:

"**§43-39. Certified copy of order of court noted.**

In voluntary transactions a certificate from the proper State, county or court officer, or certified copy of the order, decree or judgment of any court of competent jurisdiction shall be authority for him to order a proper notation thereof upon the ~~registration of titles book,~~ consolidated real property records, and for the register of deeds to note the transaction under the direction of the court."

Section 42.(h) G.S. 43-42 reads as rewritten:

"**§43-42. Conveyance of registered land in trust.**

Whenever a writing, instrument or record is filed for the purpose of transferring registered land in trust, or upon any

equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in such land, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate, but it shall be sufficient to enter in the ~~book~~ consolidated real property records and upon the certificates a memorial thereof by the terms "in trust" or "upon condition" or in other apt words, and to refer by number to the writing, instrument or record authorizing or creating the same. And if express power is given to sell, encumber or deal with the land in any manner, such power shall be noted upon the certificates by the term "with power to sell" or "with power to encumber," or by other apt words."

Section 42.(i) G.S. 43-44 reads as rewritten:

"**§ 43-44. Validating conveyance by entry on margin of certificate.**

In all cases where the owner of any estate in lands, the title to which has been registered or attempted to be registered in accordance with the provisions of this Chapter, has before August 21, 1924, and subsequent to such registration made any conveyance of such estate, or any portion thereof, by any form of conveyance sufficient in law to pass the title thereto if the title to said lands had not been so registered, the record owner and holder of the certificate of title covering such registered estate may enter upon the margin of his certificate of title in the ~~registration of titles book~~ consolidated real property records a memorandum showing that such registered estate, or a portion thereof, has been so conveyed, and further showing the name of the grantee or grantees and the number of the book and the page thereof where such conveyance is recorded in the office of the register of deeds, and make a like entry upon the owner's certificate of title held by him, both of such entries to be signed by him and witnessed by the register of deeds, and attested by the seal of office of the register of deeds upon said owner's certificate, with the further notation made and signed by the register of deeds on the margin of the certificate of title in the ~~registration of titles book~~ consolidated real property records showing that such entry has been made upon the owner's certificate of title, and thereupon such conveyance shall become and be as valid and effectual to pass such estate of the owner according to the tenor and purport of such conveyance as if the title to said lands had never been so registered, whether such conveyance be in form absolute or upon condition of trust; and in all cases where such conveyance has been made before August 21,

1924, upon the making of the entries herein authorized by the record owner and holder of such owner's certificate of title, the grantee and his heirs and assigns shall thereafter have the same right to convey the said estate or any part of the same in all respects as if the title to said lands had never been so registered."

Section 42.(j) This section is effective retroactive to January 1, 2000.

Section 43. G.S. 55-5-04(b) reads as rewritten:

"(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the Secretary of State of any such process, notice or demand shall be made by delivering to and leaving with ~~him~~ the Secretary of State or with any clerk having charge of the corporation department of ~~his~~ the Secretary of State's office, duplicate copies of such process, notice or ~~demand.~~ demand and the fee required by G.S. 55-1-22(b). In the event any such process, notice or demand is served on the Secretary of ~~State, he~~ State in the manner provided for in this section, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if there is no mailing address for the principal office on file, to the corporation at its registered office. Service on a corporation under this subsection shall be effective for all purposes from and after the date of such service on the Secretary of State."

Section 44. G.S. 55-9-05 reads as rewritten:

"**§ 55-9-05. Exemptions.**

The provisions of G.S. 55-9-02 shall not be applicable to any corporation that shall be made the subject of a business combination by an other entity if: (i) the corporation was not a public corporation (as defined in G.S. 55-1-40 (18a)) at the time such other entity acquired in excess of ten percent (10%) of the voting shares; (ii) on or before September 30, 1990 (or such earlier date as may be irrevocably established by resolution of the board of directors), the board of directors of a corporation to which G.S. 55-9-02 was not applicable on July 1, 1990, (other than a corporation described in G.S. 55-9-05 (iii)) adopted a

bylaw stating that the provisions of this Article shall not be applicable to the corporation; (iii) in the case of a corporation to which G.S. 55-9-02 was not applicable on July 1, 1990, as the result of adoption by its board of directors under G.S. 55-9-05(ii) of a bylaw providing that G.S. 55-9-02 not apply to such corporation, the board of directors of such corporation shall not have rescinded such bylaw on or before September 30, 1990 (or such earlier date as may be irrevocably established by resolution of the board of directors); (iv) in the case of a corporation (including its predecessors) which becomes a public corporation for the first time after July 1, 1990, such corporation adopts a bylaw within 90 days of becoming a public corporation stating that the provisions of this Article shall not be applicable to it; (v) in the case of a newly formed corporation after April 23, 1987, the initial articles of incorporation of the corporation shall provide that the provisions of this Article shall not be applicable; ~~or~~ (vi) such business combination was the subject of an existing agreement of the corporation on ~~April 23, 1987.~~ April 23, 1987; or (vii) on or after September 1, 2000 and on or before December 31, 2000 (or such earlier date as may be irrevocably established by resolution of the board of directors), the board of directors of a corporation to which G.S. 55-9-02 was applicable on September 1, 2000 adopted a bylaw stating that the provisions of this Article shall not be applicable to the corporation. Neither the adoption or failure to adopt a bylaw of the type set forth in ~~G.S. 55-9-05(ii) or (iv)~~ subdivisions (ii), (iv), or (vii) of this section nor the rescission or failure to rescind a bylaw of the type referred to in G.S. 55-9-05(iii) shall constitute grounds for any cause of action, at law or in equity, against the corporation or any of its directors."

Section 45. G.S. 55-11-10(e1) reads as rewritten:

"(e1) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement (i) of any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article

13 of this Chapter, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such ~~process.~~ process and the fee required by G.S. 55-1-22(b). Upon receipt of service of process on behalf of a surviving business ~~entity,~~ entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application."

Section 46. G.S. 55A-5-04(b) reads as rewritten:

"(b) When a corporation fails to appoint or maintain a registered agent in this State, or when its registered agent cannot with due diligence be found at the registered office, the Secretary of State shall be an agent of the corporation upon whom any process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with the Secretary of State or with any clerk having charge of the corporation department of ~~his~~ the Secretary of State's office, duplicate copies of such process, notice, or ~~demand.~~ demand and the fee required by G.S. 55A-1-22(b). In the event any process, notice, or demand is served on the Secretary of ~~State, he~~ State in the manner provided for in this section, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the corporation at its principal office shown in its most recent annual report, if applicable, the articles of incorporation, the Designation of Principal Office Address form, in any subsequent Corporation's Statement of Change

of Principal Office Address form, or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if there is no mailing address for the principal office on file, to the corporation at its registered office. Service on a corporation under this subsection shall be effective for all purposes from and after the date of such service on the Secretary of State."

Section 47. G.S. 55-9A-09 reads as rewritten:

"**§ 55-9A-09. Exemptions.**

The provisions of this Article shall not be applicable to any corporation if, on or before September 30, 1990, or such earlier date as may be irrevocably established by resolution of the board of directors, or at any time before the corporation becomes, or after it ceases to be, a covered corporation, the board of directors adopts a bylaw stating that the provisions of this Article shall not be applicable to the corporation; or, in the case of a corporation formed after August 12, 1987, its initial articles of incorporation provide that this Article shall not be applicable to the ~~corporation.~~ corporation; or on or after September 1, 2000 and on or before December 31, 2000 (or such earlier date as may be irrevocably established by resolution of the board of directors), the board of directors of a corporation to which the provisions of this Article was applicable on September 1, 2000 adopted a bylaw stating that the provisions of this Article shall not be applicable to the corporation. Neither adoption nor failure to adopt such a bylaw or provision shall constitute grounds for any cause of action against the corporation, or any officer or director of the corporation."

Section 48. G.S. 55A-11-09(e1) reads as rewritten:

"(e1) If the surviving business entity is not a domestic limited liability company, a domestic business corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic business corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic business corporation under Article 13 of Chapter 55 of the General Statutes,

and (iii) any obligation of the surviving business entity arising from the merger; and

(2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such ~~process.~~ process and the fee required by G.S. 55A-1-22(b). Upon receipt of service of process on behalf of a surviving business ~~entity,~~ entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application."

Section 49. G.S. 57C-2-43(b) reads as rewritten:

"(b) Whenever a limited liability company shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of the limited liability company upon whom any process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with the Secretary of State or with any clerk having charge of the limited liability company department of the Secretary of State's office, duplicate copies of the process, notice, or ~~demand.~~ demand and the fee required by G.S. 57C-1-22(b). In the event any such process, notice, or demand is served on the Secretary of ~~State,~~ State in the manner provided for in this section, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the limited liability company at its principal office shown in its most recent annual report, at the address indicated in the latest communication received by the Secretary of State from the limited liability company stating the

current mailing address of its principal office or, if there is no mailing address for the principal office on file, to the limited liability company at its registered office. Service on a limited liability company under this subsection shall be effective for all purposes from and after the date of the service on the Secretary of State."

Section 50. G.S. 57C-7-04(a) reads as rewritten:

"(a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of G.S. 57C-7-06;

(2) The name of the state or country under whose law it is organized;

(3) Its date of organization and period of duration;

(4) The street address, and the mailing address if different from the street address, of its principal ~~office in the state or country under whose law it is organized;~~ office;

(5) The street address, and the mailing address if different from the street address, of its registered office in this State and the name of its registered agent at that office; and

(6) The names and usual business addresses of its current managers."

Section 51. G.S. 57C-9A-23(b) reads as rewritten:

"(b) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership when the merger takes effect, the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii)

any obligation of the surviving business entity arising from the merger; and

(2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such ~~process.~~ process and the fee required by G.S. 57C-1-22(b). Upon receipt of service of process on behalf of a surviving business ~~entity,~~ entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application."

Section 52. G.S. 59-73.6(b) reads as rewritten:

"(b) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership when the merger takes effect, the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for

service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such ~~process.~~ process and the fees required by G.S. 59-73.7(c). Upon receipt of service of process on behalf of a surviving business ~~entity,~~ entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application."

Section 53. G.S. 59-84.2(h) reads as rewritten:

"(h) ~~An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal.~~ A registration is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth the following:

(1) The name of the partnership.

(2) The date of filing of the registration.

(3) The amendment to the registration."

Section 54. G.S. 59-91(f) reads as rewritten:

"(f) ~~An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal.~~ A registration is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth the following:

(1) The name of the partnership.

(2) The date of filing of the registration.

(3) The amendment to the registration."

Section 55. G.S. 59-902(a)(4) reads as rewritten:

"(a) Before transacting business in this State, a foreign limited partnership shall procure a certificate of authority to transact business in this State from the Secretary of State. No foreign limited partnership shall be entitled to transact in this

State any business which a limited partnership organized under this Article is not permitted to transact. In order to register, a foreign limited partnership shall deliver to the Secretary of State an original and one conformed copy of an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this State;

(2) The jurisdiction and date of its formation;

(3) The date of formation and the period of duration;

(4) The address, including county and city or town, and street and number, if any, of the principal office of the foreign limited ~~partnership in the jurisdiction under the laws of which it is formed;~~ partnership;

(5) The address, including county and city or town, and street and number, if any, of the proposed registered office of the foreign limited partnership in this State, and the name of its proposed registered agent in this State at such address; the agent must be an individual resident of this State, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in this State;

(6) If the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and addresses of the partners, a list of the names and addresses or, at the election of the foreign limited partnership, a list of the names and addresses of the general partners and the address, including county and city or town, and street and number, of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep such records until such foreign limited partnership's registration in this State is cancelled;

(7) A statement that in consideration of the issuance of a certificate of authority to transact business in this State, the foreign limited partnership appoints the Secretary of State of North Carolina as the agent to receive service of process, notice, or demand, whenever the foreign limited partnership fails to appoint or maintain a registered agent in this State or whenever any

such registered agent cannot with reasonable diligence be found at the registered office;

(8) The names and addresses including county and city or town, and street and number, if any, of all of the general partners;

(9) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true."

Section 56. G.S. 62-302 reads as rewritten:

"**§ 62-302. Regulatory fee.**

(a) Fee Imposed. -- It is the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The cost of regulating public utilities is a burden incident to the privilege of operating as a public utility. Therefore, for the purpose of defraying the cost of regulating public utilities, every public utility subject to the jurisdiction of the Commission shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

It is also the policy of the State to provide limited oversight of certain electric membership corporations as provided in G.S. 62-53. Therefore, for the purpose of defraying the cost of providing the oversight authorized by G.S. 62-53 and G.S. 117-18.1, each fiscal year each electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16 shall pay an annual fee as provided in this section.

(b) Public Utility Rate. --

~~(1) For the 1989-90 fiscal year, the regulatory fee shall be the greater of (i) twelve hundredths percent (0.12%) of each public utility's North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents ($6.25) each quarter.~~

(2) ~~For fiscal years beginning on or after July 1, 1990, the~~ The public utility regulatory fee for each fiscal year shall be the greater of (i) a percentage rate, established by the General Assembly, of each public utility's North Carolina jurisdictional revenues for each

quarter or (ii) six dollars and twenty-five cents ($6.25) each quarter.

When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose a percentage rate of the public utility regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143-11. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. The General Assembly shall set the percentage rate of the public utility regulatory fee by law.

The percentage rate may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Commission and the Public Staff for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated increase or decrease in North Carolina jurisdictional revenues.

(3) If the Commission, the Public Staff, or both experience a revenue shortfall, the Commission shall implement a temporary public utility regulatory fee surcharge to avert the deficiency that would otherwise occur. In no event may the total percentage rate of the public utility regulatory fee plus any surcharge established by the Commission exceed twenty-five hundredths percent (0.25%).

(4) As used in this section, the term 'North Carolina jurisdictional revenues' means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but

not including tap-on fees or any other form of contributions in aid of construction.

(b1) Electric Membership Corporation Rate. -- ~~For the purpose of providing the oversight authorized by G.S. 62-53 and G.S. 117-18.1, beginning with the 1999-2000 fiscal year the North Carolina Electric Membership Corporation shall pay an annual flat fee to the fund established in subsection (d) of this section.~~ The ~~amount of the annual~~ electric membership corporation regulatory fee for each fiscal year shall be a dollar amount as established by the General Assembly by law.

When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose the amount of the electric membership corporation regulatory fee. For fiscal years beginning in an odd-numbered year, the proposed amount shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143-11. For fiscal years beginning in an even-numbered year, the proposed amount shall be included in a special budget message the Governor shall submit to the General Assembly.

The amount of the electric membership corporation regulatory fee proposed by the Commission may not exceed the amount necessary to defray the estimated cost of the operations of the Commission and the Public Staff for the regulation of the electric membership corporations in the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of the Commission and the Public Staff for the regulation of the electric membership corporations for the upcoming fiscal year. ~~The fee will be assessed on a quarterly basis and will be due and payable to the Commission on or before the 15th day of the second month following the end of each quarter.~~

(c) When Due. -- The electric membership corporation regulatory fee imposed under this section shall be paid in quarterly installments. The fee is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter.

The public utility regulatory fee imposed under this ~~section, except the fee imposed by subsection (b1) of this section,~~ section is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter. Every public utility subject to the public utility regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Commission. The report shall state the public utility's total

North Carolina jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting documentation that the Commission may by rule require. Receipts shall be reported on an accrual basis.

If a public utility's report for the first quarter of any fiscal year shows that application of the percentage rate would yield a quarterly fee of twenty-five dollars ($25.00) or less, the public utility shall pay an estimated fee for the entire fiscal year in the amount of twenty-five dollars ($25.00). If, after payment of the estimated fee, the public utility's subsequent returns show that application of the percentage rate would yield quarterly fees that total more than twenty-five dollars ($25.00) for the entire fiscal year, the public utility shall pay the cumulative amount of the fee resulting from application of the percentage rate, to the extent it exceeds the amount of fees, other than any surcharge, previously paid.

(d) Use of Proceeds. -- A special fund in the office of State Treasurer, the Utilities Commission and Public Staff Fund, is created. The fees collected pursuant to this section and all other funds received by the Commission or the Public Staff, except for the clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a), shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Utilities Commission and Public Staff Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the Utilities Commission and Public Staff Fund shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public as provided by this Chapter and in regulating electric membership corporations as provided in G.S. 117-18.1.

The clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a) shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Section 57. G.S. 66-273 reads as rewritten:

"**§ 66-273. Prerequisites for authentication.**

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.
(2) All dates must follow in chronological order on all certifications.
(3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.
(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.
(5) Whenever a document is to be authenticated by the United States Department of State, it must comply with all applicable statutes, rules and regulations of that office."

Section 58. G.S. 66-291 reads as rewritten:

"**§ 66-291. Requirements.**

(a) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the effective date of this Article shall do one of the following:

(1) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or
(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):
a. 1999: $.0094241 per unit sold after the effective date of this Article.
b. 2000: $.0104712 per unit sold.
c. For each of 2001 and 2002: $.0136125 per unit sold.
d. For each of 2003 through 2006: $.0167539 per unit sold.
e. For each of 2007 and each year thereafter: $.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (2) of ~~section~~ subsection (a) of this ~~subsection~~ section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product

manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subdivision (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(3) To the extent not released from escrow under subdivisions (1) or (2) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the Attorney General that it is in compliance with this section. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(1) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation ~~of this subsection,~~ either of subdivision (2) of subsection (a) of this section or of subsection (b) of this section, may impose a civil penalty (the clear proceeds of which shall be paid to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2) in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow

per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(2) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation either of subdivision of subsection (a) of this ~~section,~~ section or subsection (b) of this section, may impose a civil penalty (the clear proceeds of which shall be paid to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2) in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation."

Section 59.(a) G.S. 85B-3.2(a) reads as rewritten:

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

(1) Applicant -- An applicant for initial licensure as an ~~auctioneer.~~ auctioneer, apprentice auctioneer, or auction firm.

(2) Criminal history -- A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to be licensed as an ~~auctioneer.~~ auctioneer, apprentice auctioneer, or auction firm."

Section 59.(b) G.S. 85B-3.2(d) reads as rewritten:

"(d) If the applicant's verified criminal history record check reveals one or more convictions of a crime that is punishable as a felony offense, or the conviction of any crime involving fraud or moral turptitude, the Commission may deny the applicant's license. However, the conviction shall not automatically prohibit licensure, and the following factors shall be considered by the Commission in determining whether licensure shall be denied:

(1) The level and seriousness of the crime.

(2) The date of the crime.
(3) The age of the person at the time of the crime.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the applicant and the applicant's duties as an ~~auctioneer.~~ auctioneer, apprentice auctioneer, or auction firm.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
(7) The subsequent commission by the person of a crime."

Section 59.(c) The catchline for G.S. 114-19.8 reads as rewritten:

"**§ 114-19.8. Criminal record checks of applicants for ~~auctioneer~~ auctioneer, apprentice auctioneer, or auction firm license.**"

Section 59.(d) This section becomes effective October 1, 2000 and applies to applications for licensure for auctioneers, apprentice auctioneers, and auction firms filed on or after that date.

Section 60. G.S. 90-178.3 reads as rewritten:

"**§90-178.3. Regulation of midwifery.**

(a) No person shall practice or offer to practice or hold oneself out to practice midwifery unless approved pursuant to this Article.

(b) A person approved pursuant to this Article may practice midwifery in a hospital or non-hospital setting and shall practice under the supervision of a physician licensed to practice medicine who is actively engaged in the practice of obstetrics. A registered nurse approved pursuant to this Article is authorized to write prescriptions for drugs in accordance with the same conditions applicable to a nurse practitioner under G.S. 90-18.2(b).

(c) Graduate nurse midwife applicant status may be granted by the joint subcommittee in accordance with G.S. 90-178.4."

Section 61. The catchline of G.S. 105-40 reads as rewritten:

"**§ 105-40. Amusements -- Certain exhibitions, performances, and entertainments exempt from ~~license~~ tax.**"

Section 62. G.S. 105-116(d) reads as rewritten:

"(d) Distribution. -- Part of the taxes imposed by this section on electric power ~~companies, natural gas companies, and~~

~~regional natural gas districts~~ companies is distributed to cities under G.S. 105-116.1."

Section 63.(a) G.S. 105-129.17(b) reads as rewritten:

"(b) Cap. -- ~~A total~~ The credits allowed in this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credits may be carried forward for the succeeding five years."

Section 63.(b) G.S. 105-129.18 reads as rewritten:

"**§ 105-129.18. Substantiation.**

To claim a ~~credits~~ credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection."

Section 63.(c) G.S. 105-129.19 reads as rewritten:

"**§ 105-129.19. Reports.**

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the credits allowed in this Article.

(2) The cost of business property and renewable energy property with respect to which ~~business property~~ credits were claimed.

(2a) The location of each qualified North Carolina low-income building with respect to which a low-income housing credit was claimed.

(3) The total cost to the General Fund of the credits claimed."

Section 64.(a) G.S. 105-130.15(a) reads as rewritten:

"(a) The net income of a corporation shall be computed in accordance with the method of accounting it regularly ~~employed~~ employs in keeping ~~the books of such corporation, but such method~~

~~of accounting must~~ its books. The method must be consistent with respect to both income and ~~deductions, but if in any case such~~ deductions. If this method does not clearly reflect the income, the computation shall be made in accordance with ~~such method as in the opinion of the Secretary of Revenue~~ a method that, in the Secretary's opinion, does clearly reflect the income, but shall follow as nearly as practicable the federal practice, unless contrary to the context and intent of this Part.

The Secretary may ~~in his discretion~~ adopt the rules and regulations and any guidelines administered or established by the Internal Revenue Service unless contrary to any provisions of this Part."

Section 64.(b) G.S. 105-130.17(a) reads as rewritten:

"(a) Returns must be filed as prescribed by the Secretary at the place prescribed by the Secretary. Returns must be in the form prescribed by the Secretary. The Secretary shall furnish forms in accordance with G.S. 105-254. ~~shall be in such form as the Secretary of Revenue may from time to time prescribe, and shall be filed with the Secretary at his office, or at any branch office which he may establish. The Secretary shall cause to be prepared blank forms for the said returns, and shall cause them to be distributed throughout the State, and shall furnish them upon request; but failure to receive or secure the form shall not relieve any corporation from the obligation of making any return herein required.~~"

Section 64.(c) G.S. 105-130.18 reads as rewritten:

"**§ 105-130.18. Failure to file returns; supplementary returns.**

If the Secretary ~~of Revenue shall be of the opinion that any~~ determines that a corporation has failed to file a return or to include in a return filed, either intentionally or through error, items of taxable ~~income he may require of such~~ income, the Secretary may require from the corporation a return or supplementary return, under affirmation, ~~in such form as he shall prescribe,~~ of all the items of income ~~which~~ that the corporation received during the year for which the return is made, whether or not taxable under this Part. If from a supplementary return or otherwise the Secretary finds that any items of income, taxable under this Part, have been omitted from the original return, ~~or~~ that any items returned as taxable ~~that~~ are not taxable, or that any item of taxable income is overstated or understated, ~~he may require any such item to be disclosed to him~~ the Secretary may require that the item be disclosed under affirmation of the corporation, and ~~to~~ be added to or deducted from the original return. ~~Such~~ The filing of a supplementary return and the

correction of the original return ~~shall~~ does not relieve the corporation from any of the penalties ~~to which it may be liable under the provisions of~~ under G.S. 105-236. The Secretary may proceed under the provisions of G.S. 105-241.1, whether or not the Secretary ~~he~~ requires a return or a supplementary return under this section."

Section 65. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. -- The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

. . .

"(5b) The amount received during the taxable year from one or more State, local, or federal government retirement plans to the extent the amount is exempt from tax under this Part pursuant to a court order in settlement of the following cases: Bailey v. State, 92 CVS 10221, 94 CVS 6904, 95 CVS 6625, 95 CVS 8230; Emory v. State, 98 CVS 0738; and Patton v. State, 95 CVS 04346. Amounts deducted under this subdivision may not also be deducted under subdivision (6) of this subsection."

Section 66. G.S. 105-163.44 is repealed.

Section 67.(a) G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- Before a person may engage in business as a

~~Before a person may engage in business as a~~ retailer or a wholesale merchant, the person must obtain a certificate of registration from the ~~Department. To obtain a certificate of registration, a person must register with the Department.~~

~~A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer who makes taxable sales becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales.~~ Department in accordance with G.S. 105-164.29."

Section 67.(b) G.S. 105-164.29 reads as rewritten:

"**§ 105-164.29. Application for ~~licenses~~ certificate of registration by wholesale merchants and retailers.**

(a) Application. -- ~~Every application for a license by a wholesale merchant or retailer shall be made upon a form prescribed by the Secretary and shall set forth all information the Secretary may require.~~ To obtain a certificate of

registration, a person must register with the Department. A wholesale merchant or retailer who has more than one business is required to obtain only one certificate of registration to cover all operations of the business throughout the State. An application for registration must ~~The application shall~~ be signed as follows:

(1) By the owner, if the owner is an individual.

(2) By a manager, member, or partner, if the owner is an association, a partnership, or a limited liability company.

(3) By an executive officer or some other person specifically authorized by the corporation to sign the application, if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written evidence of the person's authority must be attached to the application.

~~A wholesale merchant or retailer whose business extends into more than one county is required to secure only one license to cover all operations of the business throughout the State.~~

(b) Issuance. -- ~~When the required application has been made the Secretary shall issue a license to the applicant. A license~~ A certificate of registration is not assignable and is valid only for the person in whose name it is ~~issued and for the transaction of business at the place designated in the license. The license holder shall display the license conspicuously at all times at the place for which it was issued.~~ issued. A copy of the certificate of registration must be displayed at each place of business.

(c) ~~Reissuance.~~ Term. -- A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer who makes taxable sales becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales. ~~A person whose license has been previously suspended or revoked shall pay the Secretary fifteen dollars ($15.00) for the reissuance of the license. A wholesale merchant whose annual license has been previously suspended or revoked shall pay the Secretary twenty-five dollars ($25.00) for the reissuance of the license for the remainder of the license year.~~

(d) Revocation. -- Whenever a ~~license holder~~ wholesale merchant or retailer fails to comply with this Article or violates G.S. 14-401.18, the Secretary, upon hearing, after

giving ~~the license holder~~ 10 days' notice in writing, specifying the time and place of hearing and requiring the ~~license holder~~ wholesale merchant or retailer to show cause why the ~~license~~ certificate of registration should not be revoked, may revoke or suspend the ~~license.~~ certificate of registration. The notice may be served personally or by registered mail directed to the last known address of the ~~license holder.~~ wholesale merchant or retailer. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 apply to this section.

~~Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after the license has been suspended or revoked, and each officer of any corporation that so engages in business shall be guilty of a Class 3 misdemeanor and only subject to a fine of up to five hundred dollars ($500.00) for each offense.~~"

Section 67.(c) G.S. 105-164.38 reads as rewritten:

"**§ 105-164.38. Tax ~~shall be~~ is a lien.**

(a) The tax imposed by this Article ~~shall be~~ is a lien upon all personal property of any person who is required by this Article to obtain a ~~license~~ certificate of registration to engage in business and who stops engaging in the business by transferring the business, transferring the stock of goods of the business, or going out of business. A person who stops engaging in business ~~shall~~ must file the return required by this Article within 30 days after transferring the business, transferring the stock of goods of the business, or going out of business.

(b) Any person to whom the business or the stock of goods was transferred ~~shall~~ must withhold from the consideration paid for the business or stock of goods an amount sufficient to cover the taxes due until the person selling the business or stock of goods produces a statement from the Secretary showing that the taxes have been paid or that no taxes are due. If the person who buys a business or stock of goods fails to withhold an amount sufficient to cover the taxes and the taxes remain unpaid after the 30-day period allowed, the buyer is personally liable for the unpaid taxes to the extent of the greater of the following:

(1) The consideration paid by the buyer for the business or the stock of goods.

(2) The fair market value of the business or the stock of goods.

(c) The period of limitations for assessing liability against the buyer of a business or the stock of goods of a business and for enforcing the lien against the property ~~shall expire~~ expires

one year after the end of the period of limitations for assessment against the person who sold the business or the stock of goods. Except as otherwise provided in this section, a person who buys a business or the stock of goods of a business and that person's liability for unpaid taxes are subject to the provisions of G.S. 105-241.1, 105-241.2, 105-241.3, and 105-241.4 and to other remedies for the collection of taxes to the same extent as if the person had incurred the original tax liability."

Section 68. G.S. 105-187.6(b) reads as rewritten:

"(b) Partial Exemptions. -- A maximum tax of forty dollars ($40.00) applies when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To a secured party who has a perfected security interest in the motor vehicle.

(2) To a partnership, limited liability company, or corporation as an incident to the formation of the partnership, limited liability company, or corporation, and no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the ~~Internal Revenue Code as defined in G.S. 105-228.90,~~ Code, or to a partnership, limited liability company, or corporation by merger, conversion, or consolidation in accordance with applicable law."

Section 69. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(2) Department. -- The Department of Revenue."

Section 70. G.S. 105-236(10) reads as rewritten:

"(10) Failure to File Informational Returns. --

a. Repealed by Session Laws 1998-212, s. 29A.14(m).

b. The Secretary may request a person who fails to file timely statements of payment to another person with respect to wages, dividends, rents, or interest paid to that person to file the statements by a certain date. If the payer fails to file the statements by that date, the amounts claimed on the payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.

c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed a penalty of fifty dollars ($50.00)."

Section 71. G.S. 105-275(40) reads as rewritten:

"(40) Computer software and any documentation related to the computer software. As used in this subdivision, the term "computer software" means any program or routine used to cause a computer to perform a specific task or set of tasks. The term includes system and application programs and database storage and management programs.

The exclusion established by this subdivision does not apply to computer software and its related documentation if the computer software meets one or more of the following descriptions:

a. It is embedded software. "Embedded software" means computer instructions, known as microcode, that reside permanently in the internal memory of a computer system or other equipment and are not intended to be removed without terminating the operation of the computer system or equipment and removing a computer chip, a circuit, or another mechanical device.

b. It is purchased or licensed from a person who is unrelated to the taxpayer and it is capitalized on the books of the taxpayer in accordance with generally accepted accounting principles, including financial accounting standards issued by the Financial Accounting Standards Board. A person is unrelated to a taxpayer if (i) the taxpayer and the person are not subject to any common ownership, either directly or indirectly, and (ii) neither the taxpayer nor the person has any ownership interest, either directly or indirectly, in the other.

~~This~~

This subdivision does not affect the value or taxable status of any property that is

otherwise subject to taxation under this Subchapter.

The provisions of the exclusion established by this subdivision are not severable. If any provision of this subdivision or its application is held invalid, the entire subdivision is repealed."

Section 72.(a) G.S. 105-275(41), as amended by Section 1 of S.L. 2000-2, reads as rewritten:

"~~(41)~~ (42) A vehicle that is offered at retail for short-term lease or rental and is owned or leased by an entity engaged in the business of leasing or renting vehicles to the general public for short-term lease or rental. For the purposes of this subdivision, the term 'short-term lease or rental' shall have the same meaning as in ~~G.S. 105-187.1.~~ G.S. 105-187.1, and the term 'vehicle' shall have the same meaning as in G.S. 153A-156(e) and G.S. 160A-215.1(e). A gross receipts tax as set forth by G.S. 153A-156 and G.S. 160A-215.1 is substituted for and replaces the ad valorem tax previously levied on these vehicles."

Section 72.(b) G.S. 105-282.1(a) reads as rewritten:

"(a) Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled thereto. Except as provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

(1) The United States government, the State of North Carolina and the counties and municipalities of the State are exempted from the requirement that owners file applications for exemption.

(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (32a), (33), (34), ~~or~~ (40), or (42) or exempted under G.S. 105-278.2 are not required to file applications for the exclusion or exemption of that property.

(3) After an owner of property entitled to exemption under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), (7), (8), (12), (17) through (19), (21) or (39), G.S. 105-277.1, or G.S. 105-278 has applied for exemption or exclusion and the exemption or exclusion has been approved, the owner is not required to file an application in subsequent years except in the following circumstances:

a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property; or

b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion.

(4) After an owner of property entitled to exclusion under G.S. 105-277.10 has applied for the exclusion and the exclusion has been approved, the owner is not required to apply for the exclusion in subsequent years so long as the classified property, including classified property acquired after the application is approved, is used or held for use directly in manufacturing or processing as part of industrial machinery.

(5) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a

municipality, as appropriate. An untimely application for exemption or exclusion approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed."

Section 73. Effective January 1, 2001, G.S. 105-369(b1) reads as rewritten:

"(b1) Notice to Owner. -- After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the listing owner and to the record owner of each affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the names of the listing owner and the record owner ~~listing owner that his or her name~~ will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct listing owner or record owner does not affect the validity of the tax lien or of any foreclosure action."

Section 74. G.S. 105-449.37(a)(1a) reads as rewritten:

(1a) Motor vehicle. -- A motor vehicle as defined in G.S. ~~105-164.3(8c),~~ 105-164.3 other than special mobile equipment as defined in G.S. ~~105-164.3(16b).~~ 105-164.3."

Section 75.(a) G.S. 105-330.1(b) reads as rewritten:

"(b) Exceptions. -- The following motor vehicles are not classified under subsection (a) of this section:

(1) Motor vehicles exempt from registration pursuant to G.S. 20-51.

(2) Manufactured homes, mobile classrooms, and mobile offices.

(3) Semitrailers or trailers registered on a multiyear basis.

(4) Motor vehicles owned or leased by a public service company and appraised under G.S. 105-335.

~~(5) "U-drive-it" passenger vehicles registered under G.S. 20-87(2).~~"

Section 75.(b) G.S. 153A-156, as enacted by Section 2 of S.L. 2000-2, reads as rewritten:

"§ 153A-156. Gross receipts tax on short-term leases or rentals.

(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. ~~105-275(41),~~ 105-275(42), a county may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one and one-half percent (1.5%) of the gross receipts from such short-term leases or rentals.

(b) If a county enacts the substitute and replacement gross receipts tax pursuant to this section, any entity required to collect the tax shall include a provision in each retail short-term lease or rental agreement noting that the percentage amount enacted by the county of the total lease or rental price, excluding ~~sales~~ highway use tax, is being charged as a tax on gross receipts. For purposes of this section, the transaction giving rise to the tax shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle. The tax shall be collected at the time of lease or rental and placed in a segregated account until remitted to the county.

(c) The collection and use of taxes under this section are not subject to ~~sales~~ highway use tax and are not included in the gross receipts of the entity. The proceeds collected under this section belong to the county and are not subject to creditor liens against the entity.

(d) A tax levied under this section shall be collected by the county but otherwise administered in the same manner as the tax levied under G.S. 105-164.4(a)(2).

(e) The following definitions apply in this section:

(1) Vehicle. -- Any of the following:

a. A motor vehicle of the ~~private~~ passenger type, including a passenger van, minivan, or sport utility vehicle.

b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to possess a commercial drivers license.

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

(2) Short-term lease or rental. -- Defined in G.S. 105-187.1(4).

(f) The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of ~~this~~ Chapter 105 of the General Statutes apply to a tax levied under this section. The county board of commissioners may exercise any power the Secretary of Revenue may exercise in collecting local sales and use taxes."

Section 75.(c) G.S. 160A-215.1, as enacted by Section 3 of S.L. 2000-2, reads as rewritten:

"**§ 160A-215.1. Gross receipts tax on short-term leases or rentals.**

(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. ~~105-275(41),~~ 105-275(42), a city may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one and one-half percent (1.5%) of the gross receipts from such short-term leases or rentals. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. 160A-211.

(b) If a city enacts the substitute and replacement gross receipts tax pursuant to this section, any entity required to collect the tax shall include a provision in each retail short-term lease or rental agreement noting that the percentage amount enacted by the city of the total lease or rental price, excluding ~~sales~~ highway use tax, is being charged as a tax on gross receipts. For purposes of this section, the transaction giving rise to the tax shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle. The tax shall be collected at the time of lease or rental and placed in a segregated account until remitted to the city.

(c) The collection and use of taxes under this section are not subject to ~~sales~~ highway use tax and are not included in the gross receipts of the entity. The proceeds collected under this section belong to the city and are not subject to creditor liens against the entity.

(d) A tax levied under this section shall be collected by the city but otherwise administered in the same manner as the tax levied under G.S. 105-164.4(a)(2).

(e) The following definitions apply in this section:

(1) Vehicle. -- Any of the following:

a. A motor vehicle of the ~~private~~ passenger type, including a passenger van, minivan, or sport utility vehicle.
b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to posses a commercial drivers license.
c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

(2) Short-term lease or rental. -- Defined in G.S. 105-187.1.

(f) The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of ~~this~~ Chapter 105 of the General Statutes apply to a tax levied under this section. The governing body of the city may exercise any power the Secretary of Revenue may exercise in collecting local sales and use taxes."

Section 75.(d) This section is effective July 1, 2000.

Section 76.(a) G.S. 113B-6 reads as rewritten:

"**§ 113B-6. General duties and responsibilities.**

The Energy Policy Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor a comprehensive long- range State energy policy to achieve maximum effective management and use of present and future sources of energy, such policy to include but not be limited to an energy ~~conservation plan,~~ efficiency program, an energy management plan, an emergency energy program, and an energy research and development program;
(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy and to encourage the efficient use of all such energy forms in a manner consistent with State energy policy;
(3) To continually review and coordinate all State government research, education and management programs relating to energy matters and to continually educate and inform the general public regarding such energy matters;
(4) To recommend to the Governor and to the General Assembly needed energy legislation and to recommend for implementation such modifications of energy policy, plans

and programs as the Council considers necessary and desirable."

Section 76.(b) G.S. 113B-7 reads as rewritten:

"§113B-7. Energy ~~Conservation Plan;~~ Efficiency Program; components.

(a) The Energy Policy Council shall prepare a recommended Energy ~~Conservation Plan~~ Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy ~~Conservation Plan~~ Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy ~~Conservation Plan~~ Efficiency Program shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the Energy Policy Council considers to be a significant part of a statewide conservation effort and which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended ~~plan.~~ program.

(d) In addition to specific conservation recommendations, the Energy ~~Conservation Plan~~ Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended ~~plan,~~ program, the Council shall arrange for its distribution to interested parties and shall make ~~such plan~~ the program available to the public and the Council further shall set a date for public hearing on said ~~plan.~~ program.

(e) Upon completion of the Energy ~~Conservation Plan,~~ Efficiency Program, the Council shall transmit said ~~plan,~~ program, to be known as the State Energy ~~Conservation Plan,~~ Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy ~~Conservation Plan~~ Efficiency Program to the President of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the Energy ~~Conservation Plan,~~ Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section."

Section 77. G.S. 115C-47(18), as amended by Section 8.18(b) of S.L. 2000-67, reads as rewritten:

"(18) To Make Rules Concerning the Conduct and Duties of Personnel. -- Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind

of reports they shall make, and their duties in the care of school property.

Prior to the beginning of each school year, each local board of education shall identify all reports, including local school required reports, that are required at the local level for the school year and shall, to the maximum extent possible, eliminate any duplicate or obsolete reporting requirements. No additional reports shall be required at the local level after the beginning of the school year without the prior approval of the local board of education.

Each local board of education shall appoint a person or establish a paperwork control committee to monitor all reports and other paperwork ~~produced by or~~ required of teachers by the central office."

Section 78. Part 3 of Article 2 of Chapter 143B of the General Statutes is repealed.

Section 79.(a) G.S. 143B-434.1 reads as rewritten:

"**§ 143B-434.1. The North Carolina Travel and Tourism Board -- creation, duties, membership.**

(a) There is created within the Department of Commerce the North Carolina Travel and Tourism Board. The Secretary of Commerce and the Director of the Division of ~~Travel and Tourism~~ Tourism, Film, and Sports Development will work with the Board to fulfill the duties and requirements set forth in this section, and to promote the sound development of the travel and tourism industry in North Carolina.

(b) The function and duties of the Board shall be:

(1) To advise the Secretary of Commerce in the formulation of policy and priorities for the promotion and development of travel and tourism in the State.

(2) To advise the Secretary of Commerce in the development of a budget for the Division of ~~Travel and Tourism.~~ Tourism, Film, and Sports Development.

(3) To recommend programs to the Secretary of Commerce that will promote the State as a travel and tourism destination and that will develop travel and tourism opportunities throughout the State.

(4) To advise the Secretary of Commerce every three months as to the effectiveness of agencies with which the Department has contracted for advertising

and regarding the selection of an advertising agency that will assist the Department in the promotion of the State as a travel and tourism destination.

(5) To name a three-member subcommittee, with one member from each of the eastern, central, and western regions of the State, to make recommendations to the Secretary of Commerce regarding any revisions in the matching funds tourism grants program, project applications, and criteria for projects that qualify for participation in the program.

(6) To advise the Secretary of Commerce from time to time as to the effectiveness of the overall operations of the Division of ~~Travel and Tourism.~~ Tourism, Film, and Sports Development.

(7) To promote the exchange of ideas and information on travel and tourism between State and local governmental agencies, and private organizations and individuals.

(8) To advise the Secretary of Commerce upon any matter that the Secretary, Governor, or Director of the Division of ~~Travel and Tourism~~ Tourism, Film, and Sports Development may refer to it.

(c) The Board shall consist of 27 members as follows:

(1) The Secretary of Commerce, who shall not be a voting member.

(2) The Director of the Division of ~~Travel and Tourism,~~ Tourism, Film, and Sports Development, who shall not be a voting member.

(3) Two members designated by the Board of Directors of the North Carolina Hotel and Motel Association.

(4) Two members designated by the Board of Directors of the North Carolina Restaurant Association.

(5) Three Directors of Convention and Visitor Bureaus designated by the Board of Directors of the North Carolina Association of Convention and Visitor Bureaus.

(6) The Chairperson of the Travel and Tourism Coalition.

(7) The President of the Travel Council of North Carolina.

(8) A member designated by the Board of Directors of the Travel Council of North Carolina.

(9) The President of North Carolina Citizens for Business and Industry.
(10) One member designated by the North Carolina Petroleum Marketers Association.
(11) One person associated with tourism attractions in North Carolina, appointed by the Speaker of the House of Representatives. One person who is not a member of the General Assembly, appointed by the Speaker of the House of Representatives.
(12) One person associated with the tourism-related transportation industry, appointed by the President Pro Tempore of the Senate. One person who is not a member of the General Assembly, appointed by the President Pro Tempore of the Senate.
(13) Four public members each interested in matters relating to travel and tourism, two appointed by the Governor (one from a rural area and one from an urban area), one appointed by the Speaker of the House, and one appointed by the President Pro Tempore of the Senate.
(14) One member associated with the major cultural resources and activities of the State in North Carolina, appointed by the Governor.
(15) Two members of the House of Representatives, appointed by the Speaker of the House of Representatives.
(16) Two members of the Senate, appointed by the President Pro Tempore of the Senate.

(d) The members of the Board shall serve the following terms: the Secretary of Commerce, the Director of the Division of ~~Travel and Tourism,~~ Tourism, Film, and Sports Development, the Chairperson of the Travel and Tourism Coalition, the President of the Travel Council of North Carolina, and the President of North Carolina Citizens for Business and Industry shall serve on the Board while they hold their respective offices. Each member of the Board appointed by the Governor shall serve during his or her term of office. The members of the Board appointed by the General Assembly shall serve two-year terms beginning on January 1 of odd-numbered years and ending on December 31 of the following year. The first such term shall begin on January 1, 1991, or as soon thereafter as the member is appointed to the Board, and end on December 31, 1992. All other members of the Board shall serve a term which consists of the portion of calendar year 1991 that remains following their appointment or designation and,

thereafter, two-year terms which shall begin on January 1 of an even-numbered year and end on December 31 of the following year. The first such two-year term shall begin on January 1, 1992, and end on December 31, 1994.

(e) No member of the Board, except a member serving by virtue of his or her office, shall serve during more than five consecutive calendar years, except that a member shall continue to serve until his or her successor is appointed.

(f) Appointments to fill vacancies in the membership of the Board that occur due to resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term and shall be made by the same appointing authority that made the initial appointment.

(g) Board members who are employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. Board members who are legislators shall be reimbursed for travel and subsistence in accordance with G.S. 120-3.1. All other Board members, except those serving pursuant to subdivisions (3) through (10) of subsection (c) of this section, shall receive per diem, subsistence, and travel expenses at the rate set forth in G.S. 138-5. Board members serving pursuant to subdivisions (3) through (10) of subsection (c) of this section shall not receive per diem, subsistence, or travel expenses. The expenses set forth in this section shall be paid by the Division of ~~Travel and Tourism~~ Tourism, Film, and Sports Development of the Department of Commerce.

(h) At its first meeting in 1991, the Board shall elect one of its voting members to serve as Chairperson during calendar year 1991. At its last regularly scheduled meeting in 1991, and at its last regularly scheduled meeting in each year thereafter, the Board shall elect one of its voting members to serve as Chairperson for the coming calendar year. No person shall serve as Chairperson during more than three consecutive calendar years. The Chairperson shall continue to serve until his or her successor is elected.

(i) A majority of the current voting membership shall constitute a quorum.

(j) The Secretary of Commerce shall provide clerical and other services as required by the Board."

Section 79.(b) G.S. 143B-434.2(d) reads as rewritten:

"(d) The Department of Commerce, and the Division of ~~Travel and Tourism~~ Tourism, Film, and Sports Development within that Department, shall implement the policies set forth in this section. The Division of ~~Travel and Tourism~~ Tourism, Film, and

Sports Development shall make an annual report to the General Assembly regarding the status of the travel and tourism industry in North Carolina; the report shall be submitted to the General Assembly by January 15 of each year beginning January 15, 1992. The duties and responsibilities of the Department of Commerce through the Division of ~~Travel and Tourism~~ Tourism, Film, and Sports Development shall be to:

(1) Organize and coordinate programs designed to promote tourism within the State and to the State from other states and foreign countries.
(2) Measure and forecast tourist volume, receipts, and impact, both social and economic.
(3) Develop a comprehensive plan to promote tourism to the State.
(4) Encourage the development of the State's tourism infrastructure, facilities, services, and attractions.
(5) Cooperate with neighboring states and the federal government to promote tourism to the State from other countries.
(6) Develop opportunities for professional education and training in the tourism industry.
(7) Provide advice and technical assistance to local public and private tourism organizations in promoting tourism to the State.
(8) Encourage cooperation between State agencies and private individuals and organizations to advance the State's tourist interests and seek the views of these agencies and the private sector in the development of State tourism programs and policies.
(9) Give leadership to all concerned with tourism in the State.
(10) Perform other functions necessary to the orderly growth and development of tourism.
(11) Develop informational materials for visitors which, among other things, shall:
    a. Describe the State's travel and tourism resources and the State's history, economy, political institutions, cultural resources, outdoor recreational facilities, and principal festivals.
    b. Urge visitors to protect endangered species, natural resources, archaeological artifacts, and cultural treasures.

c. Instill the ethic of stewardship of the State's natural resources.

(12) Foster an understanding among State residents and civil servants of the economic importance of hospitality and tourism to the State.

(13) Work with local businesses, including banks and hotels, with educational institutions, and with the United States Travel and Tourism Administration, to provide special services for international visitors, such as currency exchange facilities.

(14) Encourage the reduction of architectural and other barriers which impede travel by physically handicapped persons."

Section 79.(c) The Revisor of Statutes shall change the term "Division of Travel and Tourism" to "Division of Tourism, Film, and Sports Development" wherever it appears in the general statutes.

Section 80. G.S. 159-13(b)(6) reads as rewritten:

"(6) The estimated percentage of collection of property taxes shall not be greater than the percentage of the levy actually realized in cash as of June 30 during the preceding fiscal year. For purposes of the calculation under this subdivision only, the levy for the registered motor vehicle tax under Article ~~22C~~ 22A of Chapter 105 of the General Statutes shall be based on the nine-month period ending March 31 of the preceding fiscal year, and the collections realized in cash with respect to this levy shall be based on the twelve-month period ending June 30 of the preceding fiscal year."

Section 81. G.S. 163-132.1(d) reads as rewritten:

"(d) Freezing of Precincts. --

(1) Notwithstanding the provisions of G.S. 163-132.3, after the Executive Secretary-Director approves the precincts in accordance with subsection (c) of this section and before January 2, 2002, no county board of elections may establish, alter, discontinue, or create any precinct except by division of one precinct into two or more precincts using lines that the Census Bureau has indicated it will use as 2000 Census block boundaries for that division. Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local

act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1998 Boundary and Annexation Survey and ending January 2, 2002, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the county board of elections may exercise one of the following options:

~~(1)~~ a. Direct by resolution that the annexed area is automatically moved into the 'city precinct', provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts.

~~(2)~~ b. Adopt a resolution moving the precinct boundary to a visible feature that the Census Bureau has indicated it will use as a 2000 block boundary.

(2) The Executive Secretary-Director of the State Board of Elections may permit during the freeze a correction to a county's precincts as they were approved pursuant to subsection (c) of this section where one of the following sets of conditions is present:

~~(1)~~ a. A precinct was designated pursuant to subsection (c) inacccurately, and the United States Bureau of the Census agrees to include the corrected precinct on its database for the 2000 Census.

~~(2)~~ b. The boundary of a precinct designated pursuant to subsection (c) of this section was subsequently removed by the United States Bureau of the Census as an acceptable feature for a precinct line based upon a determination by the Bureau that the feature did not exist as shown, and the county board of elections agrees by resolution to an alternative boundary for the precinct on a feature the Bureau does find acceptable.

(3) The county board of elections shall submit any proposed change made during the freeze under this

subsection to the Legislative Services Office, which shall review the proposal and write a letter advising the Executive Secretary-Director of its opinion as to the legal compliance of the proposal. If the proposal complies with the law, the Executive Secretary-Director shall approve the proposal. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director as being in compliance with the provisions of this subsection."

Section 82. G.S. 163-278.5 reads as rewritten:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other ~~States.~~ States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina ~~offices.~~ offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision."

Section 83. G.S. 163-278.39A(a) reads as rewritten:

"(a) Expanded Disclosure Requirements. -- ~~In addition to the basic disclosure requirements in G.S. 163-278.39, any~~ Any political campaign advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section. To the extent that it provides the same information required by G.S. 163-278.39, a statement made pursuant to this section satisfies the requirements of G.S. 163-278.39 for the same advertisement."

Section 84. G.S. 163-278.39A(i) reads as rewritten:

"(i) No Criminal Liability. -- Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal ~~liability for any person.~~ liability."

Section 85. Section 14 of S.L. 1998-22 reads as rewritten:

"Section 14. (a) Notwithstanding G.S. 105-187.44(b), as enacted by this act, the amount distributed to a city under G.S. 105-187.44(b) for taxes collected for each of the quarters in the ~~fiscal year~~ 1999-2000 and 2000-2001 fiscal years may not exceed

its benchmark amount until each city receives an amount equal to its benchmark amount. Each quarter, the Secretary of Revenue shall determine a city's benchmark amount and the amount it would receive under G.S. 105-187.44(b) if not for the redistribution required by this section. The Secretary shall identify those cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts and shall determine the total dollar amount of the shortfall. The Secretary shall reduce the amount to be distributed to those cities whose distribution amount under G.S. 105-187.44(b) exceeds their benchmark amount by the total dollar amount of the shortfall determined for that quarter in proportion to each city's excess. However, in no event may a city's distribution amount be reduced below its benchmark amount. The Secretary will redistribute these monies to the cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts in proportion to each city's shortfall. In any quarter that a city does not have a prior year's distribution for the corresponding quarter in fiscal year 1998-99, that city is excluded from the redistribution required under this section for that quarter. In that case, the city will receive the amount it is entitled to receive under G.S. 105-187.44(b), as enacted by this act.

For the purposes of this subsection, the term 'benchmark amount' means the amount a city received under G.S. 105-116.1 attributable to piped natural gas for the corresponding quarter during the fiscal year 1998-99.

(b) The Department of Revenue must calculate the amount a city received for taxes collected for each of the ~~first three~~ quarters in fiscal year 1998-99 under G.S. 105-116.1 that was attributable to piped natural gas. The Department must also calculate the amount each city would have received under G.S. 105-187.44(b), as enacted by this act, for taxes collected for each of the ~~first three~~ quarters in fiscal year 1999-2000. The Department shall give this information to the Revenue Laws Study Committee. The Revenue Laws Study Committee shall study the impact of this act on the distribution of part of the proceeds of the excise tax on piped natural gas to the cities and report its findings, and any recommendation, to the ~~2000 Session of the 1999~~ 2001 General Assembly."

Section 86. Subsection 17.12(c) of S.L. 1999-237 reads as rewritten:

"Section 17.12.(c) The Governor shall appoint a superior court judge for the additional judgeship in Superior Court District 22 as authorized by subsection (b) of this

section. The successor to that judge shall be elected in the 2000 general election to serve the remainder of the unexpired term expiring December 31, ~~2002, in order to provide for unstaggered terms for multiple judgeships in the same district.~~ 2008."

Section 87. Section 3 of S.L. 1999-321 is repealed.

Section 88. Section 33 of S.L. 1999-360 reads as rewritten:

"Section 33. Affordable Housing Credit. -- Part III of this act is effective for taxable years beginning on or after January 1, ~~2000, and applies~~ 2000. Sections 10 through 15 of Part III apply to buildings to which federal credits are allocated on or after January 1, 2000."

Section 89. Section 1 of S.L. 2000-64 reads as rewritten:

"Section 1. ~~S.L. 1993-205,~~ Chapter 203 of the 1993 Session Laws, as amended by S.L. 1999-285, is repealed."

Section 90. Section 21 of S.L. 2000-67 reads as rewritten:

"Requested by: Representatives Jeffus, Wainwright, Easterling, Redwine, Edwards, Senators Warren, Lucas, Rand, Albertson, Robinson, Plyler, Perdue, Odom, Kerr

NATIONAL WORLD WAR II MEMORIAL FUNDS

Section 21. Of the funds appropriated in this act to the Department of Administration for the 2000-2001 fiscal year, the sum of three hundred ninety-two thousand dollars ($392,000) shall be used by the Division of Veterans Affairs to fund the voluntary contribution of the State toward the construction of the National World War II Memorial in Washington, D.C."

Section 91. If House Bill 813, 1999 General Assembly, becomes law, the introductory language of Section 1 of the bill reads as rewritten:

"Section 1. ~~Article 35~~ Article 26 of Chapter 14 is amended by adding a new section to read:".

Section 92.(a) If House Bill 1560, 1999 General Assembly, becomes law, the introductory language of subsection (c) of Section 5 of that bill reads as rewritten:

"Section 5.(c) G.S. 105-129.4(a) through (b1), as amended by Section ~~11~~ 8 of this act, read as rewritten:".

Section 92.(b) If House Bill 1560, 1999 General Assembly, becomes law, subsection (g) of Section 10 of that bill reads as rewritten:

"Section 10.(g) Modify Credit and Expiration Provisions. -- Section ~~11~~ 8 of this act is effective for taxable years beginning on or after January 1, 2000."

Section 92.(c) If House Bill 1560, 1999 General Assembly, becomes law, subsection (h) of Section 10 of that bill reads as rewritten:

"Section 10.(h) Technical Correction. -- Section ~~12~~ 9 of this act becomes effective May 1, 1999, and applies to taxes paid on or after that date. Section 12 is repealed for taxes paid on or after January 1, 2008."

Section 93. Except as otherwise specified, this act is effective when it becomes law.

SB 1335:
2000 Technical Corrections

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Senator Hartsell
Date:	July 5, 2000	**Summary by:**	O. Walker Reagan, Committe Counsel and Erika Churchill, Staff Attorney
Version:	S1335-CSRU-001		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1335 is primarily a recommendation of the General Statutes Commission to correct technical errors and to make conforming changes to various statutes and session laws.***

Sections 1 through 35 were recommended by the General Statutes Commission and have been summarized in a separate document by the Commission's staff. This summary will cover the remaining sections of the bill. The changes beginning with Section 36 have been identified by legislative staff, agency staff, and others.

BILL ANALYSIS

Section 36. Page 16

- Amends G.S. 5A-23(g) to conform to changes made in1999 to the contempt statutes by stating an individual found in civil contempt may not be found in criminal contempt on the same facts under Article 1 of Chapter 5A.

Section 37. Page 17

- Corrects the reference in 7A-41 to a date relating to the description of a set of Superior Court judge districts in Pender and New Hanover counties. The districts were described by the listing of precincts. The precincts were not designated by that time, the original date, so this amendment moves the date to December 1, 1999.

Section 38. Page 17

- Corrects an incorrect subdivision cite.

Section 39. Page 17

- Deletes the language placing the Commission in the Department of Justice.
- Clarifies that the Commission may recertify criminal justice officers, training schools and programs, and criminal justice instructors.

Section 40. Page 20

- Amends the Predatory Lending law to provide that a lender may not shift loss, liability, or claim of any kind to the closing agent or closing attorney.

Section 41. Page 21

- Conforms the law that a tenant is entitled to return of payments made prior to a sale of the property by the landlord only as specified in the statutes, and deletes the requirement that the landlord must refund payments to the tenant within 60 days if the transfer of the property was involuntary to conform with the 30 day refund period in other circumstances.

Section 42. Page 23

- Makes conforming changes in Chapter 43 to changes made in 1999 in the Torrens Title law for the Register of Deeds to record Torrens property transactions in the consolidated real property records not in the title registration book.
- This section is effective retroactive to January 1, 2000.

Sections 43,45, 46, 48, 49, 51, 52. Pages 29,30, 31, 32, 33, 34, 35

- Makes conforming changes for filings for corporations, merged entities, limited liability companies the Secretary of State's authority to collect fees already established when the filing associated with the fee is accomplished.

Sections 44 and 47. Page 29 and 32

- Most North Carolina corporations opted out of the Control Share Acquisition Act and the Shareholder Protection Act in 1990 but for different reasons, some did not. Some of those that did not opt out have since adopted a shareholder rights plan which provides them with a more certain protection than the CSAA or the SPA. The standard shareholder rights plan and the CSAA have conflicting provisions. The best way to resolve this is to permit North Carolina public companies another opportunity to opt out of the CSAA and SPA. The CSAA and the SPA were adopted at the same time in the 1980's. After 10 years, North Carolina public corporations should have a new limited opt out period under both Acts to resolve conflicts which could result in costly and lengthy litigation.

Sections 53-54. Page 36

- Clarifies process and required information to be filed to amend the registration of a partnership.

Sections 50 and 55. Pages 34 and 36

- Deletes excess language referring to the principal office in the state or country under whose law the entity is organized.

Section 56. Page 38

- Reorganizes and clarifies new regulatory fee levied in 1999 on certain electic membership corporations.

Section 57. Page 41

- Clarifies that a document must comply with all applicable statutes, rules and regulations of the United States Department of State, if the document is to be authenticated by that office.

Section 58. Page 42

- Corrects incorrect references to subsection, rather than "sections" as previously stated; brings the statute into conformity with drafting policy for criminal history background check requirements.

Section 59. Page 44

- Clarifies definition of applicant to include auctioneer, apprentice auctioneer, or auction firm in the applicable statutes and catchlines.
- This section becomes effective October 1, 2000 and applies to applications for licensure on or after that date.

Section 60. Page 45

- Adds a new subsection to clarify that a graduate nurse midwife applicant status may be granted.

Section 61. Page 45

- Conforming change to the statute catchline to reflect that the nature of the tax has changed from a license tax to a privilege tax.

Section 62. Page 45

- Makes conforming change to reflect that natural gas tax is now levied and distributed under a different statute.

Section 63. Page 46

- Corrects wording problems that resulted when two different 1999 acts amended the same statutes.

Section 64. Page 46

- Conforms outdated language in the corporate income tax statutes.

Section 65. Page 48

- Makes a conforming change to recognize that certain State, local, and federal government retirement benefits are exempt from North Carolina income tax pursuant to settlement of the Bailey, Emory, and Patton cases.

Section 67. Page 48

- Repeals a criminal penalty for willful failure to pay corporate estimated tax, because it duplicates a penalty already provided in G.S. 105-236(9), in the general administrative section of the Revenue Act.

Section 67. Page 48

- Conforms the statute to reflect that only one statewide retail sales tax license is required, reorganizes and consolidates two similar statutes, deletes obsolete language regarding renewal fees, and repeals a criminal penalty that duplicates a penalty already provided in the general administrative section of the Revenue Act.

Section 68. Page 51

- Corrects the form of a reference to the Internal Revenue Code.

Section 69 . Page 51

- Adds a definition of "Department" in Chapter 105 of the General Statutes, consistent with the way the term is used in that Chapter to mean "Department of Revenue."

Section 70. Page 51

- Adds the missing word "the" to the statute.

Section 71. Page 52

- Corrects indentation of statute.

Sections 72 and 75. Pages 53 and 55

- Corrects numerical cite in G.S. 105-275, as amended by Section 1 of S.L. 2000-2, and adds clarifying definition reference for the term "vehicle."
- Adds corrected numerical cite to other General Statutes referencing G.S. 105-275(42).
- This section is effective July 1, 2000.

Section 73. Page 55

- Makes a conforming change regarding a mailed notice to reflect a 1999 change in the content of tax lien lists published in the newspapers. This section becomes effective January 1, 2001, the same date the 1999 changes become effective.

Section 74. Page 55

- Corrects definitional cross-references to avoid problems when definitions are renumbered.

Section 76. Page 58

- Conforms the name of the Energy Conservation Plan to "Energy Efficiency Program" throughout the statutes, and changes references to the "plan" to the "program."

Section 77. Page 60

- Clarifies the powers and duties of the local Board of Education with respect to the Conduct and Duties of Personnel over paperwork control and monitoring applies to paperwork required of teachers.

Section 78. Page 61

- This part of Article 2 is repealed to delete an obsolete commission.

Section 79. Page 61

- Conforms the name of the Division of Travel and Tourism, located in the Department of Commerce, to the Division of Tourism, Film, and Sports Development. This section reflects making this change throughout the statutes..

Section 80. Page 66

- Amends the requirements for local budget ordinances to reflect the proper Article for registered motor vehicle tax in Chapter 105.

Section 81. Page 66

- This gives the Executive Secretary-Director of the State Board of Elections the authority to correct inaccurate and administratively changed precinct boundaries under the Precinct Boundary Program, that would otherwise be frozen until January 2002. This will allow the county boards to use designated precincts that conform to the Census database and the General Assembly redistricting database.

Section 82. Page 68

- Amends a section of the Campaign Finance Act to conform the scope section to include State elections and referenda. The remainder of the Article deals with State referenda as well as elections.

Section 83. Page 68

- This clarifies "Stand by Your Ad" under the Election Laws to eliminate the requirement for a candidate to make a statement twice in a radio or TV ad in order to satisfy two separate statutes.

Section 84. Page 68

- This corrects a provision of the "Stand by Your Ad" law to be clear that the statement that the act does not impose any criminal liability also applies to individuals.

Section 85. Page 68

- Extends hold harmless period for piped gas tax distributions to municipalities, to allow the Revenue Laws Study Committee more time to evaluate whether the new distribution method enacted in 1998 will yield distribution amounts that are similar enough to those provided under prior law.

Section 86. Page 69

- Corrects term end to December 31, 2008 for a non-Section 5 Voting Rights Act district originally thought to be subject to Section 5.

Section 87. Page 70

- Repeals Section 3 of S.L. 1999-321 to eliminate extra words made unnecessary by Section 3 of S.L.1999-340.

Section 88. Page 70

- Corrects effective date for 1999 change to G.S. 105-241.1, the scope of which was inadvertently limited.

Section 89. Page 70

- Corrects the Section 1 of S.L. 2000-64 to repeal Chapter 203 of the 1993 Session Laws, rather than Chapter 205 as previously stated.

Section 90. Page 70

- Amends Section 21 of S.L. 2000-67 to include Representative Edwards in the list of persons requesting the provisions. Representative Edwards was inadvertently left out.

Sections 91-92. Page 70

- These sections identify improper cites in HB 813 and HB 1560, which need to be corrected if the bills are become law.

Section 93. Page 71

- Unless otherwise specified in the section, the bill would become effective when it becomes law.

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

MEMORANDUM

TO: Senate Judiciary I Committee

FROM: General Statutes Commission

DATE: July 4, 2000

RE: Senate Bill 1335 (2000 Technical Corrections)

General Comments

Sections 1 through 34 of this bill contain the General Statutes Commission's recommendations for technical corrections to various sections of the General Statutes. These amendments correct typographical, redlining, and other obvious drafting errors, update or correct statutory references and proper names, provide for gender neutral terminology, and make technical conforming changes.

Specific Comments

Section 1. This section amends G.S. 7A-38.4(1) to insert the word "in", which was inadvertently omitted in the phrase "who participate settlement procedures".

Section 2. This section amends G.S. 18B-603(f)(8) to correct a typographical error in a citation. The reference to "G.S. 18B-100(1)" should be "G.S. 18B-1001(1)".

Sections 3 and 4. These sections amend G.S. 20-19(c3)(3) and G.S. 20-19(c3)(4), respectively, to correct an obvious drafting error. G.S. 20-19(c3)(3) and G.S. 20-19(c3)(4) provide for restrictions to be placed on drivers licenses for persons convicted of various offenses, and a restriction that a person not operate a vehicle with an alcohol concentration of "0.00 or more" would prohibit the person from ever operating a vehicle. The intended phrasing is "greater than 0.00".

Sections 5, 6, and 7. These sections amend G.S. 20-138.2A(b2), 20-138.2B(b2), and 20-138.3(b2) to state the correct name for the Commission for Health Services.

Section 8. This section amends G.S. 31B-4(a) to reinsert the conjunction in the list of things that bar the right to renounce property. The conjunction "or" appeared at the end of subdivision (a)(3) but was deleted and not replaced when that subdivision was repealed.

Section 9. This section amends G.S. 43-46 to delete a "the" that was inadvertently not redlined out when the statute was amended in 1999.

Section 10. This section corrects a possibly problematic correction to 1999 legislation. G.S. 57C-2-20 was amended in two separate acts in 1999. These amendments conflicted, and in Section 50 of S.L. 1999-456, an attempt was made to reconcile the conflict by repealing the amendment in the first act (S.L. 1999-189) and restating the statute. However, the introductory language used in S.L. 1999-456 was not completely clear. The amendment in Section 30 repeals Section 50 of S.L. 1999-456 and restates the intended correction.

Sections 11, 12, 13, and 14 amend G.S. 58-7-70, 58-28-15, 58-30-10(6)e., and 58-30-55(2), respectively. These statutes were amended in 1999 in a provision that directed the deletion of the term "certificate of authority" and substitution of the term "license" in a list of specific sections of Chapter 58 of the General Statutes. Three of the listed sections, however, already contained the term "license" as well as the term "certificate of authority" so that the 1999 amendment resulted in duplicative terminology. In a fourth listed section, the term used in the statute was "certificates of authority" (in the plural) rather than "certificate of authority", so that the intended amendment could not be implemented. Sections 11, 13 and 14 remove the duplicative terms, and Section 12 actually makes the intended terminology change.

Section 15. This section amends G.S. 58-42-45(a) to remove language that should have been but was not deleted when the statute was amended in 1999.

Section 16. This section amends G.S. 58-50-1 to insert the word "under", which was inadvertently not inserted when the statute was amended in 1999. Apparently, among other things, the 1999 amendment intended to replace the word "thereunder" with the phrase "under the policy".

Section 17. This section amends G.S. 59-201(a) to remove a need for any conjunction. When subdivision (5) was added in 1999, the conjunction "and" (between subdivisions (3) and (4)) was not moved. Section 17 changes the punctuation so that no conjunction is needed.

Section 18. This section amends G.S. 89C-12 to eliminate a duplicated "the".

Section 19. This section contains two separate amendments. First, it makes a conforming amendment to G.S. 93A-3(a). G.S. 93A-3(a) creates the North Carolina Real Estate Commission and, among other things, fixes the number of members and provides for them to serve staggered three-year terms. In 1999, the General Assembly increased the number of Commission members from seven to nine without also amending the portion providing for

staggered terms. The first amendment in this section fixes that oversight; it also makes the term "salesmen" gender neutral.

The second amendment in this section authorizes the Revisor of Statutes to change the words "salesman", "salesman's", "salesmen", and "salesmen's" to their gender neutral equivalents in Chapter 93A of the General Statutes (the chapter dealing with realtors).

Section 20. Section 16 of S.L. 1999-293 added a new subsection to "G.S. 110-36.3", which does not exist. The intended reference was to G.S. 110-136.3. Section 20 corrects this error by repealing the faulty provision and reenacting it with the correct citation.

Section 21. This section amends Sections 6 and 11 of S.L. 1998-220 to correct a typographical error in the introductory language. Sections 6 and 11 of S.L. 1998-220 literally amended G.S. 115C-174.21(b) and (c), respectively, but there is no G.S. 115C-174.21. The clearly intended reference was to G.S. 115C-174.11.

Section 22. This section amends G.S. 115C-105.46(2) to correct a typographical error in a citation. "G.S. 115C-105.57" should read "G.S. 115C-105.47".

Section 23. This section amends G.S. 115C-325(n) to remove a duplicated phrase.

Section 24. This section amends G.S. 115C-325(q) to delete a paragraph that was inadvertently not deleted when the subsection was effectively rewritten in 1998.

Section 25. This section amends G.S. 115C-404(a) to remove meaningless extra language that resulted from amendments in 1998 by multiple acts.

Section 26. This section amends G.S. 116-14(b1) to remove a duplicate "in".

Section 27. This section makes two conforming amendments to G.S. 116B-66(a) to take into account legislative amendments to G.S. 116B-56, which is twice cited in G.S. 116B-66(a).

Chapter 116B of the General Statutes was substantially revised in 1999. During the legislative process, G.S. 116B-56 as proposed lost its original subdivision (6) and gained a new subsection. The remaining original subdivisions were accordingly designated as being in subsection (a) and the original subdivision (7) was renumbered as subdivision (a)(6). G.S. 116B-66(a)(4), which deals with property escheated under the original subdivision (6) of G.S. 116B-56, is therefore meaningless and should be deleted. G.S. 116B-66(a)(5) should be amended to correct the citation to G.S. 116B-56(7) to read "G.S. 116B-56(a)(6)", since the subdivision (7) referred to is the originally proposed subdivision (7) that was renumbered as (a)(6).

Section 28. This section amends the catchline of G.S. 120-9 to conform the catchline to an earlier amendment deleting material from G.S. 120-9.

Section 29. This section amends G.S. 126-2(b)(5) to remove the word "seven" that was inadvertently not redlined out when the statute was amended in 1998.

Section 30. This section amends G.S. 131D-2(b)(1) to remove extra language that resulted from multiple amendments to this statute in 1999.

Section 31. This section amends G.S. 136-176(b)(2) to correct a typographical error in a citation. "G.S. 136-80" should read "G.S. 136-180".

Section 32. This section amends G.S. 143B-270(c) to remove a sentence that is no longer necessary.

Section 33. This section amends G.S. 143-151.57(a) to remove an extra word "inspector".

Section 34. This section amends G.S. 160A-23.1(d)(1) to complete updating the dates in this statute from 1992 to 2002.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. S1835-CSRV-001 Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE Y

Rep.)
) _____
Sen.)

moves to amend the bill on page 16, lines 18 THROUGH 38

( ) WHICH CHANGES THE TITLE

by DELETING THE LINES; AND

BY RENUMBERING THE REMAINING SECTIONS ACCORDINGLY.

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 7-5-00

S. B. No. 21335- CSRV-001 Amendment No. #02
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

~~Rep.~~)
) Reed
Sen.)

1 moves to amend the bill on page 70, line 2

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORDS "REMAINDER OF THE

4 UNEXPIRED".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-5-00

S. B. No. SB 1335 - CSRU - 001 Amendment No. # 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

~~Rep.~~) Gulley
Sen.)

moves to amend the bill on page 20, lines 9 AND 10

( ) WHICH CHANGES THE TITLE

by INSERTING A NEW BILL SECTION TO READ:

"SECTION 40: G.S. 18B-108 READS AS REWRITTEN:

"ALCOHOLIC BEVERAGES MAY BE SOLD ON RAILROAD TRAINS IN THIS STATE UPON ~~RECEIPT OF THE REQUIRED REVENUE LICENSE UNDER G.S. 105-113.76~~ COMPLIANCE WITH ARTICLE 2 OF CHAPTER 105 OF THE GENERAL STATUTES." ; AND

BY RENUMBERING THE REMAINING SECTIONS ACCORDINGLY.

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 7-5-00

S. B. No. SB 1335-CSRV-001 Amendment No. # 4
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

~~Rep.~~) Hartsell
Sen.)

moves to amend the bill on page 30, lines 20 THROUGH 21

( ) WHICH CHANGES THE TITLE

by REWRITING THE LINE TO READ:

"DECEMBER 31, 2000, THE BOARD"; AND

ON PAGE 30, LINE 23

BY DELETING THE WORD "ADOPTED" AND SUBSTITUTING THE WORD "ADOPTS"; AND

ON PAGE 32, LINES 20 THROUGH 22,

BY REWRITING THE LINES TO READ:

"SEPTEMBER 1, 2000 AND ON OR BEFORE DECEMBER 31, 2000, THE BOARD OF DIRECTORS OF A CORPORATION"; AND

ON PAGE 32, LINE 24,

BY DELETING THE WORD "ADOPTED" AND SUBSTITUTING THE WORD "ADOPTS".

SIGNED Hartsell

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 7-5-00

S. B. No. 21135-CSRV-001 Amendment No. #5
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~)
) Clodfelter
Sen.)

1 moves to amend the bill on page 70, line 16
2 ( ) WHICH CHANGES THE TITLE
3 by DELETING "203" AND SUBSTITUTING "205".
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SIGNED Daniel G Clodfelter

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 7-5-00

S. B. No. 1335 Amendment No. # 6 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~) Rand

Sen.)

moves to amend the bill on page 70, line 30

( ) WHICH CHANGES THE TITLE

by _____

~~rewriting the~~ ~~to read:~~

reads as rewritten:

"b. The compensation bonus for persons subject to section 26.11 of this act shall be an average of five hundred dollars ($500.00) and shall be allocated to individuals according to the rules adopted by the Board of Governors, or the Board of Trustees of the North Carolina School of Science and Mathematics.

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 7-5-00

S. B. No. 1335 Amendment No. #6
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~)
) Rand
Sen.)

moves to amend the bill on page 70, line 30

( ) WHICH CHANGES THE TITLE

by _____

~~rewriting the~~ reads as rewritten:

~~to read:~~

" a. The compensation bonus for persons subject to Section 26.10 of this act shall be an average of five hundred dollars ($500.00) and shall be allocated in accordance with guidelines adopted by the State Board of Community Colleges.

SIGNED Tony Rand

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, July 06, 2000

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

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

S.B. **1335** 2000 Technical Corrections

Draft Number:	PCS 8678
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

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

H.B. **1502** Adverse Weather Court Closing

Draft Number:	PCS 5116
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

Co

TOTAL REPORTED: 2

Committee Clerk Comment: Will have Sen. Cooper sign

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1804*
Committee Substitute Favorable 6/5/00
Committee Substitute #2 Favorable 6/21/00

Short Title: Establish Juvenile Department. (Public)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

PART I. CREATION OF DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

Section 1.(a) Article 3C of Chapter 147 of the General Statutes is repealed.

Section 1.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12.

"Department of Juvenile Justice and Delinquency Prevention.

"Part 1. Creation of Department.

"§ 143B-511. Creation of the Department of Juvenile Justice and Delinquency Prevention.

There is hereby created and constituted a department to be known as the 'Department of Juvenile Justice and Delinquency Prevention', with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article.

"§ 143B-512. Transfer of Office of Juvenile Justice authority to the Department of Juvenile Justice and Delinquency Prevention.

(a) All (i) statutory authority, powers, duties, and functions, including directives of S.L. 1998-202, rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Office of Juvenile Justice under the Office of the Governor are transferred to and vested in the Department of Juvenile Justice and Delinquency Prevention. This transfer has all of the elements of a Type I transfer as defined in G.S. 143A-6.

(b) The Department shall be considered a continuation of the Office of Juvenile Justice for the purpose of succession to all rights, powers, duties, and obligations of the Office and of those rights, powers, duties, and obligations exercised by the Office of the Governor on behalf of the Office of Juvenile Justice. Where the Office of Juvenile Justice is referred to by law, contract, or other document, that reference shall apply to the Department. Where the Office of the Governor is referred to by contract or other document, where the Office of the Governor is acting on behalf of the Office of Juvenile Justice, that reference shall apply to the Department.

(c) All institutions previously operated by the Office of Juvenile Justice and the present central office of the Office of Juvenile Justice, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Office or by the Office of the Governor for the Office of Juvenile Justice, shall be administered by the Department of Juvenile Justice and Delinquency Prevention.

"Part 2. General Provisions.

"**§ 143B-513. Definitions.**

In this Article, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.

(2) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(3) County Councils. -- Juvenile Crime Prevention Councils created under G.S. 143B-529.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(8) Department. -- The Department of Juvenile Justice and Delinquency Prevention.

(9) Detention. -- The secure confinement of a juvenile under a court order.

(10) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(11) District. -- Any district court district as established by G.S. 7A-133.

(12) Judge. -- Any district court judge.

(13) Judicial district. -- Any district court district as established by G.S. 7A-133.

(14) Juvenile. -- Except as provided in subdivisions (7) and (22) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(15) Juvenile court. -- Any district court exercising jurisdiction under this Chapter.

(16) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the Department for placement in a training school.

(17) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(18) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(19) Secretary. -- The Secretary of Juvenile Justice and Delinquency Prevention.

(20) State Council. -- The State Advisory Council on Juvenile Justice and Delinquency Prevention established under G.S. 143B-536.

(21) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department.

(22) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly

disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

"§ 143B-514. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.

(a) The head of the Department is the Secretary. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that training schools be phased out as populations diminish.

(2) Close a State training school when its operation is no longer justified and transfer State funds appropriated for the operation of that training school to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing training schools, provided the Advisory Budget Commission reviews this action.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision

services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding on a matching basis juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Assist the Criminal Justice Information Network Governing Board with administering a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles. The plan shall include attendance at appropriate

professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the Secretary shall prescribe the functions, powers, duties, and obligations of every agency or division in the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations. The Department may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. In developing the model, the Department shall consider the recommendations of the State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-515. Authority to contract with other entities.**

(a) The Department may contract with any governmental agency, person, or association for the accomplishment of its duties and responsibilities. The expenditure of funds under these contracts shall be for the purposes for which the funds were appropriated and not otherwise prohibited by law.

(b) The Department may enter into contracts with, and act as intermediary between, any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program. As a condition of assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees.

(c) The Department and any other appropriate State or local agency may purchase services from public or private agencies providing delinquency prevention programs or juvenile court services, including parenting responsibility classes. The programs shall meet State standards. As institutional populations are reduced, the Department may divert State funds appropriated for institutional programs to purchase the services under the Executive Budget Act.

(d) Each programmatic, residential, and service contract or agreement entered into by the Department shall include a cooperation clause to ensure compliance with the Department's quality assurance requirements and cost-accounting requirements.

"§ 143B-516. Authority to assist private nonprofit foundations.

The Department may provide appropriate services or allow employees of the Department to assist any private nonprofit foundation that works directly with the Department's services or programs and whose sole purpose is to support these services and programs. A Department employee shall be allowed to work with a foundation no more than 20 hours in any one month. These services are not subject to Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the Department of State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall transmit to the Department a copy of the annual financial audit report of the private nonprofit foundation.

"§ 143B-517. Annual report.

On or before April 1 each year, beginning with the year 2001, the Department shall report to the General Assembly on the effectiveness and cost benefit of every program operated and contracted by the Department and a summary of the local programs that receive State funding. The report shall include the most current institutional populations of juveniles being served by the Department, a comparison of the costs of the services, and a ranking of all programs that provide services to juveniles. The Department shall submit the report to the various State agencies providing services to juveniles.

"Part 3. Juvenile Facilities.

"§ 143B-518. Juvenile facilities.

In order to provide any juvenile in a juvenile facility with appropriate treatment according to that juvenile's need, the Department shall be responsible for the administration of statewide educational, clinical, psychological, psychiatric, social, medical, vocational, and recreational services or programs.

"§ 143B-519. Authority to provide necessary medical or surgical care.

The Department may provide any medical and surgical treatment necessary to preserve the life and health of juveniles committed to the custody of the Department; however, no surgical operation may be performed except as authorized in G.S. 148-22.2.

"§ 143B-520. Compensation to juveniles in care.

A juvenile who has been committed to the Department may be compensated for work or participation in training programs at rates approved by the Secretary within available funds. The Secretary may provide for a reasonable allowance to the juvenile for incidental personal expenses, and any balance of the juvenile's earnings remaining at the time the juvenile is released shall be paid to the juvenile or the juvenile's parent or guardian. The Department may accept grants or funds from any source to compensate juveniles under this section.

"§ 143B-521. Visits and community activities.

(a) The Department shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Department.

(b) The Department shall develop a program of home visits for juveniles in the custody of the Department. The visits shall begin after the juvenile has been in the custody of the Department for a period of at least six months. In developing the program, the Department shall adopt criteria that promote the protection of the public and the best interests of the juvenile.

"§ 143B-522. Regional detention services.

The Department is responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services that offer juvenile detention care of sufficient quality to meet State standards to any juvenile requiring juvenile detention care within the State in a detention facility as follows:

(1) The Department shall plan with the counties operating a county detention facility to provide regional juvenile detention services to surrounding counties. The Department has discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate factors.

(2) The Department may plan with any county that has space within its county jail system to use the existing space for a county detention facility when needed, if the space meets the State standards for a detention facility and meets all of the requirements of G.S. 153A-221. The use of space within the county jail system shall be constructed to ensure that juveniles are not able to converse with, see, or be seen by the adult population, and juveniles housed in a space within a county jail shall be supervised closely.

(3) The Department shall plan for and administer regional detention facilities. The Department shall carefully plan the location, architectural design, construction, and administration of a program to meet the needs of juveniles in juvenile detention care. The physical facility of a regional detention facility shall comply with all applicable State and federal standards. The programs of a regional detention facility shall comply with the standards established by the Department.

"§ 143B-523. State subsidy to county detention facilities.

The Department shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention facility in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Department. The Department may vary the exact

funding formulas to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care.

"**§ 143B-524. Authority for implementation.**

In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department may:

(1) Release or transfer a juvenile from one detention facility to another when necessary to administer the juvenile's detention appropriately.

(2) Plan with counties that operate county detention facilities to provide regional services and to upgrade physical facilities to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards.

(3) Allow the State to reimburse law enforcement officers or other appropriate employees of local government for the costs of transportation of a juvenile to and from any juvenile detention facility.

(4) Seek funding for juvenile detention services from federal sources, and accept gifts of funds from public or private sources.

"Part 4. Juvenile Court Services.

"**§ 143B-525. Duties and powers of chief court counselors.**

The chief court counselor in each district appointed under G.S. 143B-514(b)(15) may:

(1) Appoint court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.

(3) Provide in-service training for staff as required by the Department.

(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.

"**§ 143B-526. Duties and powers of juvenile court counselors.**

As the court or the chief court counselor may direct or require, all juvenile court counselors shall have the following powers and duties:

(1) Secure or arrange for any information concerning a case that the court may require before, during, or after the hearing.

(2) Prepare written reports for the use of the court.

(3) Appear and testify at court hearings.

(4) Assume custody of a juvenile as authorized by G.S. 7B-1900, or when directed by court order.

(5) Furnish each juvenile on probation or protective supervision and that juvenile's parents, guardian, or custodian with a written

statement of the juvenile's conditions of probation or protective supervision, and consult with the juvenile's parents, guardian, or custodian so that they may help the juvenile comply with the conditions.

(6) Keep informed concerning the conduct and progress of any juvenile on probation or under protective supervision through home visits or conferences with the parents or guardian and in other ways.

(7) See that the juvenile complies with the conditions of probation or bring to the attention of the court any juvenile who violates the juvenile's probation.

(8) Make periodic reports to the court concerning the adjustment of any juvenile on probation or under court supervision.

(9) Keep any records of the juvenile's work as the court may require.

(10) Account for all funds collected from juveniles.

(11) Serve necessary court documents pertaining to delinquent and undisciplined juvenile matters.

(12) Assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public or the juvenile, and when necessary to carry out the responsibilities of court counselors under this section and under Chapter 7B of the General Statutes.

(13) Use reasonable force and restraint necessary to secure custody assumed under subdivision (12) of this section.

(14) Provide supervision for a juvenile transferred to the counselor's supervision from another court or another state, and provide supervision for any juvenile released from an institution operated by the Department when requested by the Department to do so.

(15) Assist in the development of post-release supervision and the supervision of juveniles.

(16) Have any other duties as the court may direct.

"Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

"§ 143B-527. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

(a) The Department shall implement the comprehensive juvenile delinquency and substance abuse prevention plan developed by the Office of Juvenile Justice and shall coordinate with County Councils for implementation of a continuum of services and programs at the community level.

The Department shall ensure that localities are informed about best practices in juvenile delinquency and substance abuse prevention.

(b) The plan shall contain the following:

(1) Identification of the risk factors at the developmental stages of a juvenile's life that may result in delinquent behavior.

(2) Identification of the protective factors that families, schools, communities, and the State must support to reduce the risk of juvenile delinquency.

(3) Programmatic concepts that are effective in preventing juvenile delinquency and substance abuse and that should be made available as basic services in the communities, including:

a. Early intervention programs and services.

b. In-home training and community-based family counseling and parent training.

c. Adolescent and family substance abuse prevention services, including alcohol abuse prevention services, and substance abuse education.

d. Programs and activities offered before and after school hours.

e. Life and social skills training programs.

f. Classes or seminars that teach conflict resolution, problem solving, and anger management.

g. Services that provide personal advocacy, including mentoring relationships, tutors, or other caring adult programs.

(c) The Department shall cooperate with all other affected State agencies and entities in implementing this section.

"Part 6. Juvenile Crime Prevention Councils.

"§ 143B-528. Legislative intent.

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to training schools and to provide community-based delinquency and substance abuse prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils.

"§ 143B-529. Creation; method of appointment; membership; chair and vice-chair.

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of commissioners of a county shall appoint a Juvenile Crime Prevention Council. Each County Council is a continuation of the corresponding Council created under G.S. 147-33.61. The County Council shall consist of not more than 25 members and should include, if possible, the following:

(1) The local school superintendent, or that person's designee;
(2) A chief of police in the county;
(3) The local sheriff, or that person's designee;
(4) The district attorney, or that person's designee;
(5) The chief court counselor, or that person's designee;
(6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
(7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
(8) The county manager, or that person's designee;
(9) A substance abuse professional;
(10) A member of the faith community;
(11) A county commissioner;
(12) A person under the age of 21;
(13) A juvenile defense attorney;
(14) The chief district court judge, or a judge designated by the chief district court judge;
(15) A member of the business community;
(16) The local health director, or that person's designee;
(17) A representative from the United Way or other nonprofit agency;
(18) A representative of a local parks and recreation program; and
(19) Up to seven members of the public to be appointed by the board of commissioners of a county.

The board of commissioners of a county shall modify the County Council's membership as necessary to ensure that the members reflect the racial and socioeconomic diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council under subsection (a) of this section. The membership shall be representative of each participating county.

(c) The members of the County Council shall elect annually the chair and vice-chair.

"**§ 143B-530. Terms of appointment.**

Each member of a County Council shall serve for a term of two years, except for initial terms as provided in this section. Each member's term is a continuation of that member's term under G.S. 147-33.62. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) were appointed for an initial term ending on June 30, 2000. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001, and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1.

"**§ 143B-531. Vacancies; removal.**

Appointments to fill vacancies shall be for the remainder of the former member's term.

Members shall be removed only for malfeasance or nonfeasance as determined by the board of county commissioners.

"**§ 143B-532. Meetings; quorum.**

County Councils shall meet at least bimonthly, or more often if a meeting is called by the chair.

A majority of members constitutes a quorum.

"**§ 143B-533. Compensation of members.**

Members of County Councils shall receive no compensation but may receive a per diem in an amount established by the board of county commissioners.

"**§ 143B-534. Powers and duties.**

(a) Each County Council shall review annually the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of county commissioners for its approval. Upon the county's authorization, the plan shall be submitted to the Department for final approval and subsequent implementation.

(b) Each County Council shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

(c) On an ongoing basis, each County Council shall:

(1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs.

(2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding.

(3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem.

(4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments.

(5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families. These services may include court-ordered parenting responsibility classes.

(6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district.

"**§ 143B-535. Funding for programs.**

(a) Annually, the Department shall develop and implement a funding mechanism for programs that meet the standards developed under this Part. The Department shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. -- The Department shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.

(2) Use a formula for the distribution of funds. -- A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternative services to juveniles in their communities.

(3) Allow and encourage local flexibility. -- A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternative funds.

(4) Combine resources. -- Counties shall be allowed and encouraged to combine resources and services.

(b) The Department shall adopt rules to implement this section. The Department shall provide technical assistance to County Councils and shall require them to evaluate all State-funded programs and services on an ongoing and regular basis.

"Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-536. Creation of Council; purpose; members; duties.**

(a) There is created the State Advisory Council on Juvenile Justice and Delinquency Prevention. The State Council shall be located within the Department for organizational, budgetary, and administrative purposes.

(b) The purpose of the State Council is to review and advise the Department in the development of a comprehensive interagency plan to reduce juvenile delinquency and substance abuse and to coordinate efforts among State agencies providing services and supervision to juveniles who are at risk of delinquency and for juveniles who have been adjudicated of delinquent and undisciplined behavior.

(c) The State Council shall consist of 20 members as follows:

(1) The Governor shall appoint five persons, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice issues.

(2) The Chief Justice of the Supreme Court shall appoint four persons.

(3) The following persons, or their designees, shall serve ex officio:

a. The Governor.

b. The Chief Justice of the Supreme Court.

c. The President Pro Tempore of the Senate.

d. The Speaker of the House of Representatives.

e. The Director of the Administrative Office of the Courts.

f. The Superintendent of Public Instruction.
g. The Secretary of Administration.
h. The Secretary of Health and Human Services.
i. The Secretary of Correction.
j. The Secretary of Crime Control and Public Safety.
k. The President of The University of North Carolina.

(d) Initial members, other than ex officio members, who were appointed under former G.S. 147-33.70 and whose terms began January 1, 1999, shall serve for terms as follows:

(1) Three members appointed by the Governor shall serve for terms of two years and two members for terms of three years.
(2) Two members appointed by the Chief Justice of the Supreme Court shall serve for terms of two years and two members for terms of three years.

Thereafter, members, other than ex officio members, shall serve for two-year terms. There is no prohibition against initial members being reappointed.

(e) The Governor and Chief Justice of the Supreme Court shall serve as cochairs of the State Council.

(f) A vacancy on the State Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) State Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) The chairs shall convene the Council. Meetings shall be held as often as necessary but not less than four times a year.

(j) A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council is necessary for action to be taken by the Council.

"§ 143B-537. Powers and duties of the Council.

The State Council shall have the following powers and duties:

(1) Advise the Department in the review of the State's juvenile justice planning, the development of the community juvenile justice councils, and the development of a formula for the distribution of funds to Juvenile Crime Prevention Councils.
(2) Advise all State agencies serving juveniles for the purpose of developing a consistent philosophy with regard to providing services to juveniles and promoting collaboration and the efficient and effective delivery of services to juveniles and families through State, local, and district programs and fully address problems of collaboration across State agencies with the goal of serving juveniles.

(3) Review and comment on juvenile justice, delinquency prevention, and juvenile services grant applications prepared for submission under any federal grant program by any governmental entity of the State.

(4) Review the juvenile justice system's operation and prioritization of funding needs.

(5) Review the progress and accomplishment of State and local juvenile justice, delinquency prevention, and juvenile services projects.

(6) Develop recommendations concerning the establishment of priorities and needed improvements with respect to juvenile justice, delinquency prevention, and juvenile services and report its recommendations to the General Assembly on or before March 1 each year.

(7) Review and comment on the proposed budget for the Department."

PART II. REVISIONS TO THE JUVENILE CODE.

Section 2. G.S. 7B-1501 reads as rewritten:

"§ 7B-1501. Definitions.

In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(3) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(7a) Department. -- The Department of Juvenile Justice and Delinquency Prevention created under Article 12 of Chapter 143B of the General Statutes.

(8) Detention. -- The secure confinement of a juvenile under a court order.

(9) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(10) District. -- Any district court district as established by G.S. 7A-133.

(11) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(12) House arrest. -- A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for specific purposes.

(13) Intake counselor. -- A person who screens and evaluates a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

(14) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee, or runaway, to the juvenile's home state, and codified in Article 28 of this Chapter.

(15) Judge. -- Any district court judge.

(16) Judicial district. -- Any district court district as established by G.S. 7A-133.

(17) Juvenile. -- Except as provided in subdivisions (7) and (27) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(18) Juvenile court. -- Any district court exercising jurisdiction under this Chapter.

~~(19) Office. -- The Office of Juvenile Justice.~~

(20) Petitioner. -- The individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.

(21) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the ~~Office~~ Department for placement in a training school.

(22) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(23) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(24) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(25) Teen court program. -- A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.

(26) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the ~~Office of Juvenile Justice.~~ Department.

(27) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(28) Wilderness program. -- A rehabilitative residential treatment program in a rural or outdoor setting.

The singular includes the plural, unless otherwise specified."

Section 3. The Revisor of Statutes shall substitute the term "Department of Juvenile Justice and Delinquency Prevention" for the term "Office of Juvenile Justice" everywhere that term appears in the General Statutes, except for those sections of the General Statutes amended in this act. Except where the statutes specifically reference the Administrative Office of the Courts or the Office of Guardian Ad Litem Services, the Revisor of Statutes shall substitute the term "Department" for the term "Office" everywhere that term appears in Subchapters II and III of Chapter 7B of the General Statutes.

PART III. CONFORMING CHANGES TO THE GENERAL STATUTES.

Section 4.(a) G.S. 7A-302 reads as rewritten:

"**§ 7A-302. Counties and municipalities responsible for physical facilities.**

In each county in which a district court has been established, courtrooms, office space for juvenile court counselors and support staff as assigned by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and related judicial facilities (including furniture), as defined in this Subchapter, shall be provided by the county, except that courtrooms and related judicial facilities may, with the approval of the Administrative Officer of the Courts, after consultation with county and municipal authorities, be provided by a municipality in the county. To assist a county or municipality in meeting the expense of providing courtrooms and related judicial facilities, a part of the costs of court, known as the "facilities fee," collected for the State by the clerk of superior court, shall be remitted to the county or municipality providing the facilities."

Section 4.(b) G.S. 7A-343.1 reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11

State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1

Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports."

Section 4.(c) G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

Section 4.(d) G.S. 17C-3(a) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission," in the Department of Justice. The Commission shall be composed of 26 members as follows:

(1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. -- Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; the Secretary of the Department of Correction; the President of the Department of Community Colleges.

(3a) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years."

Section 4.(e) G.S. 20-79.5(a) reads as rewritten:

"(a) Plates. -- The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representative	3
President Pro Tempore of the Senate	4
Secretary of State	5
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10
Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Services Officer	14
Secretary of Administration	15
Secretary of Environment and Natural Resources	16
Secretary of Revenue	17

Secretary of Health and Human Services	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22
Secretary of Juvenile Justice and Delinquency Prevention	23
Governor's Staff	~~23-29~~ 24-29
State Budget Officer	30
State Personnel Director	31
Advisory Budget Commission Nonlegislative Member	32-41
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53
Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-104
Post-Release Supervision and Parole Commission Member	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200".

Section 4.(f) G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the Horace Williams Campus of the University of North Carolina at Chapel Hill, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments

or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility under G.S. 148-70.

(19) The North Carolina Justice Academy.

(20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department."

Section 4.(g) G.S. 66-58(c)(7) reads as rewritten:

"(7) The operation by penal, correctional or facilities operated by the Department of Health and Human Services, the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors."

Section 4.(h) G.S. 114-19.6 reads as rewritten:

"§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Health and Human Services, and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(a) Definitions. -- As used in this section, the term:

(1) "Covered person" means:

a. An applicant for employment or a current employee in a position in the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention who provides direct care for a client, patient, student, resident or ward of the Department; or

b. Supervises positions providing direct care as outlined in sub-subdivision a. of this subdivision.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil

Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the North Carolina Department of Justice may provide to the ~~Department or Office~~ requesting department a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the ~~Department or Office~~ requesting department shall provide to the Department of Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall keep all information under this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information ~~the Department or Office~~ either department receives through the checking of the criminal history is privileged information and for the exclusive use of ~~the Department or Office.~~ that department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction

shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

Section 4.(i) G.S. 114-21(b) reads as rewritten:

"(b) The ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section."

Section 4.(j) G.S. 115C-110 reads as rewritten:

"§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency Prevention.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise and approve any plans for special education and related services to those residents.

The Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency

Prevention. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on this Department ~~or Office~~ and when other procedural due process requirements, substantially equivalent to those of G.S. 115C-116, are assured in programs of special education and related services furnished to children with special needs served by this ~~Department or Office.~~ Department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a "local educational agency" unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106(b). The plan shall include:

(1) A census of the children with special needs in the State, as required by subsection (j) of this section;

(2) A procedure for diagnosis and evaluation of each child;

(3) An inventory of the personnel and facilities available to provide special education for these children;

(4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;

(5) Standards for the education of children with special needs;

(6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and

(7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment under subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules covering:

(1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;

(2) Minimum standards for the individualized educational program for all children with special needs other than for the pregnant children, and for the educational program for the pregnant children, who receive special education and related services; and

(3) Any other rules as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

(1) A statement of the extent to which the required education and services will be provided directly by the agency;

(2) A statement of the extent to which standards in force under G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and

(3) The means by which the agency will contract to provide, at levels meeting standards in force under G.S. 115C-110(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By rule, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to these annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

(1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and

(2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children

with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except those fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall not prevent that Department ~~and Office~~ from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, to be taken in each school year. Suspected children are those in the formal process of being identified, evaluated or diagnosed as children with special needs. The census shall be conducted annually and shall be completed not later than October 15, and shall be submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than pregnant children, and of educational programs in meeting the educational needs of the pregnant children.

(l) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education."

Section 4.(k) G.S. 115C-111 reads as rewritten:

"**§ 115C-111. Free appropriate education for all children with special needs.**

No child with special needs between the ages specified by G.S. 115C-109 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian resides or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the local educational agency shall confer with the appropriate Department of Health and Human Services or ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in said program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115C-116. Every child with special needs shall be entitled to attend these nonresidential schools or programs and receive from them free appropriate public education."

Section 4.(l) G.S. 115C-113(f) reads as rewritten:

"(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the pregnant children, and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term 'individualized educational program' means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Health and Human Services and the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent."

Section 4.(m) G.S. 115C-113.1 reads as rewritten:

"**§ 115C-113.1. Surrogate parents.**

In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public Instruction, the Secretary of Health and Human Services, and the ~~Office of Juvenile Justice,~~ Secretary of Juvenile Justice and Delinquency Prevention, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent."

Section 4.(n) G.S. 115C-115 reads as rewritten:

"**§ 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.**

The board shall adopt rules and regulations to assure that:

(1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.

(2) No child shall be placed by the Board or by the local educational agency in a private or out-of-state school unless the Board has determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.

(3) If the placement of the child in a private school, out-of-state school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost."

Section 4.(o) G.S. 115C-121(b) reads as rewritten:

"(b) The Council shall consist of 23 members to be appointed as follows: five ex officio members; two members appointed by the Governor; two members of the

Senate appointed by the President Pro Tempore; two members of the House of Representatives appointed by the Speaker of the House; and 12 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of the Department of Health and Human Services or the Secretary's designee;

(1a) A representative of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, appointed by the Governor;

(2) The Secretary of the Department of Correction or the Secretary's designee;

(3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and

(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms. The initial term of office of the person appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly."

Section 4.(p) G.S. 115C-139(a) reads as rewritten:

"(a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings under the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes or into undertakings with a State agency such as the ~~Office of Juvenile Justice or the~~ Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide

the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children."

Section 4.(q) G.S. 115C-250(a) reads as rewritten:

"(a) The State Board of Education and local boards of education may expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide such children with a free appropriate education, including its duty under G.S. 115C-115. At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of exceptional children may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules and regulations concerning the construction and equipment of these buses and minibuses.

The ~~Department~~ Departments of Health and Human Services, ~~the Office of Juvenile Justice, and the Department of~~ Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide such children with a free appropriate public education.

If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses, to the program."

Section 4.(r) G.S. 115C-325(p) reads as rewritten:

"(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human ~~Services and Correction or the Office of Juvenile Justice~~ Services, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students."

Section 4.(s) G.S. 115D-1 reads as rewritten:

"**§ 115D-1. Statement of purpose.**

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the

issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the training school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission."

Section 4.(t) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided

further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section."

Section 4.(u) G.S. 120-216 reads as rewritten:

"**§ 120-216. Commission duties.**

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:

a. Determining the adequacy and appropriateness of services:

1. To children and youth receiving child welfare services;
2. To children and youth in the juvenile court system; and
3. Provided by the Division of Social Services and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.

c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose."

Section 4.(v) G.S. 122C-3(13a) reads as rewritten:

"(13a) 'Eligible assaultive and violent children' means children who are citizens of North Carolina and:

a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and

b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:

1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are presented for admission and denied due to their behaviors or handicapping conditions;

2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority under G.S. 7B-903 for whom residential treatment or placement is recommended;

3. Minors who are placed in residential programs as a condition of probation under G.S. 7B-2506;

4. Minors who are ordered to a professional residential treatment program under G.S. 7B-2506; and

5. Minors committed to the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, under G.S. 7B-2506; and

c. For whom the State has not provided appropriate treatment and educational programs."

Section 4.(w) G.S. 122C-113(b1) reads as rewritten:

"(b1) The Secretary shall cooperate with the State Board of Education and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction, in consultation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs."

Section 4.(x) G.S. 122C-117(a) reads as rewritten:

"(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;
(2) Provide services to clients in the catchment area, including clients committed to the custody of the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;
(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention the provision of services to clients through area and State facilities;
(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
(6) Comply with federal requirements as a condition of receipt of federal grants; and
(7) Appoint an area director, chosen through a search committee on which the Secretary of the Department of Health and Human Services or the Secretary's designee serves as a nonvoting member."

Section 4.(y) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1

~~Office of Juvenile Justice~~
Department of Juvenile Justice and
Delinquency Prevention.....1
Board of Transportation.....1
Utilities Commission.....1
Department of Administration.....1
Clerk of the Supreme Court.....1
Clerk of the Court of Appeals.....1
Clerk of the Superior Court.....1 each
Department of Cultural Resources [State
Library].....5
Supreme Court Library.....2
Legislative Library.....1
Schools
All state-supported colleges and universities
in the State of North Carolina.....*1 each
Local Officials
Clerks of the Superior Courts.....1 each
Chief Building Inspector of each incorporated
municipality or county.....1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

Section 4.(z) G.S. 143-166.2(d) reads as rewritten:

"(d) The term 'law-enforcement officer,' 'officer,' or 'fireman' shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction and all full-time institutional and detention employees of the ~~Division of Youth Services of the Department of Health and Human Services.~~ Department of Juvenile Justice and Delinquency Prevention. The term 'firemen' shall mean both 'eligible fireman'; or 'fireman' as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated. The term 'rescue squad worker' shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of

training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term 'rescue squad worker' shall mean a member of an ambulance service certified by the Department of Health and Human Services under Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term 'Civil Air Patrol members' shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified under G.S. 143B-491(a). The term 'fireman' shall also mean county fire marshals when engaged in the performance of their county duties. The term 'rescue squad worker' shall also mean county emergency services coordinators when engaged in the performance of their county duties."

Section 4.(aa) G.S. 143B-150.5(d) reads as rewritten:

"(d) The Secretary of the Department of Health and Human Services shall ensure the cooperation of the Division of Social Services, ~~the Division of Youth Services,~~ the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Division of Medical Assistance, in carrying out the provisions of this Part."

Section 4.(bb) G.S. 143B-150.7(b) reads as rewritten:

"(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) Four members representing the Department of Health and Human Services, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom shall represent the Division of Maternal and Child Health;

(1a) One member representing the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;

(2) Two members, one from each of the following: the Administrative Office of the Courts and the Department of Public Instruction;
(3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;
(4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;
(5) One member representing the schools of social work of The University of North Carolina;
(6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and
(7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of Health and Human Services shall serve as the Chair of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services."

Section 4.(cc) G.S. 143B-152.6 reads as rewritten:

"**§ 143B-152.6. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(dd) G.S. 143B-152.14 reads as rewritten:

"**§ 143B-152.14. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties,

shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(ee) G.S. 143B-153(2) reads as rewritten:

"(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services."

Section 4.(ff) G.S. 143B-478 reads as rewritten:

"**§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings, etc.**

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 36 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services,

the Secretary of the Department of Correction, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Parole, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the

Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: ~~the representative of the Office of Juvenile Justice,~~ the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed under subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the

Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 4.(gg) G.S. 147-45 reads as rewritten:

"**§ 147-45. Distribution of copies of State publications.**

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture and Consumer Services, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0

Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment and Natural Resources,		
Department of	6	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Health and Human Services, Department of	6	0
Mental Health, Developmental Disabilities,		
and Substance Abuse Services,		
Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
~~Juvenile Justice, Office of~~		
Juvenile Justice and Delinquency		
Prevention, Department of	3	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission,		
North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0

Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1

East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
University of North Carolina, Pembroke	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
Johnson C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point University	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.

Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

Section 4.(hh) G.S. 131D-10.4 reads as rewritten:

"**§ 131D-10.4. Exemptions.**

This Article shall not apply to:

(1) Any residential child-care facility chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars ($60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation before July 1, 1977;

(2) State institutions for emotionally disturbed or delinquent children, the mentally ill, mentally retarded, and substance abusers;

(3) Secure detention facilities as specified in ~~Article 3C of Chapter 147~~ Article 12 of Chapter 143B of the General Statutes;

(4) Licensable facilities subject to the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services as specified in Article 2 of Chapter 122C of the General Statutes;

(5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14;

(6) Primarily educational institutions as defined in G.S. 131D-10.2(11); or

(7) Individuals who are related by blood, marriage, or adoption to the child."

Section 4.(ii) G.S. 153A-221.1 reads as rewritten:

"**§ 153A-221.1. Standards and inspections.**

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training.

~~The Director of the Office of Juvenile Justice shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by Article 3C of Chapter 147 of the General Statutes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.~~

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail

with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child."

Section 4.(jj) G.S. 164-40 reads as rewritten:

"**§ 164-40. Correction population simulation model; ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model.**

(a) The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

(b) The Commission shall develop ~~an Office of Juvenile Justice~~ a Department of Juvenile Justice and Delinquency Prevention facilities population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the dispositional laws set forth in Chapter 7B of the General Statutes, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, in second priority to the work of the Commission."

Section 4.(kk) G.S. 164-43 reads as rewritten:

"**§ 164-43. Priority of duties; reports; continuing duties.**

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established under G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on

these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in this State to ensure that sentences and dispositions remain uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing and dispositional practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model developed under G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated under G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment or dispositional level for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model to the provisions of the bill."

Section 4.(ll) G.S. 164-37(26) reads as rewritten:

"(26) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention."

Section 4.(mm) G.S. 143B-2 reads as rewritten:

"**§ 143B-2. Interim applicability of the Executive Organization Act of 1973.**

The Executive Organization Act of 1973 shall be applicable only to the following named departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety

(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of ~~Commerce.~~ Commerce
(10) Department of Juvenile Justice and Delinquency Prevention."

Section 4.(nn) G.S. 143B-6 reads as rewritten:

"**§ 143B-6. Principal departments.**

In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce
(10) Community Colleges System ~~Office.~~ Office
(11) Department of Juvenile Justice and Delinquency Prevention."

PART IV. EFFECTIVE DATE.

Section 5. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1462*

Short Title: Establish Juvenile Department. (Public)

Sponsors: Senators Cooper and Carter.

Referred to: Judiciary I.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

PART I. CREATION OF DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

Section 1.(a) Article 3C of Chapter 147 of the General Statutes is repealed.

Section 1.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12.

"Department of Juvenile Justice and Delinquency Prevention.

"Part 1. Creation of Department.

"§ 143B-511. Creation of the Department of Juvenile Justice and Delinquency Prevention.

There is hereby created and constituted a department to be known as the 'Department of Juvenile Justice and Delinquency Prevention' ('Department'), with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article.

"§ 143B-512. Transfer of Office of Juvenile Justice authority to the Department of Juvenile Justice and Delinquency Prevention.

(a) All (i) statutory authority, powers, duties, and functions, including directives of S.L. 1998-202, rule making, budgeting, and purchasing, (ii) records, (iii) personnel,

personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Office of Juvenile Justice under the Office of the Governor are transferred to and vested in the Department of Juvenile Justice and Delinquency Prevention. This transfer has all of the elements of a Type I transfer, as defined in G.S. 143A-6.

(b) The Department shall be considered a continuation of the Office of Juvenile Justice for the purpose of succession to all rights, powers, duties, and obligations of the Office and of those rights, powers, duties, and obligations exercised by the Office of the Governor on behalf of the Office of Juvenile Justice. Where the Office of Juvenile Justice is referred to by law, contract, or other document, that reference shall apply to the Department. Where the Office of the Governor is referred to by contract or other document, where the Office of the Governor is acting on behalf of the Office of Juvenile Justice, that reference shall apply to the Department.

(c) All institutions previously operated by the Office of Juvenile Justice and the present central office of the Office of Juvenile Justice, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Office or by the Office of the Governor for the Office of Juvenile Justice, shall be administered by the Department of Juvenile Justice and Delinquency Prevention.

"Part 2. General Provisions.

"§ 143B-513. Definitions.

The definitions set forth in G.S. 7B-1501 apply to this Article, unless modified in this Article.

"§ 143B-514. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.

(a) The head of the Department of Juvenile Justice and Delinquency Prevention is the Secretary of the Department of Juvenile Justice and Delinquency Prevention. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy which requires that training schools be phased out as populations diminish.

(2) Close a State training school when its operation is no longer justified and transfer State funds appropriated for the operation of any training school which is closed either to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing training schools, provided any such action is reviewed by the Advisory Budget Commission.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules and regulations to implement the provisions of this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision services in all district court districts of the State to provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards and approve yearly program evaluations and make recommendations to the General Assembly concerning continuation funding based on the evaluations.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding on a matching basis for juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under the provisions of this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services, and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Assist the Criminal Justice Information Network Governing Board with administering a comprehensive juvenile justice information system to collect data and information about delinquent juveniles

for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district court district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles, including attendance at appropriate professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the functions, powers, duties, and obligations of every agency or division in the Department shall be prescribed by the Secretary of the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations, and may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. In developing the model, the Department shall consider the recommendations of the State Advisory Council on Juvenile Justice and Delinquency Prevention.

"§ 143B-515. Authority to contract with other entities.

(a) The Department may contract with any governmental agency, person, association, or corporation for the accomplishment of its duties and responsibilities provided that the expenditure of funds pursuant to these contracts shall be for the

purposes for which the funds were appropriated and is not otherwise prohibited by law.

(b) The Department may enter into contracts with, and act as intermediary between, any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program; and, as a condition of assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees.

(c) The Department and any other appropriate State or local agency may purchase services from public or private agencies providing delinquency prevention programs or juvenile court services, including parenting responsibility classes. The programs shall meet State standards. As institutional populations are reduced, the Department may divert State funds appropriated for institutional programs to purchase the services pursuant to the provisions of the Executive Budget Act.

(d) Each programmatic, residential, and service contract or agreement entered into by the Department shall include a cooperation clause to ensure compliance with the Department's quality assurance requirements and cost-accounting requirements.

"**§ 143B-516. Authority to assist private nonprofit foundations.**

The Department may provide appropriate services or allow employees of the Department to assist any private nonprofit foundation which works directly with services or programs of the Department and whose sole purpose is to support the services and programs of the Department. A Department employee shall be allowed to work with a foundation no more than 20 hours in any one month. These services are not subject to the provisions of Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the Department of State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall transmit to the Department a copy of the annual financial audit report of the private nonprofit foundation.

"**§ 143B-517. Annual report.**

On or before April 1 each year, beginning with the year 2001, the Department shall report to the General Assembly on the effectiveness and cost benefit of every program operated and contracted by the Department and a summary of the local programs that receive State funding. The report shall include the most current institutional populations of juveniles being served by the Department, a comparison of the costs of the services, and a ranking of all programs that provide services to juveniles. The Department shall submit the report to the various State agencies providing services to juveniles.

"Part 3. Juvenile Facilities.

"**§ 143B-518. Juvenile facilities.**

The Department shall be responsible for administration of statewide programs to provide any juvenile in a juvenile facility with appropriate treatment according to the

juvenile's needs, including educational, clinical and psychological, psychiatric, social, medical, vocational, and recreational services or programs.

"§ 143B-519. Authority to provide necessary medical or surgical care.

The Department may provide any medical and surgical treatment necessary to preserve the life and health of juveniles committed to the custody of the Department, provided that no surgical operation may be performed except as authorized in G.S. 148-22.2.

"§ 143B-520. Compensation to juveniles in care.

Juveniles who have been committed to the Department may be compensated for work or participation in training programs at rates approved by the Secretary within available funds. The Secretary may provide for a reasonable allowance to the juvenile for incidental personal expenses, and any balance of the juvenile's earnings remaining at the time the juvenile is released shall be paid to the juvenile or the juvenile's parent or guardian. The Department is authorized to accept grants or funds from any source to compensate juveniles as provided under this section.

"§ 143B-521. Visits and community activities.

(a) The Department shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Department.

(b) The Department shall develop a program of home visits for juveniles in the custody of the Department, after the juvenile has been in the custody of the Department for a period of at least six months. In developing the program, the Department shall adopt criteria that promote the protection of the public and the best interests of the juvenile.

"§ 143B-522. Regional detention services.

The Department shall be responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services that offer juvenile detention care of sufficient quality to meet State standards to any juvenile requiring juvenile detention care within the State in a detention facility as follows:

(1) The Department shall plan with the counties operating a county detention facility to provide regional juvenile detention services to surrounding counties, except that the Department shall have discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate factors.

(2) The Department may plan with any county that has space within its county jail system to use the existing space for a county detention facility when needed, if the space meets the State standards for a detention facility and meets all of the requirements of G.S. 153A-221. The use of space within the county jail system shall be constructed to ensure that juveniles are not able to converse with, see, or be seen by the adult population, and juveniles housed in a space within a county jail shall be supervised closely.

(3) The Department shall plan for and administer regional detention facilities, including careful planning on location, architectural design, construction, and administration of a program to meet the needs of juveniles in juvenile detention care. The physical facility of a regional detention facility shall comply with all applicable State and federal standards. The programs of a regional detention facility shall comply with the standards established by the Department.

"**§ 143B-523. State subsidy to county detention facilities.**

The Department shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention facility in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Department. The exact funding formulas may be varied by the Department to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care.

"**§ 143B-524. Authority for implementation.**

In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department may:

(1) Release or transfer a juvenile from one detention facility to another when necessary to administer the juvenile's detention appropriately.

(2) Plan with counties operating county detention facilities to provide regional services and to upgrade physical facilities to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards.

(3) Allow law enforcement officers or other appropriate employees of local government to be reimbursed by the State for the costs of transportation of a juvenile to and from any juvenile detention facility.

(4) Seek funding for juvenile detention services from federal sources, and to accept gifts of funds from public or private sources.

"Part 4. Juvenile Court Services.

"**§ 143B-525. Duties and powers of chief court counselors.**

The chief court counselor in each district court district appointed as provided by this Article may:

(1) Appoint court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district court district.
(3) Provide in-service training for staff as required by the Department.
(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.

"§ 143B-526. Duties and powers of juvenile court counselors.

As the court or the chief court counselor may direct or require, all juvenile court counselors shall have the following powers and duties:

(1) Secure or arrange for such information concerning a case as the court may require before, during, or after the hearing.
(2) Prepare written reports for the use of the court.
(3) Appear and testify at court hearings.
(4) Assume custody of a juvenile as authorized by G.S. 7B-1900, or when directed by court order.
(5) Furnish each juvenile on probation or protective supervision and the juvenile's parents, guardian, or custodian with a written statement of the juvenile's conditions of probation or protective supervision, and consult with the juvenile's parents, guardian, or custodian so that they may help the juvenile comply with the conditions.
(6) Keep informed concerning the conduct and progress of any juvenile on probation or under protective supervision through home visits or conferences with the parents or guardian and in other ways.
(7) See that the conditions of probation are complied with by the juvenile, or bring any juvenile who violates the juvenile's probation to the attention of the court.
(8) Make periodic reports to the court concerning the adjustment of any juvenile on probation or under court supervision.
(9) Keep any records of the juvenile's work as the court may require.
(10) Account for all funds collected from juveniles.
(11) Serve necessary court documents pertaining to delinquent and undisciplined juvenile matters.
(12) Assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public, or the juvenile, and necessary to carry out the responsibilities of court counselors under this section and under Chapter 7B of the General Statutes.
(13) Use reasonable force and restraint necessary to secure custody assumed under subdivision (12) of this section.
(14) Provide supervision for a juvenile transferred to the counselor's supervision from another court or another state, and provide

supervision for any juvenile released from an institution operated by the Department when requested by the Department to do so.

(15) Assist in the development of post-release supervision and the supervision of juveniles.

(16) Have any other duties as the court may direct.

"Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

"§ 143B-527. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

(a) The Department shall implement the comprehensive juvenile delinquency and substance abuse prevention plan developed by the Office of Juvenile Justice and shall coordinate with county Juvenile Crime Prevention Councils, as provided in G.S. 143B-528, for implementation of a continuum of services and programs at the community level.

The Department shall ensure that localities are informed about best practices in juvenile delinquency and substance abuse prevention.

(b) The Department shall ensure that the plan contains the following:

(1) Identification of the risk factors at the developmental stages of a juvenile's life that may result in delinquent behavior.

(2) Identification of the protective factors that families, schools, communities, and the State must support to reduce the risk of juvenile delinquency.

(3) Programmatic concepts that are effective in preventing juvenile delinquency and substance abuse and that should be made available as basic services in the communities, including:

a. Early intervention programs and services.

b. In-home training and community-based family counseling and parent training.

c. Adolescent and family substance abuse prevention services, including alcohol abuse prevention services, and substance abuse education.

d. Programs and activities offered before and after school hours.

e. Life and social skills training programs.

f. Classes or seminars that teach conflict resolution, problem solving, and anger management.

g. Services that provide personal advocacy, including mentoring relationships, tutors, or other caring adult programs.

(c) The Department shall cooperate with all other affected State agencies and entities in implementing this section.

"Part 6. Juvenile Crime Prevention Councils.

"§ 143B-528. Legislative intent.

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to training schools and to provide community-based delinquency and substance abuse prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils.

"§ 143B-529. Creation; method of appointment; membership; chair and vice-chair.

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of commissioners of a county shall appoint a Juvenile Crime Prevention Council. The Juvenile Crime Prevention Council shall consist of not more than 25 members and should include, if possible, the following:

(1) The local school superintendent(s), or that person's designee(s);
(2) A chief of police in the county;
(3) The local sheriff, or that person's designee;
(4) The district attorney, or that person's designee;
(5) The chief court counselor, or that person's designee;
(6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
(7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
(8) The county manager, or that person's designee;
(9) A substance abuse professional;
(10) A member of the faith community;
(11) A county commissioner;
(12) A person under the age of 21;
(13) A juvenile defense attorney;
(14) The chief district court judge, or a district court judge designated by the chief district court judge;
(15) A member of the business community;
(16) The local health director, or that person's designee;
(17) A representative from the United Way or other nonprofit agency;
(18) A representative of a local parks and recreation program; and
(19) Up to seven members of the public to be appointed by the board of commissioners of a county.

The board of commissioners of a county shall modify the Council's membership as necessary to ensure that Council members reflect the racial and socioeconomic

diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council pursuant to subsection (a) of this section. The membership shall be representative of each participating county.

(c) The chair and vice-chair shall be elected annually by the members of the Council.

"**§ 143B-530. Terms of appointment.**

Each member of a Juvenile Crime Prevention Council shall serve for a term of two years, except for initial terms as provided in this section. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) were appointed for an initial term ending on June 30, 2000. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001 and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1.

"**§ 143B-531. Vacancies; removal.**

Appointments to fill vacancies shall be for the remainder of the former member's term.

Members shall be removed only for malfeasance, or nonfeasance as determined by the board of commissioners of the county.

"**§ 143B-532. Meetings; quorum.**

Councils shall meet at least bimonthly, or more often if a meeting is called by the chair.

A majority of members shall constitute a quorum.

"**§ 143B-533. Compensation of members.**

Members of Juvenile Crime Prevention Councils shall receive no compensation but may receive a per diem in such an amount as may be established by the board of commissioners of the county.

"**§ 143B-534. Powers and duties.**

(a) The Councils shall annually review the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of commissioners of the county for its approval. Upon the county's authorization, the plan shall be submitted to the Department for final approval and subsequent implementation.

(b) The Councils shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community level sanctions for court-adjudicated juveniles pursuant to minimum standards adopted by the Department.

(c) The Councils shall perform the following functions on an ongoing basis:

(1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs;

(2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding;

(3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem;

(4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments;

(5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families, including court-ordered parenting responsibility classes; and

(6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district.

"**§ 143B-535. Funding for programs.**

(a) Annually, the Department shall develop and implement a funding mechanism for programs that meet the standards as developed under the provisions of this Part. The Department shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. -- The Department shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded;

(2) Use a formula for the distribution of funds. -- A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternatives services to juveniles in their communities;

(3) Allow and encourage local flexibility. -- A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternatives funds; and

(4) Combine resources. -- Counties shall be allowed and encouraged to combine resources and services.

(b) The Department shall adopt rules to implement this section, and the Department shall provide technical assistance to Juvenile Crime Prevention Councils and shall ensure that the Juvenile Crime Prevention Councils evaluate all State-funded programs and services on an ongoing and regular basis.

"Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-536. Creation of Council; purpose; members; duties.**

(a) There is created the State Advisory Council on Juvenile Justice and Delinquency Prevention. The Council shall be located within the Department of Juvenile Justice and Delinquency Prevention for organizational, budgetary, and administrative purposes.

(b) The purpose of the Council is to review and advise the Department in the development of a comprehensive interagency plan to reduce juvenile delinquency and substance abuse and to coordinate efforts among State agencies providing services and supervision to juveniles who are at risk of delinquency and for juveniles who have been adjudicated of delinquent and undisciplined behavior.

(c) The Council shall consist of 20 members as follows:

(1) Five persons appointed by the Governor, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice issues.

(2) Four persons appointed by the Chief Justice of the Supreme Court.

(3) The following persons, or their designees, ex officio:

a. The Governor.

b. The Chief Justice of the Supreme Court.

c. The President Pro Tempore of the Senate.

d. The Speaker of the House of Representatives.

e. The Director of the Administrative Office of the Courts.

f. The Superintendent of Public Instruction.

g. The Secretary of the Department of Administration.

h. The Secretary of the Department of Health and Human Services.

i. The Secretary of the Department of Correction.

j. The Secretary of the Department of Crime Control and Public Safety.

k. The President of The University of North Carolina.

(d) Initial members, other than ex officio members, which were appointed pursuant to former G.S. 147-33.70 and whose terms began January 1, 1999, shall serve for terms as follows:

(1) Three members appointed by the Governor shall serve for terms of two years and two members for terms of three years.

(2) Two members appointed by the Chief Justice of the Supreme Court shall serve for terms of two years and two members for terms of three years.

Thereafter, members, other than ex officio members, shall serve for two-year terms. There is no prohibition against initial members being reappointed.

(e) The Governor and Chief Justice of the Supreme Court shall serve as cochairs of the Council.

(f) A vacancy on the Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) The Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) The chair shall convene the Council. Meetings shall be held as often as necessary but not less than four times a year.

(j) A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council shall be necessary for action to be taken by the Council.

"§ 143B-537. Powers and duties of the Council.

The Council shall have the following powers and duties:

(1) Advise the Department in the review of the State's juvenile justice planning, the development of the community juvenile justice councils, and the development of a formula for the distribution of funds to Juvenile Crime Prevention Councils.

(2) Advise all State agencies serving juveniles for the purpose of developing a consistent philosophy with regard to providing services to juveniles and promoting collaboration and the efficient and effective delivery of services to juveniles and families through State, local, and district programs and fully address problems of collaboration across State agencies with the goal of serving juveniles.

(3) Review and comment on juvenile justice, delinquency prevention, and juvenile services grant applications prepared for submission under any federal grant program by any governmental entity of the State.

(4) Review the juvenile justice system's operation and prioritization of funding needs.

(5) Review the progress and accomplishment of State and local juvenile justice, delinquency prevention, and juvenile services projects.

(6) Develop recommendations concerning the establishment of priorities and needed improvements with respect to juvenile justice, delinquency prevention, and juvenile services and report its recommendations to the General Assembly on or before March 1 each year.

(7) Review and comment on the proposed budget for the Department."

PART II. REVISIONS TO THE JUVENILE CODE.

Section 2. G.S. 7B-1501 reads as rewritten:

"§ 7B-1501. Definitions.

In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(3) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(7a) Department. -- The North Carolina Department of Juvenile Justice and Delinquency Prevention created pursuant to Article 12 of Chapter 143B of the General Statutes.

(8) Detention. -- The secure confinement of a juvenile pursuant to a court order.

(9) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(10) District. -- Any district court district as established by G.S. 7A-133.

(11) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(12) House arrest. -- A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for specific purposes.

(13) Intake counselor. -- A person who screens and evaluates a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

(14) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee, or runaway, to the juvenile's home state, and codified in Article 28 of this Chapter.

(15) Judge. -- Any district court judge.

(16) Judicial district. -- Any district court district as established by G.S. 7A-133.

(17) Juvenile. -- Except as provided in subdivisions (7) and (27) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(18) Juvenile court. -- Any district court exercising jurisdiction pursuant to this Chapter.

~~(19) Office. -- The Office of Juvenile Justice.~~

(20) Petitioner. -- The individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.

(21) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the ~~Office~~ Department for placement in a training school.

(22) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(23) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(24) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(25) Teen court program. -- A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.

(26) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the ~~Office of Juvenile Justice.~~ Department.

(27) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly

disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(28) Wilderness program. -- A rehabilitative residential treatment program in a rural or outdoor setting.

The singular includes the plural, unless otherwise specified."

Section 3. The Revisor of Statutes shall substitute the term "Department of Juvenile Justice and Delinquency Prevention" for the term "Office of Juvenile Justice" everywhere that term appears in the General Statutes, except for those sections of the General Statutes amended in this act. Except where the statutes specifically reference the Administrative Office of the Courts or the Office of Guardian ad Litem Services, the Revisor of Statutes shall substitute the term "Department" for the term "Office" everywhere that term appears in Subchapters II and III of Chapter 7B of the General Statutes.

PART III. CONFORMING CHANGES TO THE GENERAL STATUTES.

Section 4.(a) G.S. 7A-302 reads as rewritten:

"**§ 7A-302. Counties and municipalities responsible for physical facilities.**

In each county in which a district court has been established, courtrooms, office space for juvenile court counselors and support staff as assigned by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and related judicial facilities (including furniture), as defined in this Subchapter, shall be provided by the county, except that courtrooms and related judicial facilities may, with the approval of the Administrative Officer of the Courts, after consultation with county and municipal authorities, be provided by a municipality in the county. To assist a county or municipality in meeting the expense of providing courtrooms and related judicial facilities, a part of the costs of court, known as the "facilities fee," collected for the State by the clerk of superior court, shall be remitted to the county or municipality providing the facilities."

Section 4.(b) G.S. 7A-343.1 reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1

Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
~~Juvenile Justice, Office of~~	
Juvenile Justice and Delinquency Prevention,	
Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1

University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1
Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports."

Section 4.(c) G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the ~~Office of~~

~~Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

Section 4.(d) G.S. 17C-3(a) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission," in the Department of Justice. The Commission shall be composed of 26 members as follows:

(1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. -- Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; the Secretary of the Department of Correction; the President of the Department of Community Colleges.

(3a) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years."

Section 4.(e) G.S. 20-79.5(a) reads as rewritten:

"(a) Plates. -- The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representative	3
President Pro Tempore of the Senate	4
Secretary of State	5
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10
Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Services Officer	14
Secretary of Administration	15
Secretary of Environment and Natural Resources	16
Secretary of Revenue	17
Secretary of Health and Human Services	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22
Secretary of Juvenile Justice and Delinquency Prevention	23
Governor's Staff	~~23-29~~ 24-29
State Budget Officer	30
State Personnel Director	31
Advisory Budget Commission Nonlegislative Member	32-41
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53

Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-104
Post-Release Supervision and Parole Commission Member	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200".

Section 4.(f) G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the Horace Williams Campus of the University of North Carolina at Chapel Hill, nor to the comprehensive student health services or the comprehensive

student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the

Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.

(19) The North Carolina Justice Academy.

(20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department."

Section 4.(g) G.S. 66-58(c)(7) reads as rewritten:

"(7) The operation by penal, correctional or facilities operated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors."

Section 4.(h) G.S. 114-19.6 reads as rewritten:

"**§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Health and Human Services, and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.**

(a) Definitions. -- As used in this section, the term:

(1) "Covered person" means:

a. An applicant for employment or a current employee in a position in the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention who provides direct care for a client, patient, student, resident or ward of the Department; or

b. Supervises positions providing direct care as outlined in sub-subdivision a. of this subdivision.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the North Carolina Department of Justice may provide to the ~~Department or Office~~ requesting department a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the ~~Department or Office~~ requesting department shall provide to the Department of Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered

applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information ~~the Department or Office~~ either department receives through the checking of the criminal history is privileged information and for the exclusive use of ~~the Department or Office.~~ that department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

Section 4.(i) G.S. 114-21(b) reads as rewritten:

"(b) The ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section."

Section 4.(j) G.S. 115C-110 reads as rewritten:

"§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency Prevention.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise and approve any plans for special education and related services to those residents.

The Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency Prevention. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on this Department ~~or Office~~ and when other procedural due process requirements, substantially equivalent to those of G.S. 115C-116, are assured in programs of special education and related services furnished to children with special needs served by this ~~Department or Office.~~ Department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a "local educational agency" unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106(b). The plan shall include:

(1) A census of the children with special needs in the State, as required by subsection (j) of this section;

(2) A procedure for diagnosis and evaluation of each child;

(3) An inventory of the personnel and facilities available to provide special education for these children;

(4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;

(5) Standards for the education of children with special needs;

(6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and

(7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment pursuant to subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules covering:

(1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;

(2) Minimum standards for the individualized educational program for all children with special needs other than for the pregnant children, and for the educational program for the pregnant children, who receive special education and related services; and

(3) Any other rules as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

(1) A statement of the extent to which the required education and services will be provided directly by the agency;
(2) A statement of the extent to which standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and
(3) The means by which the agency will contract to provide, at levels meeting standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By rule, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to these annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

(1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and
(2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except those fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall not prevent that Department ~~and Office~~ from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, to be taken in each school year. Suspected children are those in the formal process of being identified, evaluated or diagnosed as children with special needs. The census shall be conducted annually and shall be completed not later than October 15, and shall be

submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than pregnant children, and of educational programs in meeting the educational needs of the pregnant children.

(l) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education."

Section 4.(k) G.S. 115C-111 reads as rewritten:

"**§ 115C-111. Free appropriate education for all children with special needs.**

No child with special needs between the ages specified by G.S. 115C-109 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian resides or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the local educational agency shall confer with the appropriate Department of Health and Human Services or ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in said

program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115C-116. Every child with special needs shall be entitled to attend these nonresidential schools or programs and receive from them free appropriate public education."

Section 4.(l) G.S. 115C-113(f) reads as rewritten:

"(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the pregnant children, and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term 'individualized educational program' means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Health and Human Services and the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent."

Section 4.(m) G.S. 115C-113.1 reads as rewritten:

"§ 115C-113.1. Surrogate parents.

In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public Instruction, the Secretary of Health and Human Services, and the ~~Office of Juvenile Justice,~~ Secretary of Juvenile Justice and Delinquency Prevention, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent."

Section 4.(n) G.S. 115C-115 reads as rewritten:

"§ 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.

The board shall adopt rules and regulations to assure that:

(1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.

(2) No child shall be placed by the Board or by the local educational agency in a private or out-of-state school unless the Board has determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.

(3) If the placement of the child in a private school, out-of-state school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost."

Section 4.(o) G.S. 115C-121(b) reads as rewritten:

"(b) The Council shall consist of 23 members to be appointed as follows: five ex officio members; two members appointed by the Governor; two members of the Senate appointed by the President Pro Tempore; two members of the House of Representatives appointed by the Speaker of the House; and 12 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of the Department of Health and Human Services or the Secretary's designee;
(1a) A representative of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, appointed by the Governor;
(2) The Secretary of the Department of Correction or the Secretary's designee;
(3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and
(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms. The initial term of office of the person appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly."

Section 4.(p) G.S. 115C-139(a) reads as rewritten:

"(a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings pursuant to the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes or into undertakings with a State agency such as the ~~Office of Juvenile Justice or the~~ Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children."

Section 4.(q) G.S. 115C-250(a) reads as rewritten:

"(a) The State Board of Education and local boards of education may expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide such children with a free appropriate education, including its duty under G.S. 115C-115.

At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of exceptional children may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules and regulations concerning the construction and equipment of these buses and minibuses.

The ~~Department~~ Departments of Health and Human Services, ~~the Office Juvenile Justice, and the Department of~~ Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide such children with a free appropriate public education.

If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses, to the program."

Section 4.(r) G.S. 115C-325(p) reads as rewritten:

"(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human ~~Services and Correction or the Office of Juvenile Justice~~ Services, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students."

Section 4.(s) G.S. 115D-1 reads as rewritten:

"§ 115D-1. Statement of purpose.

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the training school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission."

Section 4.(t) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention required to be certified pursuant to Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered pursuant to Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section."

Section 4.(u) G.S. 120-216 reads as rewritten:

"**§ 120-216. Commission duties.**

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:

a. Determining the adequacy and appropriateness of services:

1. To children and youth receiving child welfare services;

2. To children and youth in the juvenile court system; and

3. Provided by the Division of Social Services and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.

c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose."

Section 4.(v) G.S. 122C-3(13a) reads as rewritten:

"(13a) 'Eligible assaultive and violent children' means children who are citizens of North Carolina and:

a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and

b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:

1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are

presented for admission and denied due to their behaviors or handicapping conditions;

2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority pursuant to G.S. 7B-903 for whom residential treatment or placement is recommended;

3. Minors who are placed in residential programs as a condition of probation pursuant to G.S. 7B-2506;

4. Minors who are ordered to a professional residential treatment program pursuant to G.S. 7B-2506; and

5. Minors committed to the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, pursuant to G.S. 7B-2506; and

c. For whom the State has not provided appropriate treatment and educational programs."

Section 4.(w) G.S. 122C-113(b1) reads as rewritten:

"(b1) The Secretary shall cooperate with the State Board of Education and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction, in consultation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs."

Section 4.(x) G.S. 122C-117(a) reads as rewritten:

"(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;

(2) Provide services to clients in the catchment area, including clients committed to the custody of the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;

(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention the provision of services to clients through area and State facilities;

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
(6) Comply with federal requirements as a condition of receipt of federal grants; and
(7) Appoint an area director, chosen through a search committee on which the Secretary of the Department of Health and Human Services or the Secretary's designee serves as a nonvoting member."

Section 4.(y) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Clerk of the Superior Court	1 each
Department of Cultural Resources [State	

Library] 5
Supreme Court Library 2
Legislative Library 1
Schools
All state-supported colleges and universities
in the State of North Carolina ..... *1 each
Local Officials
Clerks of the Superior Courts ..... 1 each
Chief Building Inspector of each incorporated
municipality or county 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

Section 4.(z) G.S. 143-166.2(d) reads as rewritten:

"(d) The term 'law-enforcement officer,' 'officer,' or 'fireman' shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction and all full-time institutional and detention employees of the ~~Division of Youth Services of the Department of Health and Human Services.~~ Department of Juvenile Justice and Delinquency Prevention. The term 'firemen' shall mean both 'eligible fireman'; or 'fireman' as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated. The term 'rescue squad worker' shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term 'rescue squad worker' shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term 'Civil Air Patrol members' shall mean those senior members of the North Carolina Wing-Civil Air

Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a). The term 'fireman' shall also mean county fire marshals when engaged in the performance of their county duties. The term 'rescue squad worker' shall also mean county emergency services coordinators when engaged in the performance of their county duties."

Section 4.(aa) G.S. 143B-150.5(d) reads as rewritten:

"(d) The Secretary of the Department of Health and Human Services shall ensure the cooperation of the Division of Social Services, ~~the Division of Youth Services,~~ the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Division of Medical Assistance, in carrying out the provisions of this Part."

Section 4.(bb) G.S. 143B-150.7(b) reads as rewritten:

"(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) Four members representing the Department of Health and Human Services, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom shall represent the Division of Maternal and Child Health;

(1a) One member representing the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;

(2) Two members, one from each of the following: the Administrative Office of the Courts and the Department of Public Instruction;

(3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;

(4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;

(5) One member representing the schools of social work of The University of North Carolina;

(6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and

(7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of Health and Human Services shall serve as the Chair of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services."

Section 4.(cc) G.S. 143B-152.6 reads as rewritten:

"**§ 143B-152.6. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(dd) G.S. 143B-152.14 reads as rewritten:

"**§ 143B-152.14. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(ee) G.S. 143B-153(2) reads as rewritten:

"(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services."

Section 4.(ff) G.S. 143B-478 reads as rewritten:

"§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings, etc.

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 36 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Parole, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: ~~the representative of the Office of Juvenile Justice,~~ the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 4.(gg) G.S. 147-45 reads as rewritten:

"**§ 147-45. Distribution of copies of State publications.**

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture and Consumer Services, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment and Natural Resources, Department of	6	0

Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Health and Human Services, Department of	6	0
Mental Health, Developmental Disabilities, and Substance Abuse Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	3	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.

State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1

North Carolina Central University	5	5
Western Carolina University	2	1
University of North Carolina, Pembroke	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
Johnson C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point University	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0

Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

Section 4.(hh) G.S. 131D-10.4 reads as rewritten:

"**§ 131D-10.4. Exemptions.**

This Article shall not apply to:

(1) Any residential child-care facility chartered by the laws of the State of North Carolina (or operating under charters of other states

which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars ($60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation before July 1, 1977;

(2) State institutions for emotionally disturbed or delinquent children, the mentally ill, mentally retarded, and substance abusers;

(3) Secure detention facilities as specified in ~~Article 3C of Chapter 147~~ Article 12 of Chapter 143B of the General Statutes;

(4) Licensable facilities subject to the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services as specified in Article 2 of Chapter 122C of the General Statutes;

(5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14;

(6) Primarily educational institutions as defined in G.S. 131D-10.2(11); or

(7) Individuals who are related by blood, marriage, or adoption to the child."

Section 4.(ii) G.S. 153A-221.1 reads as rewritten:

"**§ 153A-221.1. Standards and inspections.**

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training.

~~The Director of the Office of Juvenile Justice shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by Article 3C of Chapter 147 of the General Statutes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.~~

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child."

Section 4.(jj) G.S. 164-40 reads as rewritten:

"**§ 164-40. Correction population simulation model; ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model.**

(a) The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

(b) The Commission shall develop ~~an Office of Juvenile Justice~~ a Department of Juvenile Justice and Delinquency Prevention facilities population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the dispositional laws set forth in Chapter 7B of the General Statutes, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, in second priority to the work of the Commission."

Section 4.(kk) G.S. 164-43 reads as rewritten:

"**§ 164-43. Priority of duties; reports; continuing duties.**

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established pursuant to G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in this State to ensure that sentences and dispositions remain uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing and dispositional practices, and it

shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model developed pursuant to G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment or dispositional level for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model to the provisions of the bill."

Section 4.(ll) G.S. 164-37(26) reads as rewritten:

"(26) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention."

PART IV. EFFECTIVE DATE.

Section 5. This act becomes effective July 1, 2000.

VISITOR REGISTRATION SHEET

S-I
Name of Committee

7-5-00
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Leanna Winn	NCSBA
Maureen O'Connor	BCBSNC
Jackie Bryden	BCBSNC
DeAnne Nelson	BCBSNC
Kathryn Nunn	BCBSNC
John Baile	NC. Dept. of Rev.
Helen Savage	AARP
Anna Roberts	NC Businesses for Affordable Health Care
LuAnne Bankert	NCAHP
JOHN PETERSON	NCBAHC
PAUL MAHONEY	NC ASSN OF HEALTH PLANS
Ken Wyatt	BCBSNC
ROBERT PASCHAL	Young, Moore & Henderson, P.A.
Joanne Pruitt	NCMAP
Floyd Lewis	General Statutes Commission

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Linda Upchurch	UICI
Stephanie Mamun	NCAR
Evelyn Hawthorne	UNC-CH
Pam Heardorff	Youth advocacy & Involvement
Roney Lamm	Citi Financial / Citi Group
Larry Heckner	Household Financial Group.
Jan Kanquist	NCAHA
Anthony Silari	Smart START.
Jonathan Sher	NC Child Advocacy Institute
Paula A. Wolf	Covenant w/ NC's Children
Larry Dick	OJJ
George Sweatt	OJJ
Deborah Ross	ACLU
Jan Horowitz	ACLU-NC
Ed Turlington	Brooks, Pierce
Marsha Glenn	DOA

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Rainey	Poyner Spruill
Marvin Musselwhite	" "
Ali Suher	NCCCS
R. Paul Wiles	NCMBA
Rodney Maddox Julie P Lawhin	SOS
Stephanie Montgomery	SOS
Jennifer Jo Brown	NCMS
Allison Clapp	NCMS
BRUCE THOMPSON	PARKER POE ADAMS + BERNSTEIN
Christy Earnhardt	NCATL
Stacy Flannery	NCNCFA
Jim Bendel	MAMSP
Joyce Peters	JPAssoc/MAMSP
MARK A CREECH	C. A. L.
James Bowden	OJJ

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
D R Bea	Capitol Group
David Ferrell	Hofler, McNamara, Caldwell et al
Eddie Caldwell	H McCC&C, P.A.
Katherine Miller	NCASA
Adam Seay	NCHAC
Paul Pully	NCATL
Kyle Poole	NCDOJ
Patricia Keeler	NCACC
Julie Carnahan	NCCBI
Andy Romanet	NCLM
T Mullen	NCREC
Ann Duncan	NCAHP
PERRI MORGAN	NFIB
BILL SWOGGIN	KENNEDY COVINGTON
John McMillan	MF&S P.A.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NC Bankers Assn.
Lucius Pullen	Attorney
Jon Carr	Jordan Price

Principal Clerk ___
Reading Clerk ___

SENATE
NOTICE OF COMMITTEE MEETING

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

DATE: **Tuesday, July 11, 2000**
TIME: **10:00 a.m.**
ROOM: **1027**

The following bills or resolutions will be considered:

HB 1804 Establish Juvenile Dept. Rep. Baddour
(SB 1462 - Sen. Cooper)

Senator Cooper, Chair

MINUTES
SENATE JUDICIARY I COMMITTEE
JULY 11, 2000

The Senate Judiciary I Committee met on July 11, 2000 at 10:00 a.m. in Room 1027 of the Legislative Building. A majority of members was present.

Senator Cooper called the meeting to order and recognized Senator Carter (at the request of Representative Baddour, the bill sponsor) to explain **House Bill 1804** – AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

Senator Carter moved to adopt a Proposed Committee Substitute for House Bill 1804 for discussion. The motion carried by a majority voice vote.

George Sweat, Director of the Office of Juvenile Justice, was recognized to answer questions from the Committee.

After discussion by the Committee, Senator Albertson moved to give the Proposed Committee Substitute a favorable report. The motion carried by a majority voice vote.

There being no further business, the meeting adjourned.

Sen. Roy A. Cooper, III, Chairman

Susan M. Moore, Comm. Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1804*
Committee Substitute Favorable 6/5/00
Committee Substitute #2 Favorable 6/21/00

Short Title: Establish Juvenile Department. (Public)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

PART I. CREATION OF DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

Section 1.(a) Article 3C of Chapter 147 of the General Statutes is repealed.

Section 1.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12.

"Department of Juvenile Justice and Delinquency Prevention.

"Part 1. Creation of Department.

"§ 143B-511. Creation of the Department of Juvenile Justice and Delinquency Prevention.

There is hereby created and constituted a department to be known as the 'Department of Juvenile Justice and Delinquency Prevention', with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article.

"§ 143B-512. Transfer of Office of Juvenile Justice authority to the Department of Juvenile Justice and Delinquency Prevention.

(a) All (i) statutory authority, powers, duties, and functions, including directives of S.L. 1998-202, rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Office of Juvenile Justice under the Office of the Governor are transferred to and vested in the Department of Juvenile Justice and Delinquency Prevention. This transfer has all of the elements of a Type I transfer as defined in G.S. 143A-6.

(b) The Department shall be considered a continuation of the Office of Juvenile Justice for the purpose of succession to all rights, powers, duties, and obligations of the Office and of those rights, powers, duties, and obligations exercised by the Office of the Governor on behalf of the Office of Juvenile Justice. Where the Office of Juvenile Justice is referred to by law, contract, or other document, that reference shall apply to the Department. Where the Office of the Governor is referred to by contract or other document, where the Office of the Governor is acting on behalf of the Office of Juvenile Justice, that reference shall apply to the Department.

(c) All institutions previously operated by the Office of Juvenile Justice and the present central office of the Office of Juvenile Justice, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Office or by the Office of the Governor for the Office of Juvenile Justice, shall be administered by the Department of Juvenile Justice and Delinquency Prevention.

"Part 2. General Provisions.

"**§ 143B-513. Definitions.**

In this Article, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.

(2) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(3) County Councils. -- Juvenile Crime Prevention Councils created under G.S. 143B-529.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(8) Department. -- The Department of Juvenile Justice and Delinquency Prevention.

(9) Detention. -- The secure confinement of a juvenile under a court order.

(10) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(11) District. -- Any district court district as established by G.S. 7A-133.

(12) Judge. -- Any district court judge.

(13) Judicial district. -- Any district court district as established by G.S. 7A-133.

(14) Juvenile. -- Except as provided in subdivisions (7) and (22) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(15) Juvenile court. -- Any district court exercising jurisdiction under this Chapter.

(16) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the Department for placement in a training school.

(17) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(18) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(19) Secretary. -- The Secretary of Juvenile Justice and Delinquency Prevention.

(20) State Council. -- The State Advisory Council on Juvenile Justice and Delinquency Prevention established under G.S. 143B-536.

(21) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department.

(22) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly

disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

"**§ 143B-514. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.**

(a) The head of the Department is the Secretary. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that training schools be phased out as populations diminish.

(2) Close a State training school when its operation is no longer justified and transfer State funds appropriated for the operation of that training school to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing training schools, provided the Advisory Budget Commission reviews this action.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision

services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding on a matching basis juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Assist the Criminal Justice Information Network Governing Board with administering a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles. The plan shall include attendance at appropriate

professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the Secretary shall prescribe the functions, powers, duties, and obligations of every agency or division in the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations. The Department may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. In developing the model, the Department shall consider the recommendations of the State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-515. Authority to contract with other entities.**

(a) The Department may contract with any governmental agency, person, or association for the accomplishment of its duties and responsibilities. The expenditure of funds under these contracts shall be for the purposes for which the funds were appropriated and not otherwise prohibited by law.

(b) The Department may enter into contracts with, and act as intermediary between, any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program. As a condition of assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees.

(c) The Department and any other appropriate State or local agency may purchase services from public or private agencies providing delinquency prevention programs or juvenile court services, including parenting responsibility classes. The programs shall meet State standards. As institutional populations are reduced, the Department may divert State funds appropriated for institutional programs to purchase the services under the Executive Budget Act.

(d) Each programmatic, residential, and service contract or agreement entered into by the Department shall include a cooperation clause to ensure compliance with the Department's quality assurance requirements and cost-accounting requirements.

"§ 143B-516. Authority to assist private nonprofit foundations.

The Department may provide appropriate services or allow employees of the Department to assist any private nonprofit foundation that works directly with the Department's services or programs and whose sole purpose is to support these services and programs. A Department employee shall be allowed to work with a foundation no more than 20 hours in any one month. These services are not subject to Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the Department of State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall transmit to the Department a copy of the annual financial audit report of the private nonprofit foundation.

"§ 143B-517. Annual report.

On or before April 1 each year, beginning with the year 2001, the Department shall report to the General Assembly on the effectiveness and cost benefit of every program operated and contracted by the Department and a summary of the local programs that receive State funding. The report shall include the most current institutional populations of juveniles being served by the Department, a comparison of the costs of the services, and a ranking of all programs that provide services to juveniles. The Department shall submit the report to the various State agencies providing services to juveniles.

"Part 3. Juvenile Facilities.

"§ 143B-518. Juvenile facilities.

In order to provide any juvenile in a juvenile facility with appropriate treatment according to that juvenile's need, the Department shall be responsible for the administration of statewide educational, clinical, psychological, psychiatric, social, medical, vocational, and recreational services or programs.

"§ 143B-519. Authority to provide necessary medical or surgical care.

The Department may provide any medical and surgical treatment necessary to preserve the life and health of juveniles committed to the custody of the Department; however, no surgical operation may be performed except as authorized in G.S. 148-22.2.

"§ 143B-520. Compensation to juveniles in care.

A juvenile who has been committed to the Department may be compensated for work or participation in training programs at rates approved by the Secretary within available funds. The Secretary may provide for a reasonable allowance to the juvenile for incidental personal expenses, and any balance of the juvenile's earnings remaining at the time the juvenile is released shall be paid to the juvenile or the juvenile's parent or guardian. The Department may accept grants or funds from any source to compensate juveniles under this section.

"§ 143B-521. Visits and community activities.

(a) The Department shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Department.

(b) The Department shall develop a program of home visits for juveniles in the custody of the Department. The visits shall begin after the juvenile has been in the custody of the Department for a period of at least six months. In developing the program, the Department shall adopt criteria that promote the protection of the public and the best interests of the juvenile.

"§ 143B-522. Regional detention services.

The Department is responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services that offer juvenile detention care of sufficient quality to meet State standards to any juvenile requiring juvenile detention care within the State in a detention facility as follows:

(1) The Department shall plan with the counties operating a county detention facility to provide regional juvenile detention services to surrounding counties. The Department has discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate factors.

(2) The Department may plan with any county that has space within its county jail system to use the existing space for a county detention facility when needed, if the space meets the State standards for a detention facility and meets all of the requirements of G.S. 153A-221. The use of space within the county jail system shall be constructed to ensure that juveniles are not able to converse with, see, or be seen by the adult population, and juveniles housed in a space within a county jail shall be supervised closely.

(3) The Department shall plan for and administer regional detention facilities. The Department shall carefully plan the location, architectural design, construction, and administration of a program to meet the needs of juveniles in juvenile detention care. The physical facility of a regional detention facility shall comply with all applicable State and federal standards. The programs of a regional detention facility shall comply with the standards established by the Department.

"§ 143B-523. State subsidy to county detention facilities.

The Department shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention facility in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Department. The Department may vary the exact

funding formulas to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care.

"**§ 143B-524. Authority for implementation.**

In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department may:

(1) Release or transfer a juvenile from one detention facility to another when necessary to administer the juvenile's detention appropriately.

(2) Plan with counties that operate county detention facilities to provide regional services and to upgrade physical facilities to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards.

(3) Allow the State to reimburse law enforcement officers or other appropriate employees of local government for the costs of transportation of a juvenile to and from any juvenile detention facility.

(4) Seek funding for juvenile detention services from federal sources, and accept gifts of funds from public or private sources.

"Part 4. Juvenile Court Services.

"**§ 143B-525. Duties and powers of chief court counselors.**

The chief court counselor in each district appointed under G.S. 143B-514(b)(15) may:

(1) Appoint court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.

(3) Provide in-service training for staff as required by the Department.

(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.

"**§ 143B-526. Duties and powers of juvenile court counselors.**

As the court or the chief court counselor may direct or require, all juvenile court counselors shall have the following powers and duties:

(1) Secure or arrange for any information concerning a case that the court may require before, during, or after the hearing.

(2) Prepare written reports for the use of the court.

(3) Appear and testify at court hearings.

(4) Assume custody of a juvenile as authorized by G.S. 7B-1900, or when directed by court order.

(5) Furnish each juvenile on probation or protective supervision and that juvenile's parents, guardian, or custodian with a written

statement of the juvenile's conditions of probation or protective supervision, and consult with the juvenile's parents, guardian, or custodian so that they may help the juvenile comply with the conditions.

(6) Keep informed concerning the conduct and progress of any juvenile on probation or under protective supervision through home visits or conferences with the parents or guardian and in other ways.

(7) See that the juvenile complies with the conditions of probation or bring to the attention of the court any juvenile who violates the juvenile's probation.

(8) Make periodic reports to the court concerning the adjustment of any juvenile on probation or under court supervision.

(9) Keep any records of the juvenile's work as the court may require.

(10) Account for all funds collected from juveniles.

(11) Serve necessary court documents pertaining to delinquent and undisciplined juvenile matters.

(12) Assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public or the juvenile, and when necessary to carry out the responsibilities of court counselors under this section and under Chapter 7B of the General Statutes.

(13) Use reasonable force and restraint necessary to secure custody assumed under subdivision (12) of this section.

(14) Provide supervision for a juvenile transferred to the counselor's supervision from another court or another state, and provide supervision for any juvenile released from an institution operated by the Department when requested by the Department to do so.

(15) Assist in the development of post-release supervision and the supervision of juveniles.

(16) Have any other duties as the court may direct.

"Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

"§ 143B-527. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

(a) The Department shall implement the comprehensive juvenile delinquency and substance abuse prevention plan developed by the Office of Juvenile Justice and shall coordinate with County Councils for implementation of a continuum of services and programs at the community level.

The Department shall ensure that localities are informed about best practices in juvenile delinquency and substance abuse prevention.

(b) The plan shall contain the following:

(1) Identification of the risk factors at the developmental stages of a juvenile's life that may result in delinquent behavior.

(2) Identification of the protective factors that families, schools, communities, and the State must support to reduce the risk of juvenile delinquency.

(3) Programmatic concepts that are effective in preventing juvenile delinquency and substance abuse and that should be made available as basic services in the communities, including:

a. Early intervention programs and services.

b. In-home training and community-based family counseling and parent training.

c. Adolescent and family substance abuse prevention services, including alcohol abuse prevention services, and substance abuse education.

d. Programs and activities offered before and after school hours.

e. Life and social skills training programs.

f. Classes or seminars that teach conflict resolution, problem solving, and anger management.

g. Services that provide personal advocacy, including mentoring relationships, tutors, or other caring adult programs.

(c) The Department shall cooperate with all other affected State agencies and entities in implementing this section.

"Part 6. Juvenile Crime Prevention Councils.

"§ 143B-528. Legislative intent.

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to training schools and to provide community-based delinquency and substance abuse prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils.

"§ 143B-529. Creation; method of appointment; membership; chair and vice-chair.

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of commissioners of a county shall appoint a Juvenile Crime Prevention Council. Each County Council is a continuation of the corresponding Council created under G.S. 147-33.61. The County Council shall consist of not more than 25 members and should include, if possible, the following:

(1) The local school superintendent, or that person's designee;
(2) A chief of police in the county;
(3) The local sheriff, or that person's designee;
(4) The district attorney, or that person's designee;
(5) The chief court counselor, or that person's designee;
(6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
(7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
(8) The county manager, or that person's designee;
(9) A substance abuse professional;
(10) A member of the faith community;
(11) A county commissioner;
(12) A person under the age of 21;
(13) A juvenile defense attorney;
(14) The chief district court judge, or a judge designated by the chief district court judge;
(15) A member of the business community;
(16) The local health director, or that person's designee;
(17) A representative from the United Way or other nonprofit agency;
(18) A representative of a local parks and recreation program; and
(19) Up to seven members of the public to be appointed by the board of commissioners of a county.

The board of commissioners of a county shall modify the County Council's membership as necessary to ensure that the members reflect the racial and socioeconomic diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council under subsection (a) of this section. The membership shall be representative of each participating county.

(c) The members of the County Council shall elect annually the chair and vice-chair.

"**§ 143B-530. Terms of appointment.**

Each member of a County Council shall serve for a term of two years, except for initial terms as provided in this section. Each member's term is a continuation of that member's term under G.S. 147-33.62. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) were appointed for an initial term ending on June 30, 2000. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001, and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1.

"**§ 143B-531. Vacancies; removal.**

Appointments to fill vacancies shall be for the remainder of the former member's term.

Members shall be removed only for malfeasance or nonfeasance as determined by the board of county commissioners.

"**§ 143B-532. Meetings; quorum.**

County Councils shall meet at least bimonthly, or more often if a meeting is called by the chair.

A majority of members constitutes a quorum.

"**§ 143B-533. Compensation of members.**

Members of County Councils shall receive no compensation but may receive a per diem in an amount established by the board of county commissioners.

"**§ 143B-534. Powers and duties.**

(a) Each County Council shall review annually the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of county commissioners for its approval. Upon the county's authorization, the plan shall be submitted to the Department for final approval and subsequent implementation.

(b) Each County Council shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

(c) On an ongoing basis, each County Council shall:

(1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs.

(2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding.

(3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem.

(4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments.

(5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families. These services may include court-ordered parenting responsibility classes.

(6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district.

"**§ 143B-535. Funding for programs.**

(a) Annually, the Department shall develop and implement a funding mechanism for programs that meet the standards developed under this Part. The Department shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. -- The Department shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.

(2) Use a formula for the distribution of funds. -- A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternative services to juveniles in their communities.

(3) Allow and encourage local flexibility. -- A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternative funds.

(4) Combine resources. -- Counties shall be allowed and encouraged to combine resources and services.

(b) The Department shall adopt rules to implement this section. The Department shall provide technical assistance to County Councils and shall require them to evaluate all State-funded programs and services on an ongoing and regular basis.

"Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-536. Creation of Council; purpose; members; duties.**

(a) There is created the State Advisory Council on Juvenile Justice and Delinquency Prevention. The State Council shall be located within the Department for organizational, budgetary, and administrative purposes.

(b) The purpose of the State Council is to review and advise the Department in the development of a comprehensive interagency plan to reduce juvenile delinquency and substance abuse and to coordinate efforts among State agencies providing services and supervision to juveniles who are at risk of delinquency and for juveniles who have been adjudicated of delinquent and undisciplined behavior.

(c) The State Council shall consist of 20 members as follows:

(1) The Governor shall appoint five persons, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice issues.

(2) The Chief Justice of the Supreme Court shall appoint four persons.

(3) The following persons, or their designees, shall serve ex officio:

a. The Governor.

b. The Chief Justice of the Supreme Court.

c. The President Pro Tempore of the Senate.

d. The Speaker of the House of Representatives.

e. The Director of the Administrative Office of the Courts.

f. The Superintendent of Public Instruction.
g. The Secretary of Administration.
h. The Secretary of Health and Human Services.
i. The Secretary of Correction.
j. The Secretary of Crime Control and Public Safety.
k. The President of The University of North Carolina.

(d) Initial members, other than ex officio members, who were appointed under former G.S. 147-33.70 and whose terms began January 1, 1999, shall serve for terms as follows:

(1) Three members appointed by the Governor shall serve for terms of two years and two members for terms of three years.
(2) Two members appointed by the Chief Justice of the Supreme Court shall serve for terms of two years and two members for terms of three years.

Thereafter, members, other than ex officio members, shall serve for two-year terms. There is no prohibition against initial members being reappointed.

(e) The Governor and Chief Justice of the Supreme Court shall serve as cochairs of the State Council.

(f) A vacancy on the State Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) State Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) The chairs shall convene the Council. Meetings shall be held as often as necessary but not less than four times a year.

(j) A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council is necessary for action to be taken by the Council.

"**§ 143B-537. Powers and duties of the Council.**

The State Council shall have the following powers and duties:

(1) Advise the Department in the review of the State's juvenile justice planning, the development of the community juvenile justice councils, and the development of a formula for the distribution of funds to Juvenile Crime Prevention Councils.
(2) Advise all State agencies serving juveniles for the purpose of developing a consistent philosophy with regard to providing services to juveniles and promoting collaboration and the efficient and effective delivery of services to juveniles and families through State, local, and district programs and fully address problems of collaboration across State agencies with the goal of serving juveniles.

(3) Review and comment on juvenile justice, delinquency prevention, and juvenile services grant applications prepared for submission under any federal grant program by any governmental entity of the State.

(4) Review the juvenile justice system's operation and prioritization of funding needs.

(5) Review the progress and accomplishment of State and local juvenile justice, delinquency prevention, and juvenile services projects.

(6) Develop recommendations concerning the establishment of priorities and needed improvements with respect to juvenile justice, delinquency prevention, and juvenile services and report its recommendations to the General Assembly on or before March 1 each year.

(7) Review and comment on the proposed budget for the Department."

PART II. REVISIONS TO THE JUVENILE CODE.

Section 2. G.S. 7B-1501 reads as rewritten:

"**§ 7B-1501. Definitions.**

In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(3) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(7a) Department. -- The Department of Juvenile Justice and Delinquency Prevention created under Article 12 of Chapter 143B of the General Statutes.

(8) Detention. -- The secure confinement of a juvenile under a court order.

(9) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(10) District. -- Any district court district as established by G.S. 7A-133.

(11) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(12) House arrest. -- A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for specific purposes.

(13) Intake counselor. -- A person who screens and evaluates a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

(14) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee, or runaway, to the juvenile's home state, and codified in Article 28 of this Chapter.

(15) Judge. -- Any district court judge.

(16) Judicial district. -- Any district court district as established by G.S. 7A-133.

(17) Juvenile. -- Except as provided in subdivisions (7) and (27) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(18) Juvenile court. -- Any district court exercising jurisdiction under this Chapter.

~~(19) Office. -- The Office of Juvenile Justice.~~

(20) Petitioner. -- The individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.

(21) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the ~~Office~~ Department for placement in a training school.

(22) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(23) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(24) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(25) Teen court program. -- A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.

(26) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the ~~Office of Juvenile Justice.~~ Department.

(27) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(28) Wilderness program. -- A rehabilitative residential treatment program in a rural or outdoor setting.

The singular includes the plural, unless otherwise specified."

Section 3. The Revisor of Statutes shall substitute the term "Department of Juvenile Justice and Delinquency Prevention" for the term "Office of Juvenile Justice" everywhere that term appears in the General Statutes, except for those sections of the General Statutes amended in this act. Except where the statutes specifically reference the Administrative Office of the Courts or the Office of Guardian Ad Litem Services, the Revisor of Statutes shall substitute the term "Department" for the term "Office" everywhere that term appears in Subchapters II and III of Chapter 7B of the General Statutes.

PART III. CONFORMING CHANGES TO THE GENERAL STATUTES.

Section 4.(a) G.S. 7A-302 reads as rewritten:

"**§ 7A-302. Counties and municipalities responsible for physical facilities.**

In each county in which a district court has been established, courtrooms, office space for juvenile court counselors and support staff as assigned by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and related judicial facilities (including furniture), as defined in this Subchapter, shall be provided by the county, except that courtrooms and related judicial facilities may, with the approval of the Administrative Officer of the Courts, after consultation with county and municipal authorities, be provided by a municipality in the county. To assist a county or municipality in meeting the expense of providing courtrooms and related judicial facilities, a part of the costs of court, known as the "facilities fee," collected for the State by the clerk of superior court, shall be remitted to the county or municipality providing the facilities."

Section 4.(b) G.S. 7A-343.1 reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11

State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1

Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports."

Section 4.(c) G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

Section 4.(d) G.S. 17C-3(a) reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission," in the Department of Justice. The Commission shall be composed of 26 members as follows:

(1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. -- Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; the Secretary of the Department of Correction; the President of the Department of Community Colleges.

(3a) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years."

Section 4.(e) G.S. 20-79.5(a) reads as rewritten:

"(a) Plates. -- The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representative	3
President Pro Tempore of the Senate	4
Secretary of State	5
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10
Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Services Officer	14
Secretary of Administration	15
Secretary of Environment and Natural Resources	16
Secretary of Revenue	17

Secretary of Health and Human Services	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22
Secretary of Juvenile Justice and Delinquency Prevention	23
Governor's Staff	~~23-29~~ 24-29
State Budget Officer	30
State Personnel Director	31
Advisory Budget Commission Nonlegislative Member	32-41
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53
Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-104
Post-Release Supervision and Parole Commission Member	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200".

Section 4.(f) G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the Horace Williams Campus of the University of North Carolina at Chapel Hill, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments

or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility under G.S. 148-70.

(19) The North Carolina Justice Academy.

(20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department."

Section 4.(g) G.S. 66-58(c)(7) reads as rewritten:

"(7) The operation by penal, correctional or facilities operated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors."

Section 4.(h) G.S. 114-19.6 reads as rewritten:

"**§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Health and Human Services, and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.**

(a) Definitions. -- As used in this section, the term:

(1) "Covered person" means:

a. An applicant for employment or a current employee in a position in the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention who provides direct care for a client, patient, student, resident or ward of the Department; or

b. Supervises positions providing direct care as outlined in sub-subdivision a. of this subdivision.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil

Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the North Carolina Department of Justice may provide to the ~~Department or Office~~ requesting department a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the ~~Department or Office~~ requesting department shall provide to the Department of Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall keep all information under this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information ~~the Department or Office~~ either department receives through the checking of the criminal history is privileged information and for the exclusive use of ~~the Department or Office.~~ that department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction

shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department ~~or~~ ~~Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

Section 4.(i) G.S. 114-21(b) reads as rewritten:

"(b) The ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section."

Section 4.(j) G.S. 115C-110 reads as rewritten:

"§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency Prevention.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise and approve any plans for special education and related services to those residents.

The Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency

Prevention. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on this Department ~~or Office~~ and when other procedural due process requirements, substantially equivalent to those of G.S. 115C-116, are assured in programs of special education and related services furnished to children with special needs served by this ~~Department or Office.~~ Department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a "local educational agency" unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106(b). The plan shall include:

(1) A census of the children with special needs in the State, as required by subsection (j) of this section;

(2) A procedure for diagnosis and evaluation of each child;

(3) An inventory of the personnel and facilities available to provide special education for these children;

(4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;

(5) Standards for the education of children with special needs;

(6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and

(7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment under subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules covering:

(1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;

(2) Minimum standards for the individualized educational program for all children with special needs other than for the pregnant children, and for the educational program for the pregnant children, who receive special education and related services; and

(3) Any other rules as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

(1) A statement of the extent to which the required education and services will be provided directly by the agency;

(2) A statement of the extent to which standards in force under G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and

(3) The means by which the agency will contract to provide, at levels meeting standards in force under G.S. 115C-110(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By rule, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to these annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

(1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and

(2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children

with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except those fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall not prevent that Department ~~and Office~~ from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, to be taken in each school year. Suspected children are those in the formal process of being identified, evaluated or diagnosed as children with special needs. The census shall be conducted annually and shall be completed not later than October 15, and shall be submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than pregnant children, and of educational programs in meeting the educational needs of the pregnant children.

(l) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education."

Section 4.(k) G.S. 115C-111 reads as rewritten:

"**§ 115C-111. Free appropriate education for all children with special needs.**

No child with special needs between the ages specified by G.S. 115C-109 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian resides or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the local educational agency shall confer with the appropriate Department of Health and Human Services or ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in said program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115C-116. Every child with special needs shall be entitled to attend these nonresidential schools or programs and receive from them free appropriate public education."

Section 4.(l) G.S. 115C-113(f) reads as rewritten:

"(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the pregnant children, and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term 'individualized educational program' means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Health and Human Services and the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent."

Section 4.(m) G.S. 115C-113.1 reads as rewritten:

"**§ 115C-113.1. Surrogate parents.**

In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public Instruction, the Secretary of Health and Human Services, and the ~~Office of Juvenile Justice,~~ Secretary of Juvenile Justice and Delinquency Prevention, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent."

Section 4.(n) G.S. 115C-115 reads as rewritten:

"**§ 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.**

The board shall adopt rules and regulations to assure that:

(1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.

(2) No child shall be placed by the Board or by the local educational agency in a private or out-of-state school unless the Board has determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.

(3) If the placement of the child in a private school, out-of-state school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost."

Section 4.(o) G.S. 115C-121(b) reads as rewritten:

"(b) The Council shall consist of 23 members to be appointed as follows: five ex officio members; two members appointed by the Governor; two members of the

Senate appointed by the President Pro Tempore; two members of the House of Representatives appointed by the Speaker of the House; and 12 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of the Department of Health and Human Services or the Secretary's designee;

(1a) A representative of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, appointed by the Governor;

(2) The Secretary of the Department of Correction or the Secretary's designee;

(3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and

(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms. The initial term of office of the person appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly."

Section 4.(p) G.S. 115C-139(a) reads as rewritten:

"(a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings under the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes or into undertakings with a State agency such as the ~~Office of Juvenile Justice or the~~ Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide

the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children."

Section 4.(q) G.S. 115C-250(a) reads as rewritten:

"(a) The State Board of Education and local boards of education may expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide such children with a free appropriate education, including its duty under G.S. 115C-115. At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of exceptional children may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules and regulations concerning the construction and equipment of these buses and minibuses.

The ~~Department~~ Departments of Health and Human Services, ~~the Office of Juvenile Justice, and the Department of~~ Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide such children with a free appropriate public education.

If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses, to the program."

Section 4.(r) G.S. 115C-325(p) reads as rewritten:

"(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human ~~Services and Correction or the Office of Juvenile Justice~~ Services, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students."

Section 4.(s) G.S. 115D-1 reads as rewritten:

"§ 115D-1. Statement of purpose.

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the

issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the training school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission."

Section 4.(t) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided

further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section."

Section 4.(u) G.S. 120-216 reads as rewritten:

"**§ 120-216. Commission duties.**

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:

a. Determining the adequacy and appropriateness of services:

1. To children and youth receiving child welfare services;
2. To children and youth in the juvenile court system; and
3. Provided by the Division of Social Services and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.

c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose."

Section 4.(v) G.S. 122C-3(13a) reads as rewritten:

"(13a) 'Eligible assaultive and violent children' means children who are citizens of North Carolina and:

a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and

b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:

1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are presented for admission and denied due to their behaviors or handicapping conditions;

2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority under G.S. 7B-903 for whom residential treatment or placement is recommended;

3. Minors who are placed in residential programs as a condition of probation under G.S. 7B-2506;

4. Minors who are ordered to a professional residential treatment program under G.S. 7B-2506; and

5. Minors committed to the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, under G.S. 7B-2506; and

c. For whom the State has not provided appropriate treatment and educational programs."

Section 4.(w) G.S. 122C-113(b1) reads as rewritten:

"(b1) The Secretary shall cooperate with the State Board of Education and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction, in consultation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs."

Section 4.(x) G.S. 122C-117(a) reads as rewritten:

"(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;
(2) Provide services to clients in the catchment area, including clients committed to the custody of the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;
(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention the provision of services to clients through area and State facilities;
(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
(6) Comply with federal requirements as a condition of receipt of federal grants; and
(7) Appoint an area director, chosen through a search committee on which the Secretary of the Department of Health and Human Services or the Secretary's designee serves as a nonvoting member."

Section 4.(y) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1

~~Office of Juvenile Justice~~
Department of Juvenile Justice and
Delinquency Prevention.....1
Board of Transportation.....1
Utilities Commission.....1
Department of Administration.....1
Clerk of the Supreme Court.....1
Clerk of the Court of Appeals.....1
Clerk of the Superior Court.....1 each
Department of Cultural Resources [State
Library].....5
Supreme Court Library.....2
Legislative Library.....1
Schools
All state-supported colleges and universities
in the State of North Carolina.....*1 each
Local Officials
Clerks of the Superior Courts.....1 each
Chief Building Inspector of each incorporated
municipality or county.....1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

Section 4.(z) G.S. 143-166.2(d) reads as rewritten:

"(d) The term 'law-enforcement officer,' 'officer,' or 'fireman' shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction and all full-time institutional and detention employees of the ~~Division of Youth Services of the Department of Health and Human Services.~~ Department of Juvenile Justice and Delinquency Prevention. The term 'firemen' shall mean both 'eligible fireman'; or 'fireman' as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated. The term 'rescue squad worker' shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of

training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term 'rescue squad worker' shall mean a member of an ambulance service certified by the Department of Health and Human Services under Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term 'Civil Air Patrol members' shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified under G.S. 143B-491(a). The term 'fireman' shall also mean county fire marshals when engaged in the performance of their county duties. The term 'rescue squad worker' shall also mean county emergency services coordinators when engaged in the performance of their county duties."

Section 4.(aa) G.S. 143B-150.5(d) reads as rewritten:

"(d) The Secretary of the Department of Health and Human Services shall ensure the cooperation of the Division of Social Services, ~~the Division of Youth Services,~~ the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Division of Medical Assistance, in carrying out the provisions of this Part."

Section 4.(bb) G.S. 143B-150.7(b) reads as rewritten:

"(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) Four members representing the Department of Health and Human Services, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom shall represent the Division of Maternal and Child Health;

(1a) One member representing the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;

(2) Two members, one from each of the following: the Administrative Office of the Courts and the Department of Public Instruction;
(3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;
(4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;
(5) One member representing the schools of social work of The University of North Carolina;
(6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and
(7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of Health and Human Services shall serve as the Chair of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services."

Section 4.(cc) G.S. 143B-152.6 reads as rewritten:

"§ 143B-152.6. Cooperation of State and local agencies.

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(dd) G.S. 143B-152.14 reads as rewritten:

"§ 143B-152.14. Cooperation of State and local agencies.

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties,

shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(ee) G.S. 143B-153(2) reads as rewritten:

"(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services."

Section 4.(ff) G.S. 143B-478 reads as rewritten:

"§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings, etc.

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 36 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services,

the Secretary of the Department of Correction, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Parole, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the

Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: ~~the representative of the Office of Juvenile Justice,~~ the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed under subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the

Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 4.(gg) G.S. 147-45 reads as rewritten:

"**§ 147-45. Distribution of copies of State publications.**

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture and Consumer Services, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0

Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment and Natural Resources, Department of	6	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Health and Human Services, Department of	6	0
Mental Health, Developmental Disabilities, and Substance Abuse Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	3	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0

Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1

East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
University of North Carolina, Pembroke	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
Johnson C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point University	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.

Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

Section 4.(hh) G.S. 131D-10.4 reads as rewritten:

"**§ 131D-10.4. Exemptions.**

This Article shall not apply to:

(1) Any residential child-care facility chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars ($60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation before July 1, 1977;

(2) State institutions for emotionally disturbed or delinquent children, the mentally ill, mentally retarded, and substance abusers;

(3) Secure detention facilities as specified in ~~Article 3C of Chapter 147~~ Article 12 of Chapter 143B of the General Statutes;

(4) Licensable facilities subject to the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services as specified in Article 2 of Chapter 122C of the General Statutes;

(5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14;

(6) Primarily educational institutions as defined in G.S. 131D-10.2(11); or

(7) Individuals who are related by blood, marriage, or adoption to the child."

Section 4.(ii) G.S. 153A-221.1 reads as rewritten:

"**§ 153A-221.1. Standards and inspections.**

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training.

~~The Director of the Office of Juvenile Justice shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by Article 3C of Chapter 147 of the General Statutes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.~~

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail

with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child."

Section 4.(jj) G.S. 164-40 reads as rewritten:

"**§ 164-40. Correction population simulation model; ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model.**

(a) The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

(b) The Commission shall develop ~~an Office of Juvenile Justice~~ a Department of Juvenile Justice and Delinquency Prevention facilities population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the dispositional laws set forth in Chapter 7B of the General Statutes, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, in second priority to the work of the Commission."

Section 4.(kk) G.S. 164-43 reads as rewritten:

"**§ 164-43. Priority of duties; reports; continuing duties.**

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established under G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on

these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in this State to ensure that sentences and dispositions remain uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing and dispositional practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model developed under G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated under G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment or dispositional level for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model to the provisions of the bill."

Section 4.(ll) G.S. 164-37(26) reads as rewritten:

"(26) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention."

Section 4.(mm) G.S. 143B-2 reads as rewritten:

"**§ 143B-2. Interim applicability of the Executive Organization Act of 1973.**

The Executive Organization Act of 1973 shall be applicable only to the following named departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety

(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of ~~Commerce.~~ Commerce
(10) Department of Juvenile Justice and Delinquency Prevention."

Section 4.(nn) G.S. 143B-6 reads as rewritten:

"**§ 143B-6. Principal departments.**

In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce
(10) Community Colleges System ~~Office.~~ Office
(11) Department of Juvenile Justice and Delinquency Prevention."

PART IV. EFFECTIVE DATE.

Section 5. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1804*
Committee Substitute Favorable 6/5/00
Committee Substitute #2 Favorable 6/21/00
Proposed Senate Committee Substitute H1804-PCS5120-RH

Short Title: Establish Juvenile Department. (Public)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

PART I. CREATION OF DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

Section 1.(a) Article 3C of Chapter 147 of the General Statutes is repealed.

Section 1.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12.

"Department of Juvenile Justice and Delinquency Prevention.

"Part 1. Creation of Department.

"§ 143B-511. Creation of the Department of Juvenile Justice and Delinquency Prevention.

There is hereby created and constituted a department to be known as the 'Department of Juvenile Justice and Delinquency Prevention', with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article.

"**§ 143B-512. Transfer of Office of Juvenile Justice authority to the Department of Juvenile Justice and Delinquency Prevention.**

(a) All (i) statutory authority, powers, duties, and functions, including directives of S.L. 1998-202, rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Office of Juvenile Justice under the Office of the Governor are transferred to and vested in the Department of Juvenile Justice and Delinquency Prevention. This transfer has all of the elements of a Type I transfer as defined in G.S. 143A-6.

(b) The Department shall be considered a continuation of the Office of Juvenile Justice for the purpose of succession to all rights, powers, duties, and obligations of the Office and of those rights, powers, duties, and obligations exercised by the Office of the Governor on behalf of the Office of Juvenile Justice. Where the Office of Juvenile Justice is referred to by law, contract, or other document, that reference shall apply to the Department. Where the Office of the Governor is referred to by contract or other document, where the Office of the Governor is acting on behalf of the Office of Juvenile Justice, that reference shall apply to the Department.

(c) All institutions previously operated by the Office of Juvenile Justice and the present central office of the Office of Juvenile Justice, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Office or by the Office of the Governor for the Office of Juvenile Justice, shall be administered by the Department of Juvenile Justice and Delinquency Prevention.

"Part 2. General Provisions.

"**§ 143B-513. Definitions.**

In this Article, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.

(2) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(3) County Councils. -- Juvenile Crime Prevention Councils created under G.S. 143B-529.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(8) Department. -- The Department of Juvenile Justice and Delinquency Prevention.

(9) Detention. -- The secure confinement of a juvenile under a court order.

(10) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(11) District. -- Any district court district as established by G.S. 7A-133.

(12) Judge. -- Any district court judge.

(13) Judicial district. -- Any district court district as established by G.S. 7A-133.

(14) Juvenile. -- Except as provided in subdivisions (7) and (22) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(15) Juvenile court. -- Any district court exercising jurisdiction under this Chapter.

(16) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the Department for placement in a training school.

(17) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(18) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(19) Secretary. -- The Secretary of Juvenile Justice and Delinquency Prevention.

(20) State Council. -- The State Advisory Council on Juvenile Justice and Delinquency Prevention established under G.S. 143B-536.

(21) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the Department.

(22) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

"**§ 143B-514. Duties and powers of the Department of Juvenile Justice and Delinquency Prevention.**

(a) The head of the Department is the Secretary. The Secretary shall have the powers and duties conferred by this Chapter, delegated by the Governor, and conferred by the Constitution and laws of this State. The Secretary shall be responsible for effectively and efficiently organizing the Department to promote the policy of the State as set forth in this Article and to promote public safety and to prevent the commission of delinquent acts by juveniles.

(b) The Secretary shall have the following powers and duties:

(1) Give leadership to the implementation as appropriate of State policy that requires that training schools be phased out as populations diminish.

(2) Close a State training school when its operation is no longer justified and transfer State funds appropriated for the operation of that training school to fund community-based programs, to purchase care or services for predelinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing training schools, provided the Advisory Budget Commission reviews this action.

(3) Administer a sound admission or intake program for juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.

(4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.

(5) Adopt rules to implement this Article and the responsibilities of the Secretary and the Department under Chapter 7B of the General Statutes. The Secretary may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.

(6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation, and post-release supervision services in all district court districts of the State. The system shall provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

(7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.

(8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.

(9) Develop standards, approve yearly program evaluations, and make recommendations based on the evaluations to the General Assembly concerning continuation funding.

(10) Collect expense data for every program operated and contracted by the Department.

(11) Develop a formula for funding, on a matching basis, juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Department.

(12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services and provide information on the availability of potential funding sources and assistance in making application for needed funding.

(13) Assist the Criminal Justice Information Network Governing Board with administering a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.

(15) Appoint the chief court counselor in each district upon the recommendation of the chief district court judge of that district.

(16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of

juveniles. The plan shall include attendance at appropriate professional meetings and opportunities for educational leave for academic study.

(17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

(c) Except as otherwise specifically provided in this Article and in Article 1 of this Chapter, the Secretary shall prescribe the functions, powers, duties, and obligations of every agency or division in the Department.

(d) Where Department statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Department shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(e) The Department may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations. The Department may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(f) The Department shall develop a cost-benefit model for each State-funded program. Program commitment and recidivism rates shall be components of the model. In developing the model, the Department shall consider the recommendations of the State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-515. Authority to contract with other entities.**

(a) The Department may contract with any governmental agency, person, or association for the accomplishment of its duties and responsibilities. The expenditure of funds under these contracts shall be for the purposes for which the funds were appropriated and not otherwise prohibited by law.

(b) The Department may enter into contracts with, and act as intermediary between, any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program. As a condition of assistance, the county shall agree to hold and save harmless the Department against any claims, loss, or expense which the Department might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees.

(c) The Department and any other appropriate State or local agency may purchase services from public or private agencies providing delinquency prevention programs or juvenile court services, including parenting responsibility classes. The programs shall meet State standards. As institutional populations are reduced, the Department may divert State funds appropriated for institutional programs to purchase the services under the Executive Budget Act.

(d) Each programmatic, residential, and service contract or agreement entered into by the Department shall include a cooperation clause to ensure compliance with the Department's quality assurance requirements and cost-accounting requirements.

"§ 143B-516. Authority to assist private nonprofit foundations.

The Department may provide appropriate services or allow employees of the Department to assist any private nonprofit foundation that works directly with the Department's services or programs and whose sole purpose is to support these services and programs. A Department employee shall be allowed to work with a foundation no more than 20 hours in any one month. These services are not subject to Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the Department of State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall transmit to the Department a copy of the annual financial audit report of the private nonprofit foundation.

"§ 143B-517. Annual report.

On or before April 1 each year, beginning with the year 2001, the Department shall report to the General Assembly on the effectiveness and cost benefit of every program operated and contracted by the Department and a summary of the local programs that receive State funding. The report shall include the most current institutional populations of juveniles being served by the Department, a comparison of the costs of the services, and a ranking of all programs that provide services to juveniles. The Department shall submit the report to the various State agencies providing services to juveniles.

"Part 3. Juvenile Facilities.

"§ 143B-518. Juvenile facilities.

In order to provide any juvenile in a juvenile facility with appropriate treatment according to that juvenile's need, the Department shall be responsible for the administration of statewide educational, clinical, psychological, psychiatric, social, medical, vocational, and recreational services or programs.

"§ 143B-519. Authority to provide necessary medical or surgical care.

The Department may provide any medical and surgical treatment necessary to preserve the life and health of juveniles committed to the custody of the Department; however, no surgical operation may be performed except as authorized in G.S. 148-22.2.

"§ 143B-520. Compensation to juveniles in care.

A juvenile who has been committed to the Department may be compensated for work or participation in training programs at rates approved by the Secretary within available funds. The Secretary may provide for a reasonable allowance to the juvenile for incidental personal expenses, and any balance of the juvenile's earnings remaining at the time the juvenile is released shall be paid to the juvenile or the juvenile's parent or guardian. The Department may accept grants or funds from any source to compensate juveniles under this section.

"§ 143B-521. Visits and community activities.

(a) The Department shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Department.

(b) The Department shall develop a program of home visits for juveniles in the custody of the Department. The visits shall begin after the juvenile has been in the custody of the Department for a period of at least six months. In developing the program, the Department shall adopt criteria that promote the protection of the public and the best interests of the juvenile.

"§ 143B-522. Regional detention services.

The Department is responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services that offer juvenile detention care of sufficient quality to meet State standards to any juvenile requiring juvenile detention care within the State in a detention facility as follows:

(1) The Department shall plan with the counties operating a county detention facility to provide regional juvenile detention services to surrounding counties. The Department has discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate factors.

(2) The Department may plan with any county that has space within its county jail system to use the existing space for a county detention facility when needed, if the space meets the State standards for a detention facility and meets all of the requirements of G.S. 153A-221. The use of space within the county jail system shall be constructed to ensure that juveniles are not able to converse with, see, or be seen by the adult population, and juveniles housed in a space within a county jail shall be supervised closely.

(3) The Department shall plan for and administer regional detention facilities. The Department shall carefully plan the location, architectural design, construction, and administration of a program to meet the needs of juveniles in juvenile detention care. The physical facility of a regional detention facility shall comply with all applicable State and federal standards. The programs of a regional detention facility shall comply with the standards established by the Department.

"§ 143B-523. State subsidy to county detention facilities.

The Department shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention facility in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Department. The Department may vary the exact

funding formulas to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care.

"§ 143B-524. Authority for implementation.

In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department may:

(1) Release or transfer a juvenile from one detention facility to another when necessary to administer the juvenile's detention appropriately.

(2) Plan with counties that operate county detention facilities to provide regional services and to upgrade physical facilities to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards.

(3) Allow the State to reimburse law enforcement officers or other appropriate employees of local government for the costs of transportation of a juvenile to and from any juvenile detention facility.

(4) Seek funding for juvenile detention services from federal sources, and accept gifts of funds from public or private sources.

"Part 4. Juvenile Court Services.

"§ 143B-525. Duties and powers of chief court counselors.

The chief court counselor in each district appointed under G.S. 143B-514(b)(15) may:

(1) Appoint court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.

(3) Provide in-service training for staff as required by the Department.

(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.

"§ 143B-526. Duties and powers of juvenile court counselors.

As the court or the chief court counselor may direct or require, all juvenile court counselors shall have the following powers and duties:

(1) Secure or arrange for any information concerning a case that the court may require before, during, or after the hearing.

(2) Prepare written reports for the use of the court.

(3) Appear and testify at court hearings.

(4) Assume custody of a juvenile as authorized by G.S. 7B-1900, or when directed by court order.

(5) Furnish each juvenile on probation or protective supervision and that juvenile's parents, guardian, or custodian with a written

statement of the juvenile's conditions of probation or protective supervision, and consult with the juvenile's parents, guardian, or custodian so that they may help the juvenile comply with the conditions.

(6) Keep informed concerning the conduct and progress of any juvenile on probation or under protective supervision through home visits or conferences with the parents or guardian and in other ways.

(7) See that the juvenile complies with the conditions of probation or bring to the attention of the court any juvenile who violates the juvenile's probation.

(8) Make periodic reports to the court concerning the adjustment of any juvenile on probation or under court supervision.

(9) Keep any records of the juvenile's work as the court may require.

(10) Account for all funds collected from juveniles.

(11) Serve necessary court documents pertaining to delinquent and undisciplined juvenile matters.

(12) Assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public or the juvenile, and when necessary to carry out the responsibilities of court counselors under this section and under Chapter 7B of the General Statutes.

(13) Use reasonable force and restraint necessary to secure custody assumed under subdivision (12) of this section.

(14) Provide supervision for a juvenile transferred to the counselor's supervision from another court or another state, and provide supervision for any juvenile released from an institution operated by the Department when requested by the Department to do so.

(15) Assist in the development of post-release supervision and the supervision of juveniles.

(16) Have any other duties as the court may direct.

"Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

"§ 143B-527. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

(a) The Department shall implement the comprehensive juvenile delinquency and substance abuse prevention plan developed by the Office of Juvenile Justice and shall coordinate with County Councils for implementation of a continuum of services and programs at the community level.

The Department shall ensure that localities are informed about best practices in juvenile delinquency and substance abuse prevention.

(b) The plan shall contain the following:

(1) Identification of the risk factors at the developmental stages of a juvenile's life that may result in delinquent behavior.

(2) Identification of the protective factors that families, schools, communities, and the State must support to reduce the risk of juvenile delinquency.

(3) Programmatic concepts that are effective in preventing juvenile delinquency and substance abuse and that should be made available as basic services in the communities, including:

a. Early intervention programs and services.

b. In-home training and community-based family counseling and parent training.

c. Adolescent and family substance abuse prevention services, including alcohol abuse prevention services, and substance abuse education.

d. Programs and activities offered before and after school hours.

e. Life and social skills training programs.

f. Classes or seminars that teach conflict resolution, problem solving, and anger management.

g. Services that provide personal advocacy, including mentoring relationships, tutors, or other caring adult programs.

(c) The Department shall cooperate with all other affected State agencies and entities in implementing this section.

"Part 6. Juvenile Crime Prevention Councils.

"**§ 143B-528. Legislative intent.**

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to training schools and to provide community-based delinquency and substance abuse prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils.

"**§ 143B-529. Creation; method of appointment; membership; chair and vice-chair.**

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of commissioners of a county shall appoint a Juvenile Crime Prevention Council. Each County Council is a continuation of the corresponding Council created under G.S. 147-33.61. The County Council shall consist of not more than 25 members and should include, if possible, the following:

(1) The local school superintendent, or that person's designee;
(2) A chief of police in the county;
(3) The local sheriff, or that person's designee;
(4) The district attorney, or that person's designee;
(5) The chief court counselor, or that person's designee;
(6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
(7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
(8) The county manager, or that person's designee;
(9) A substance abuse professional;
(10) A member of the faith community;
(11) A county commissioner;
(12) A person under the age of 21;
(13) A juvenile defense attorney;
(14) The chief district court judge, or a judge designated by the chief district court judge;
(15) A member of the business community;
(16) The local health director, or that person's designee;
(17) A representative from the United Way or other nonprofit agency;
(18) A representative of a local parks and recreation program; and
(19) Up to seven members of the public to be appointed by the board of commissioners of a county.

The board of commissioners of a county shall modify the County Council's membership as necessary to ensure that the members reflect the racial and socioeconomic diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council under subsection (a) of this section. The membership shall be representative of each participating county.

(c) The members of the County Council shall elect annually the chair and vice-chair.

"§ 143B-530. Terms of appointment.

Each member of a County Council shall serve for a term of two years, except for initial terms as provided in this section. Each member's term is a continuation of that member's term under G.S. 147-33.62. Members may be reappointed. The initial terms of appointment began January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) were appointed for an initial term ending on June 30, 2000. After the initial terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 143B-529(a) shall be appointed for two-year terms, beginning on July 1. All other persons appointed to the Council were appointed for an initial term ending on June 30, 2001, and, after those initial terms, persons shall be appointed for two-year terms beginning on July 1.

"**§ 143B-531. Vacancies; removal.**

Appointments to fill vacancies shall be for the remainder of the former member's term.

Members shall be removed only for malfeasance or nonfeasance as determined by the board of county commissioners.

"**§ 143B-532. Meetings; quorum.**

County Councils shall meet at least bimonthly, or more often if a meeting is called by the chair.

A majority of members constitutes a quorum.

"**§ 143B-533. Compensation of members.**

Members of County Councils shall receive no compensation but may receive a per diem in an amount established by the board of county commissioners.

"**§ 143B-534. Powers and duties.**

(a) Each County Council shall review annually the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of county commissioners for its approval. Upon the county's authorization, the plan shall be submitted to the Department for final approval and subsequent implementation.

(b) Each County Council shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community-level sanctions for court-adjudicated juveniles under minimum standards adopted by the Department.

(c) On an ongoing basis, each County Council shall:

(1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs.

(2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding.

(3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem.

(4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments.

(5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families. These services may include court-ordered parenting responsibility classes.

(6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district.

"**§ 143B-535. Funding for programs.**

(a) Annually, the Department shall develop and implement a funding mechanism for programs that meet the standards developed under this Part. The Department shall ensure that the guidelines for the State and local partnership's funding process include the following requirements:

(1) Fund effective programs. -- The Department shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.

(2) Use a formula for the distribution of funds. -- A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternative services to juveniles in their communities.

(3) Allow and encourage local flexibility. -- A vital component of the State and local partnership established by this section is local flexibility to determine how best to allocate prevention and alternative funds.

(4) Combine resources. -- Counties shall be allowed and encouraged to combine resources and services.

(b) The Department shall adopt rules to implement this section. The Department shall provide technical assistance to County Councils and shall require them to evaluate all State-funded programs and services on an ongoing and regular basis.

"Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

"**§ 143B-536. Creation of Council; purpose; members; duties.**

(a) There is created the State Advisory Council on Juvenile Justice and Delinquency Prevention. The State Council shall be located within the Department for organizational, budgetary, and administrative purposes.

(b) The purpose of the State Council is to review and advise the Department in the development of a comprehensive interagency plan to reduce juvenile delinquency and substance abuse and to coordinate efforts among State agencies providing services and supervision to juveniles who are at risk of delinquency and for juveniles who have been adjudicated of delinquent and undisciplined behavior.

(c) The State Council shall consist of 20 members as follows:

(1) The Governor shall appoint five persons, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice issues.

(2) The Chief Justice of the Supreme Court shall appoint four persons.

(3) The following persons, or their designees, shall serve ex officio:

a. The Governor.

b. The Chief Justice of the Supreme Court.

c. The President Pro Tempore of the Senate.

d. The Speaker of the House of Representatives.

e. The Director of the Administrative Office of the Courts.

f. The Superintendent of Public Instruction.
g. The Secretary of Administration.
h. The Secretary of Health and Human Services.
i. The Secretary of Correction.
j. The Secretary of Crime Control and Public Safety.
k. The President of The University of North Carolina.

(d) Initial members, other than ex officio members, who were appointed under former G.S. 147-33.70 and whose terms began January 1, 1999, shall serve for terms as follows:

(1) Three members appointed by the Governor shall serve for terms of two years and two members for terms of three years.
(2) Two members appointed by the Chief Justice of the Supreme Court shall serve for terms of two years and two members for terms of three years.

Thereafter, members, other than ex officio members, shall serve for two-year terms. There is no prohibition against initial members being reappointed.

(e) The Governor and Chief Justice of the Supreme Court shall serve as cochairs of the State Council.

(f) A vacancy on the State Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) State Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) The chairs shall convene the Council. Meetings shall be held as often as necessary but not less than four times a year.

(j) A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council is necessary for action to be taken by the Council.

"§ 143B-537. Powers and duties of the Council.

The State Council shall have the following powers and duties:

(1) Advise the Department in the review of the State's juvenile justice planning, the development of the community juvenile justice councils, and the development of a formula for the distribution of funds to Juvenile Crime Prevention Councils.
(2) Advise all State agencies serving juveniles for the purpose of developing a consistent philosophy with regard to providing services to juveniles and promoting collaboration and the efficient and effective delivery of services to juveniles and families through State, local, and district programs and fully address problems of collaboration across State agencies with the goal of serving juveniles.

(3) Review and comment on juvenile justice, delinquency prevention, and juvenile services grant applications prepared for submission under any federal grant program by any governmental entity of the State.

(4) Review the juvenile justice system's operation and prioritization of funding needs.

(5) Review the progress and accomplishment of State and local juvenile justice, delinquency prevention, and juvenile services projects.

(6) Develop recommendations concerning the establishment of priorities and needed improvements with respect to juvenile justice, delinquency prevention, and juvenile services and report its recommendations to the General Assembly on or before March 1 each year.

(7) Review and comment on the proposed budget for the Department."

PART II. REVISIONS TO THE JUVENILE CODE.

Section 2. G.S. 7B-1501 reads as rewritten:

"**§ 7B-1501. Definitions.**

In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(3) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(4) Court. -- The district court division of the General Court of Justice.

(5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.

(6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.

(7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.

(7a) Department. -- The Department of Juvenile Justice and Delinquency Prevention created under Article 12 of Chapter 143B of the General Statutes.

(8) Detention. -- The secure confinement of a juvenile under a court order.

(9) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.

(10) District. -- Any district court district as established by G.S. 7A-133.

(11) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.

(12) House arrest. -- A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for specific purposes.

(13) Intake counselor. -- A person who screens and evaluates a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.

(14) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee, or runaway, to the juvenile's home state, and codified in Article 28 of this Chapter.

(15) Judge. -- Any district court judge.

(16) Judicial district. -- Any district court district as established by G.S. 7A-133.

(17) Juvenile. -- Except as provided in subdivisions (7) and (27) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

(18) Juvenile court. -- Any district court exercising jurisdiction under this Chapter.

~~(19) Office. -- The Office of Juvenile Justice.~~

(20) Petitioner. -- The individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.

(21) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the ~~Office~~ Department for placement in a training school.

(22) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.

(23) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(24) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.

(25) Teen court program. -- A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.

(26) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services for delinquent juveniles committed by the court to the ~~Office of Juvenile Justice.~~ Department.

(27) Undisciplined juvenile. --

a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or

b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(28) Wilderness program. -- A rehabilitative residential treatment program in a rural or outdoor setting.

The singular includes the plural, unless otherwise specified."

Section 3. The Revisor of Statutes shall substitute the term "Department of Juvenile Justice and Delinquency Prevention" for the term "Office of Juvenile Justice" everywhere that term appears in the General Statutes, except for those sections of the General Statutes amended in this act. Except where the statutes specifically reference the Administrative Office of the Courts or the Office of Guardian Ad Litem Services, the Revisor of Statutes shall substitute the term "Department" for the term "Office" everywhere that term appears in Subchapters II and III of Chapter 7B of the General Statutes.

PART III. CONFORMING CHANGES TO THE GENERAL STATUTES.

Section 4.(a) G.S. 7A-302 reads as rewritten:

"**§ 7A-302. Counties and municipalities responsible for physical facilities.**

In each county in which a district court has been established, courtrooms, office space for juvenile court counselors and support staff as assigned by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and related judicial facilities (including furniture), as defined in this Subchapter, shall be provided by the county, except that courtrooms and related judicial facilities may, with the approval of the Administrative Officer of the Courts, after consultation with county and municipal authorities, be provided by a municipality in the county. To assist a county or municipality in meeting the expense of providing courtrooms and related judicial facilities, a part of the costs of court, known as the "facilities fee," collected for the State by the clerk of superior court, shall be remitted to the county or municipality providing the facilities."

Section 4.(b) G.S. 7A-343.1 reads as rewritten:

"**§ 7A-343.1. Distribution of copies of the appellate division reports.**

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1
Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11

State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1
Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1

Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained personally to enable the justice or judge to keep up-to-date the personal set of reports."

Section 4.(c) G.S. 14-316.1 reads as rewritten:

"**§ 14-316.1. Contributing to delinquency and neglect by parents and others.**

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

Section 4.(d) G.S. 17C-3(a), as amended by Section 17.3(b) of S.L. 2000-67, reads as rewritten:

"(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called "the Commission," in the Department of Justice. The Commission shall be composed of 25 members as follows:

(1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.

(2) Police Officers. -- Three police officials appointed by the North Carolina Police Executives Association and two criminal justice officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

(3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; the President of the Department of Community Colleges.

(3a) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

(5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years."

Section 4.(e) G.S. 20-79.5(a) reads as rewritten:

"(a) Plates. -- The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representatives	3
President Pro Tempore of the Senate	4
Secretary of State	5
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10
Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Services Officer	14
Secretary of Administration	15

Secretary of Environment and Natural Resources	16
Secretary of Revenue	17
Secretary of Health and Human Services	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22
Secretary of Juvenile Justice and Delinquency Prevention	23
Governor's Staff	~~23-29~~ 24-29
State Budget Officer	30
State Personnel Director	31
Advisory Budget Commission Nonlegislative Member	32-41
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53
Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-104
Post-Release Supervision and Parole Commission Member	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200".

Section 4.(f) G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the Horace Williams Campus of the University of North Carolina at Chapel Hill, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility under G.S. 148-70.

(19) The North Carolina Justice Academy.

(20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department."

Section 4.(g) G.S. 66-58(c)(7) reads as rewritten:

"(7) The operation by penal, correctional or facilities operated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors."

Section 4.(h) G.S. 114-19.6 reads as rewritten:

"**§ 114-19.6. Criminal history record checks of employees of and applicants for employment with the Department of Health and Human Services, and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.**

(a) Definitions. -- As used in this section, the term:

(1) "Covered person" means:

a. An applicant for employment or a current employee in a position in the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention who provides direct care for a client, patient, student, resident or ward of the Department; or

b. Supervises positions providing direct care as outlined in sub-subdivision a. of this subdivision.

(2) "Criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article

26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the North Carolina Department of Justice may provide to the ~~Department or Office~~ requesting department a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the ~~Department or Office~~ requesting department shall provide to the Department of Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall keep all information under this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information ~~the Department or Office~~

either department receives through the checking of the criminal history is privileged information and for the exclusive use of ~~the Department or Office.~~ that department.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human Services or the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department ~~or Office~~ of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention in determining whether employment shall be denied:

(1) The level and seriousness of the crime;
(2) The date of the crime;
(3) The age of the person at the time of the conviction;
(4) The circumstances surrounding the commission of the crime, if known;
(5) The nexus between the criminal conduct of the person and job duties of the person;
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

Section 4.(i) G.S. 114-21(b) reads as rewritten:

"(b) The ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section."

Section 4.(j) G.S. 115C-110 reads as rewritten:

"§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate

to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency Prevention.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction for the provision of special education and related services and the power to review, revise and approve any plans for special education and related services to those residents.

The Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general

supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice.~~ Services, Correction, and Juvenile Justice and Delinquency Prevention. The Board may grant specific exemptions for programs administered by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on this ~~Department or Office~~ department and when other procedural due process requirements, substantially equivalent to those of G.S. 115C-116, are assured in programs of special education and related services furnished to children with special needs served by this ~~Department or Office.~~ department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention may require more program resources than those necessary for optimal operation of these programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a "local educational agency" unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106(b). The plan shall include:

(1) A census of the children with special needs in the State, as required by subsection (j) of this section;
(2) A procedure for diagnosis and evaluation of each child;
(3) An inventory of the personnel and facilities available to provide special education for these children;
(4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;
(5) Standards for the education of children with special needs;
(6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and
(7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment under subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules covering:

(1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;

(2) Minimum standards for the individualized educational program for all children with special needs other than for the pregnant children, and for the educational program for the pregnant children, who receive special education and related services; and

(3) Any other rules as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Health and Human ~~Services and Correction and the Office of Juvenile Justice~~ Services, Correction, and Juvenile Justice and Delinquency Prevention shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

(1) A statement of the extent to which the required education and services will be provided directly by the agency;

(2) A statement of the extent to which standards in force under G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and

(3) The means by which the agency will contract to provide, at levels meeting standards in force under G.S. 115C-110(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By rule, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to these annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

(1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and

(2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except those fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Health and Human Services and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention shall not prevent that ~~Department and Office~~ department from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, to be taken in each school year. Suspected children are those in the formal process of being identified, evaluated or diagnosed as children with special needs. The census shall be conducted annually and shall be completed not later than October 15, and shall be submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than pregnant children, and of educational programs in meeting the educational needs of the pregnant children.

(l) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the

general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education."

Section 4.(k) G.S. 115C-111 reads as rewritten:

"**§ 115C-111. Free appropriate education for all children with special needs.**

No child with special needs between the ages specified by G.S. 115C-109 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian resides or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Health and Human Services or the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the local educational agency shall confer with the appropriate Department of Health and Human Services or ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention staff for their participation and determination of the appropriateness of placement in said program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115C-116. Every child with special needs shall be entitled to attend these nonresidential schools or programs and receive from them free appropriate public education."

Section 4.(l) G.S. 115C-113(f) reads as rewritten:

"(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the pregnant children, and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term 'individualized educational program' means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Health and Human Services and the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the

resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent."

Section 4.(m) G.S. 115C-113.1 reads as rewritten:

"**§ 115C-113.1. Surrogate parents.**

In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public Instruction, the Secretary of Health and Human Services, and the ~~Office of Juvenile Justice,~~ Secretary of Juvenile Justice and Delinquency Prevention, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent."

Section 4.(n) G.S. 115C-115 reads as rewritten:

"**§ 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.**

The board shall adopt rules and regulations to assure that:

(1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.

(2) No child shall be placed by the Board or by the local educational agency in a private or out-of-state school unless the Board has determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.

(3) If the placement of the child in a private school, out-of-state school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Health and Human Services, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the

full cost of any remainder up to a maximum of fifty percent (50%) of the total cost."

Section 4.(o) G.S. 115C-121(b) reads as rewritten:

"(b) The Council shall consist of 23 members to be appointed as follows: five ex officio members; two members appointed by the Governor; two members of the Senate appointed by the President Pro Tempore; two members of the House of Representatives appointed by the Speaker of the House; and 12 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

(1) The Secretary of the Department of Health and Human Services or the Secretary's designee;

(1a) A representative of the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, appointed by the Governor;

(2) The Secretary of the Department of Correction or the Secretary's designee;

(3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and

(4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms. The initial term of office of the person appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly."

Section 4.(p) G.S. 115C-139(a) reads as rewritten:

"(a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings under the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes or into undertakings with a State agency such as the

~~Office of Juvenile Justice or the~~ Departments of Public Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide the appropriate public special education or related services for these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and provide these services by or in the local agency unit or State department, agency, or division located in the place most convenient to these children."

Section 4.(q) G.S. 115C-250(a) reads as rewritten:

"(a) The State Board of Education and local boards of education may expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide such children with a free appropriate education, including its duty under G.S. 115C-115. At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of exceptional children may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education shall adopt rules and regulations concerning the construction and equipment of these buses and minibuses.

The ~~Department~~ Departments of Health and Human Services, ~~the Office of Juvenile Justice, and the Department of~~ Juvenile Justice and Delinquency Prevention, and Correction may also expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide such children with a free appropriate public education.

If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses, to the program."

Section 4.(r) G.S. 115C-325(p) reads as rewritten:

"(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human ~~Services and Correction or the Office of Juvenile Justice~~ Services, Correction, or Juvenile Justice and Delinquency Prevention regardless of the age of the students."

Section 4.(s) G.S. 115D-1 reads as rewritten:

"§ 115D-1. Statement of purpose.

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction may, if approved by the director of the training school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission."

Section 4.(t) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention required to be certified under Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention by a court of competent jurisdiction, prison inmates, and members of the North Carolina State

Defense Militia as defined in G.S. 127A-5 and as administered under Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating under this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section."

Section 4.(u) G.S. 120-216 reads as rewritten:

"**§ 120-216. Commission duties.**

The Commission shall have the following duties:

(1) Study the needs of children and youth. This study shall include, but is not limited to:

a. Determining the adequacy and appropriateness of services:

1. To children and youth receiving child welfare services;
2. To children and youth in the juvenile court system; and
3. Provided by the Division of Social Services and the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention.

b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.

c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.

d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.

e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible.

(2) Evaluate problems associated with juveniles who are beyond the disciplinary control of their parents, including juveniles who are runaways, and develop solutions for addressing the problems of those juveniles.

(3) Identify strategies for the development and funding of a comprehensive statewide database relating to children and youth to

facilitate State agency planning for delivery of services to children and youth.

(4) Conduct any other studies, evaluations, or assessments necessary for the Commission to carry out its purpose."

Section 4.(v) G.S. 122C-113(b1) reads as rewritten:

"(b1) The Secretary shall cooperate with the State Board of Education and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction, in consultation with the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs."

Section 4.(w) G.S. 122C-117(a) reads as rewritten:

"(a) The area authority shall:

(1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;

(2) Provide services to clients in the catchment area, including clients committed to the custody of the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;

(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention the provision of services to clients through area and State facilities;

(4) Develop plans and budgets for the area authority subject to the approval of the Secretary;

(5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;

(6) Comply with federal requirements as a condition of receipt of federal grants; and

(7) Appoint an area director, chosen through a search committee on which the Secretary of the Department of Health and Human Services or the Secretary's designee serves as a nonvoting member."

Section 4.(x) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building

Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Clerk of the Superior Court	1 each
Department of Cultural Resources [State Library]	5
Supreme Court Library	2
Legislative Library	1
Schools	
All state-supported colleges and universities in the State of North Carolina	*1 each
Local Officials	
Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

Section 4.(y) G.S. 143-166.2(d) reads as rewritten:

"(d) The term 'law-enforcement officer,' 'officer,' or 'fireman' shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction and all full-time institutional and detention employees of the ~~Division of Youth Services of the Department of Health and Human Services.~~ Department of Juvenile Justice and Delinquency Prevention. The term 'firemen' shall mean both 'eligible fireman'; or 'fireman' as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the North Carolina Division of Forest Resources, Department of Environment and Natural Resources, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated. The term 'rescue squad worker' shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term 'rescue squad worker' shall mean a member of an ambulance service certified by the Department of Health and Human Services under Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term 'Civil Air Patrol members' shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified under G.S. 143B-491(a). The term 'fireman' shall also mean county fire marshals when engaged in the performance of their county duties. The term 'rescue squad worker' shall also mean county emergency services coordinators when engaged in the performance of their county duties."

Section 4.(z) G.S. 143B-150.5(d) reads as rewritten:

"(d) The Secretary of the Department of Health and Human Services shall ensure the cooperation of the Division of Social Services, ~~the Division of Youth Services,~~ the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and the Division of Medical Assistance, in carrying out the provisions of this Part."

Section 4.(aa) G.S. 143B-150.7(b) reads as rewritten:

"(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

(1) Four members representing the Department of Health and Human Services, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom shall represent the Division of Maternal and Child Health;

(1a) One member representing the ~~Office of Juvenile Justice;~~ Department of Juvenile Justice and Delinquency Prevention;

(2) Two members, one from each of the following: the Administrative Office of the Courts and the Department of Public Instruction;

(3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;

(4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;

(5) One member representing the schools of social work of The University of North Carolina;

(6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and

(7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of Health and Human Services shall serve as the Chair of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services."

Section 4.(bb) G.S. 143B-152.6 reads as rewritten:

"**§ 143B-152.6. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(cc) G.S. 143B-152.14 reads as rewritten:

"**§ 143B-152.14. Cooperation of State and local agencies.**

All agencies of the State and local government, including the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

Section 4.(dd) G.S. 143B-153(2) reads as rewritten:

"(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent juveniles and of delinquent juveniles who are placed in the custody of the Office of Juvenile Justice, and payment of necessary

costs of foster home care for needy and homeless children as provided by G.S. 108A-48; ~~and~~

d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social ~~services.~~ services; and

e. For client assessment and independent case management pertaining to the functions of county departments of social services for public assistance programs authorized under paragraph a. of this subdivision."

Section 4.(ee) G.S. 143B-478 reads as rewritten:

"**§ 143B-478. Governor's Crime Commission -- creation; composition; terms; meetings, etc.**

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 36 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Parole, the ~~Director of the Office of Juvenile Justice,~~ Secretary of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Intervention/Prevention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, the Assistant Director of the Detention ~~Bureau of the Office of Juvenile Justice,~~ Division of the Department of Juvenile Justice and Delinquency Prevention, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: ~~the representative of the Office of Juvenile Justice,~~ the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed under subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 4.(ff) G.S. 147-45 reads as rewritten:

"**§ 147-45. Distribution of copies of State publications.**

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

	Session	Assembly

Agency or Institution	Laws	Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture and Consumer Services, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment and Natural Resources, Department of	6	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Health and Human Services, Department of	6	0
Mental Health, Developmental Disabilities, and Substance Abuse Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
~~Juvenile Justice, Office of~~ Juvenile Justice and Delinquency Prevention, Department of	3	0
Transportation, Department of	1	0

Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.

Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
University of North Carolina, Pembroke	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1

Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
Johnson C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point University	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0

Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

Section 4.(gg) G.S. 131D-10.4 reads as rewritten:

"**§ 131D-10.4. Exemptions.**

This Article shall not apply to:

(1) Any residential child-care facility chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars ($60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation before July 1, 1977;

(2) State institutions for emotionally disturbed or delinquent children, the mentally ill, mentally retarded, and substance abusers;

(3) Secure detention facilities as specified in ~~Article 3C of Chapter 147~~ Article 12 of Chapter 143B of the General Statutes;

(4) Licensable facilities subject to the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services as specified in Article 2 of Chapter 122C of the General Statutes;

(5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14;
(6) Primarily educational institutions as defined in G.S. 131D-10.2(11); or
(7) Individuals who are related by blood, marriage, or adoption to the child."

Section 4.(hh) G.S. 153A-221.1 reads as rewritten:

"**§ 153A-221.1. Standards and inspections.**

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training.

~~The Director of the Office of Juvenile Justice shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by Article 3C of Chapter 147 of the General Statutes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.~~

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child."

Section 4.(ii) G.S. 164-40 reads as rewritten:

"**§ 164-40. Correction population simulation model; ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model.**

(a) The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

(b) The Commission shall develop ~~an Office of Juvenile Justice~~ a Department of Juvenile Justice and Delinquency Prevention facilities population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the dispositional laws set forth in Chapter 7B of the General Statutes, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the ~~Office of Juvenile Justice,~~ Department of Juvenile Justice and Delinquency Prevention, in second priority to the work of the Commission."

Section 4.(jj) G.S. 164-43 reads as rewritten:

"**§ 164-43. Priority of duties; reports; continuing duties.**

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established under G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in this State to ensure that sentences and dispositions remain uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing and dispositional practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model and the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model developed under G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated under G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does

not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment or dispositional level for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model or the ~~Office of Juvenile Justice~~ Department of Juvenile Justice and Delinquency Prevention facilities population simulation model to the provisions of the bill."

Section 4.(kk) G.S. 164-37(26) reads as rewritten:

"(26) A representative of the ~~Office of Juvenile Justice.~~ Department of Juvenile Justice and Delinquency Prevention."

Section 4.(ll) G.S. 143B-2 reads as rewritten:

"**§ 143B-2. Interim applicability of the Executive Organization Act of 1973.**

The Executive Organization Act of 1973 shall be applicable only to the following named departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of ~~Commerce.~~ Commerce
(10) Department of Juvenile Justice and Delinquency Prevention."

Section 4.(mm) G.S. 143B-6 reads as rewritten:

"**§ 143B-6. Principal departments.**

In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

(1) Department of Cultural Resources
(2) Department of Health and Human Services
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction

(6) Department of Environment and Natural Resources
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce
(10) Community Colleges System ~~Office.~~ Office
(11) Department of Juvenile Justice and Delinquency Prevention."

Section 4.(nn) G.S. 126-5(d)(1) reads as rewritten:

"(d) (1) Exempt Positions in Cabinet Department. -- The Governor may designate a total of 100 exempt policymaking positions throughout the following departments:

a. Department of Administration;
b. Department of Commerce;
c. Department of Correction;
d. Department of Crime Control and Public Safety;
e. Department of Cultural Resources;
f. Department of Health and Human Services;
g. Department of Environment and Natural Resources;
h. Department of Revenue; ~~and~~
i. Department of ~~Transportation.~~ Transportation; and
j. Department of Juvenile Justice and Delinquency Prevention.

The Governor may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in each cabinet department listed above in this sub-subdivision, not to exceed 30 positions in each department."

Section 4.(oo) G.S. 143B-417 reads as rewritten:

"**§ 143B-417. North Carolina Internship Council -- creation; powers and duties.**

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:

a. Office of the Governor
b. Department of Administration
c. Department of Correction
d. Department of Cultural Resources
e. Department of Revenue
f. Department of Transportation
g. Department of Environment and Natural Resources
h. Department of Commerce
i. Department of Crime Control and Public Safety
j. Department of Health and Human Services
k. Office of the Lieutenant Governor
l. Office of the Secretary of State
m. Office of the State Auditor

n. Office of the State Treasurer
o. Department of Public Instruction
p. Repealed by Session Laws 1985, c. 757, s. 162.
q. Department of Agriculture and Consumer Services
r. Department of Labor
s. Department of Insurance
t. Office of the Speaker of the House of Representatives
u. Justices of the Supreme Court and Judges of the Court of Appeals
v. Community Colleges System ~~Office.~~ Office
w. Office of State Personnel
x. Office of the Senate President Pro ~~Tempore;~~ Tempore
y. Department of Juvenile Justice and Delinquency Prevention;

(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in ~~(1).~~ subdivision (1) of this section."

Section 4.(pp) G.S. 143B-426.22 reads as rewritten:

"§ 143B-426.22. Governor's Management Council.

(a) Creation; Membership. -- The Governor's Management Council is created in the Department of Administration. The Council shall contain the following members: The Secretary of Administration, who shall serve as chairman, a senior staff officer responsible for productivity and management programs from the Departments of Commerce, Revenue, Environment and Natural Resources, Transportation, Crime Control and Public Safety, Cultural Resources, Correction, Health and Human Services, Juvenile Justice and Delinquency Prevention, and Administration; and an equivalent officer from the Offices of State Personnel, State Budget and Management, and the Governor's Program for Executive and Organizational Development. The following persons may also serve on the Council if the entity represented chooses to participate: a senior staff officer responsible for productivity and management programs from any State department not previously specified in this section, and a representative from The University of North Carolina."

PART IV. EFFECTIVE DATE.

Section 5. Section 4.(e) becomes effective January 1, 2001. The remainder of the act is effective when it becomes law.

HOUSE BILL 1804:
Establish Juvenile Department

BILL ANALYSIS

Committee:	Senate Judiciary I	**Introduced by:**	Representative Baddour
Date:	July 5, 2000	**Summary by:**	Al Andrews*
Version:	3rd Edition		Committee Counsel

SUMMARY: ***House Bill 1804 would transfer existing functions of the Office of Juvenile Justice in the Office of the Governor to a new Department of Juvenile Justice and Delinquency Prevention. The bill also would make technical and conforming changes to the Juvenile Code and other statutes. As currently drafted the bill would take effect July 1, 2000.***

BACKGROUND: Created January 1, 1999, as part of the Juvenile Justice Reform Act ("Act"), the Office of Juvenile Justice ("Office") is currently established within the Office of the Governor. The Act merged into the new Office all juvenile justice responsibilities and all personnel, funds, duties, and facilities relative to juvenile justice that had been split between the Division of Youth Services in the Department of Health and Human Services and the Division of Juvenile Services in the Administrative Office of the Courts. The Act continued to require counties to provide office space for juvenile court counselors and support staff as assigned by the new Office.

The Act directed the Governor to submit, by April 1, 2000, to the General Assembly for its approval a plan for permanent placement of these juvenile justice responsibilities. The Governor's plan recommends the creation of a cabinet-level juvenile justice agency, consolidates juvenile crime prevention and intervention programs, and coordinates State and local services.

BILL ANALYSIS:

The bill is divided into four parts.

Part I covers the creation of the Department of Juvenile Justice and Delinquency Prevention and includes Section 1 of the bill. Section 1(a) repeals Article 3C, *Office of Juvenile Justice,* of Chapter 147 of the General Statutes. Section 1(b) creates a new Article 12, *Department of Juvenile Justice and Delinquency Prevention*, in Chapter 143B of the General Statutes. In essence, all provisions of *Office of Juvenile Justice* are recodified into this new Article.

Part II covers revisions to the Juvenile Code and contains Sections 2 and 3.

Part III contains bill Section 4 and provides conforming changes to several sections of the General Statutes

Part IV contains Section 5, the effective date provison. As currently drafted the bill would take effect July 1, 2000.

**Robin Johnson of the Research Divison substantially contributed to this summary.*

Differences between H1804 (3rd Ed.) and the PCS for H1804

PCS has 3 technical changes only

1. Pg 21, L 28, Section 4.(d) reflects previous amending of GS 17C-3(a) in the budget bill (S.L. 2000-67) *(the budget bill reduced the membership of the North Carolina Criminal Justice Education and Training Standards Commission from 26 to 25 by removing the Secretary of the Department of Correction).*

2. Former Section 4.(v) is removed *(it referred to a statute repealed by the budget bill).* This caused a one alphabet change in each of the identification of each of the following sections.

3. Former Section 4.(ee), now Section 4.(dd), which rewrites G.S. 143B-152(2) (powers and duties of the Social Services Commission), was updated to reflect changes made to that statute by S1215 (ratified on 7/5/00). Those changes did not affect the meaning or substance of H1804.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 11, 2000

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1804** Establish Juvenile Department

Draft Number:	PCS 5120
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Cooper sign

VISITOR REGISTRATION SHEET

Jud. I — 7-11-00

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Dirk Taylor	NCAOC
[illegible]	Moore Van Allen
[illegible]	NCSBA
Michael Bryant	DMV
Lee Rubens	CJPC
[illegible]	Moore & Van Allen
Jonathan Horowitz	ACLU-NC
Greg Owens	ACLU-NC
Alyssa Gsell	ACLU-NC
Andrea Ghoorah	ACLU-NC
April Carson	ACLU-NC
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Eddie Caldwell	HMCC&C, P.A.
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USA Reyes	THE INSIDER
Roz Smith	NCCCC
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Deborah Ross	ACLU
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